OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 5, 2003

Ms. Allison Lanty
Assistant District Attorney
25th Judicial District of Texas
113 South River, Suite 205
Seguin, Texas 78155

OR2003-1452

Dear Ms. Lanty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179640.

The 25th Judicial District Attorney's Office received a request for all bank statements compiled for a specific prosecution. You argue that the requested documents are not subject to disclosure under the Public Information Act (the "Act"). Alternatively, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend that, as records of the grand jury, the submitted documents are not subject to the Act. In Open Records Decision No. 513 (1988), this office concluded that information obtained pursuant to a grand jury subpoena issued in connection with an investigation is within the grand jury's constructive possession and is not subject to the Act. *See also* Gov't Code § 552.003. However, if an investigation began before any information was submitted to the grand jury, and the grand jury did not formally request or direct all of the governmental body's actions in the investigation, then the information is not deemed to be in the grand jury's constructive possession. The fact that information collected or prepared by a governmental body is submitted to the grand jury, when taken alone, does not mean that the information is in the grand jury's constructive possession when the same information is also held by the governmental body. Open Records Decision No. 513 (1988).

In this instance, you explain that during the course of a felony theft investigation, the Guadalupe County Grand Jury issued a subpoena duces tecum to Randolph Brooks Federal Credit Union for the submitted documents. Based on your representation and our review of the submitted documents, we agree that these records are not subject to disclosure under the Act. Accordingly, we need not address your additional arguments under the Act.

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).

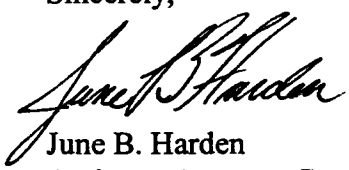
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 179640

Enc: Submitted documents

c: Mr. Peter J. Doemel
Vice President Finance & Administration
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(w/o enclosures)