



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 21, 2022

Ms. Leigh Ann Tognetti  
Assistant District Attorney  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

OR2022-17568

Dear Ms. Tognetti:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 954583 (File No. 2022-044-DA.CO).

Hidalgo County (the "county") received a request for information pertaining to the death of a named individual.<sup>1</sup> You claim the submitted information is not subject to the Act. We have considered the submitted argument and reviewed the submitted information.

You state that because the county does not have a medical examiner, autopsies for the county are conducted as ordered by a justice of the peace. In counties with no medical examiner, a justice of the peace has the authority to conduct an inquest and order an autopsy to be performed. *See* Crim. Proc. Code §§ 49.04 (requiring justice of the peace to conduct an inquest in certain circumstances), .10 (listing circumstances in which an autopsy shall be performed). *See also id.* §§ 49.01-.24 (providing for the duties of a justice of the peace with regard to inquests and autopsies); Attorney General Opinion GA-0389 (2005). For each inquest conducted, a justice of the peace is required to make an inquest record that must include the autopsy report if an autopsy was performed. *See* Crim. Proc. Code § 49.15(b)(8). The inquest record is to be maintained in the office of the justice of the peace. *See id.* § 49.15(a).

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<sup>1</sup> You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.2d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

You state the submitted information was created at the direction of a justice of the peace. *See id.* § 49.10(c)(1) (providing that, except in certain circumstances, for each body that is the subject of an inquest by a justice of the peace, the justice, in the justice's discretion, shall direct a physician to perform an autopsy). A justice of the peace is a member of the judiciary. *See* Tex. Const. art. V; Open Records Decision No. 25 (1974). It is well established that the Act applies only to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). While the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See id.* § 552.003(1)(A), (B). Moreover, information that is "collected, assembled or maintained by... the judiciary" is not subject to the Act, but is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a). In addition, information that is "collected, assembled, or maintained ... for the judiciary" by an agent of the judiciary is not subject to the Act. *Id.* § 552.0035(a); *cf.* Attorney General Opinions DM-166 (1992), H-826 (1976); Open Records Decision Nos. 610 (1992), 572 (1990), 513 (1988), 274 (1981).

We find that in performing the autopsy at issue, the physician was acting as the agent of the justice of the peace who ordered the autopsy, and thus, the submitted information is collected and maintained by the county on behalf of the justice of the peace. As such, the submitted information is in the constructive possession of the justice of the peace; thus, the submitted information is not subject to the Act and need not be released pursuant to its provisions. *Cf.* Open Records Decision Nos. 513 at 3 (information collected at the express direction of the grand jury is in constructive possession of the grand jury and not subject to the Act); 398 at 3 (1983) (audit prepared by private auditor at direction of grand jury not within the ambit of the Act).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling  
Assistant Attorney General  
Open Records Division

KK/be

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Enc. Submitted documents

c: Requestor  
(w/o enclosures)