ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 17, 2003

Ms. Karen Rabon
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-8247

Dear Ms. Rabon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192504.

The Office of the Attorney General (the "OAG") received a request for information relating to any complaints or requests to investigate the District Attorney's Offices of Jim Wells County and Brooks County for the misappropriation and misuse of seized property, vehicles, or monies. You explain that some of the responsive information has been released. You claim, however, that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with laws governing the confidentiality of grand jury proceedings. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note, and you acknowledge, that the OAG failed to seek an open records decision from this office within the statutory ten business day period. *See* Gov't Code § 552.301(a). The OAG also failed to submit the requested information to this office within the statutory fifteen business day period. *See id.* § 552.301(e)(1)(D). The OAG's failure to comply with the procedural requirements of the Public Information Act results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome this presumption of openness, the OAG must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Since the applicability of

section 552.101 provides such a compelling reason, we will address the OAG's arguments against disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Article 20.02 of the Code of Criminal Procedure provides for the secrecy of grand jury proceedings. In Open Records Decision No. 513 (1988), this office concluded that information must be withheld from disclosure if release would reveal a grand jury's deliberations. *See also Hott v. Yarbrough*, 112 Tex. 179, 245 S.W. 676 (Tex. Comm'n App. 1922, judgm't adopted) (concluding that communication made to grand jury in regular performance of its duty is absolutely privileged, including letter addressed to foreman of grand jury calling attention to supposed violation of criminal law and asking for a grand jury investigation); *see generally Stern v. State ex rel. Ansel*, 869 S.W.2d 614 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (indicating that part of rationale behind grand jury secrecy is that it encourages grand jurors to investigate suspected crimes without inhibition and engage in unrestricted deliberations). You assert, and we agree, that the submitted records reveal a grand jury's deliberations. Accordingly, the OAG must withhold the submitted information under section 552.101 of the Government Code. *But see* Open Records Decision No. 513 at 3-4 (1988) (stating that grand jury secrecy does not extend to information obtained in independent investigation that may also be presented to grand jury).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the

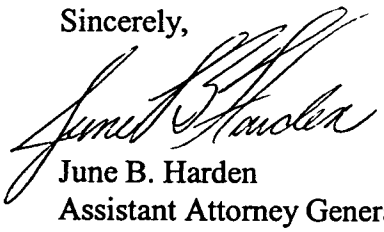
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 192504

Enc: Submitted documents

c: Mr. Melchor Hawkins
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(w/o enclosures)