ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 22, 2005

Ms. Julie Joe
Assistant County Attorney
Travis County
P. O. Box 1748
Austin, Texas 78767

OR2005-11539

Dear Ms. Joe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 238703.

The Travis County District Attorney's Office (the "D.A.'s Office") received a request for the names of grand jurors "involved in the reindictment of Tom DeLay." The D.A.'s Office claims the grand jurors' names are excepted from disclosure under section 552.107(2) of the Government Code. We have considered your claimed exception to disclosure. We have also received and considered the comments from the requestor's attorney. *See* Gov't Code § 552.304.

Section 552.107(2) provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). On October 17, 2005, Judge Brenda Kennedy issued an order to seal grand juror information:

> the 403rd District Court, . . ., hereby orders the Travis County District Clerk, or a representative thereof, to seal the record and protect all names, addresses and phone numbers of the selected Grand Jurors and any alternates for said term. Further the Court orders that pursuant to Article 19.42 of the Texas Code of Criminal Procedure, that all personal information regarding the grand

> jurors for said term, not be disclosed by the Court or agents thereof, Court personnel, or any prosecuting attorney with knowledge thereof, until and unless the Court finds that a showing of good cause has been made permitting such disclosure.

Order of the Court to Seal Grand Juror Information (403rd Dist. Ct., Travis County, Tex., Oct. 17, 2005). The first part of the order directs the district clerk or the clerk's representative to protect the grand jurors' names. It is unclear to this office whether the D.A.'s Office is a representative of the district clerk. If the D.A.'s Office is a representative of the district clerk, then you must withhold the grand jurors' names. If not, then the first part of the order does not apply to the D.A.'s Office, and the D.A.'s office may not withhold the names under the first part of the order.

The second part of the order prohibits the D.A.'s Office from disclosing the personal information of "the grand jurors for said term" in accordance with article 19.42 of the Code of Criminal Procedure. It is unclear what the court means by "said term" as the term for this grand jury has expired. Assuming this phrase applies here, we will address whether the names are confidential under article 19.42.

Article 19.42 provides as follows:

> (a) Except as provided by Subsection (b), information collected by the court, court personnel, or prosecuting attorney during the grand jury selection process about a person who serves as a grand juror, including the person's home address, home telephone number, social security number, driver's license number, and other personal information, is confidential and may not be disclosed by the court, court personnel, or prosecuting attorney.
>
> (b) On a showing of good cause, the court shall permit disclosure of the information sought to a party to the proceeding.

Crim. Proc. Code art. 19.42. Article 19.42 makes confidential certain "personal information" pertaining to individuals who serve as grand jurors. This office has opined that this provision does not make confidential the names of such individuals. *See* Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making particular information confidential). Thus, pursuant to our interpretation, because the grand jurors' names are not confidential under article 19.42, they are likewise not protected by the second part of the court order. However, we must give due deference to the court whose interpretation of article 19.42 may differ from this office's interpretation. In that event, the D.A.'s Office must adhere to the court's interpretation pursuant to section 552.107(2).

Lastly, the requestor challenges the validity of the court order based on First Amendment grounds and argues that certain criteria must be met before a court may properly deny access

to court proceedings and sealing records. It is beyond the jurisdiction of this office to determine whether the court acted properly in issuing the order or to determine the validity of the court order.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

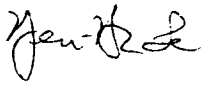
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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. 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,



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Assistant Attorney General
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YHL/krl

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