

Message

From: Webster, Brent [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=47B2D01E6F744ED7B2594F40D8DB3EC0-BEW2]
Sent: 12/23/2020 9:00:17 PM
To: wkp.ag@protonmail.com
Subject: FW: Important instructions - please review asap
Attachments: Narrative Report 20201223.docx

See attached and below

From: Webster, Brent
Sent: Wednesday, December 23, 2020 9:00 PM
To: Dorfman, Grant <Grant.Dorfman@oag.texas.gov>; French, Lesley <Lesley.French@oag.texas.gov>; Reitz, Aaron <Aaron.Reitz@oag.texas.gov>; Reno, Josh <Josh.Reno@oag.texas.gov>; Holm, Anthony <Anthony.Holm@oag.texas.gov>
Subject: Important instructions - please review asap

Colleagues,

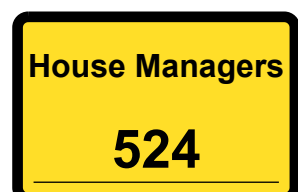
Each of you have read my report at some point. I have attached the most recent version. Please read as soon as possible, but refrain from editing it at this time. We will have a phone call with KP discussing all of our opinions about the report, including any final structural or substantive changes, so that we can make an informed decision as to the final product. The report attached is a product of your edits and my personal determination as to what edits I kept and discarded. Everyone has had slightly different opinions as to what should be included and the layout. After factoring those in, along with my own concerns, I am happy with this version.

Once everyone's input is weighed on that phone call, we will begin to finalize and proofread/edit the document.

You will receive 4 other emails with all the exhibits that we have for this report.

Thanks for your help. Please reply to me when you finish reading this. I will coordinate with KP to determine when he wants to go up on a call.

Brent



INITIAL AGENCY REVIEW

I. PURPOSE AND SCOPE OF INVESTIGATION

The purpose of this investigation is to review and analyze the actions taken by employees and political appointees of the Attorney General of Texas (“OAG”) and other individuals relating to two criminal complaints filed by Nate Paul. This investigation also involves evaluating the allegations made against Attorney General Ken Paxton (“AG Paxton”) and related documents. The individuals that made the criminal complaint against AG Paxton include Jeff Mateer, Ryan Bangert, Lacey Mase, Ryan Vassar, Mark Penley, Blake Brickman, and Darren McCarty (“the Complainants”). *See* Exhibit 1, Letter from the Complainants disclosing criminal complaint.

In addition to reviewing documents within the OAG system have interviewed or had conversations with AG Paxton, Mark Penley, Brittney Hornsey, Ryan Bangert, Ryan Vassar, Lesley French, Michael Wynne, Nate Paul, Brandon Cammack, Jason Anderson, Robert Sunley, Mindy Montford, Amy Meredith, Les St. James, Erin Mitchell, Josh Godbey, Justin Gordon, Darren McCarty, and others regarding their observations, actions, and conversations in the office. Facts within this report were discovered through the above interactions and documents discovered within the OAG and provided by outside parties. This initial report is a summary and timeline of events based on the evidence OAG has been able to discover and review. In the event that more evidence is received or discovered after the completion of this initial report, this document will be supplemented.

II. INTRODUCTION/EXECUTIVE SUMMARY

The documents and evidence discovered in the course of this investigation lead to this report's conclusion that OAG civil attorneys with limited Texas criminal law experience, attempted to understand Texas criminal law and campaign finance law, for the first time over a 24-48 hour period, all the while operating without all material facts.¹ At the time the Complainants made their claims against AG Paxton, Brandon Cammack, and Nate Paul, they were unaware of evidence and facts material to the underlying circumstances. Combined, the information they were unaware of negated and significantly undermined their allegations. Furthermore, they directly and illegally interfered with a valid and authorized Travis County District Attorney's Office ("TCDAO") criminal investigation and grand jury subpoenas.

At the time a criminal complaint was made against AG Paxton, the Complainants did not have any evidence rising to the level of bribery or any criminal act, and did not include evidence or facts supporting bribery or a criminal act within their complaint made to law enforcement. *See* "Preliminary Analysis" Section, Page XXX. Simply put, bribery requires evidence of the giving or receiving of a bribe combined with evidence of express agreement or express quid pro quo, of which the Complainants have offered no proof.² Without that key element of an express agreement, there is no criminal act. Furthermore, without evidence of a bribe, they have no criminal act. Within the Complainants' criminal complaint, all they have identified is an Attorney

¹ Each of the Complainants Job applications for each of the Complainants are included as Exhibit 2, demonstrated no substantive Texas criminal law or campaign finance experience prior to working at OAG. As Deputy for Criminal Justice, Mark Penley was learning Texas Criminal Law "on the job." Mark Penley disclosed in his interview on November 2, 2020, that he was a "National Security" prosecutor for the DOJ. National Security criminal prosecution is a "niche" area of law and is significantly different than Texas Criminal law and criminal procedure. David Maxwell was also included in this conversation, but he is not a lawyer.

² Generally speaking, to constitute bribery, allegations against Ken Paxton, Nate Paul, and Brandon Cammack would require some type of express agreement for a crime to be committed. For federal, see supreme court case; for state see Campaign donation element statute – [[[possibly cite to analysis section instead]]]

General performing statutorily authorized actions and providing assistance to a District Attorney's office.

III. FACTUAL BACKGROUND: JUNE 2020 THROUGH OCTOBER 2, 2020

The events described below are based on documents, evidence, interviews, and conversations that occurred during the investigation.

Referral #1 and OAG Investigation

Nate Paul contacted AG Paxton and told him about his conflict with the FBI and his concerns that a crime was committed against him by certain individuals in federal and state government. He asked AG Paxton to investigate. Contrary to allegations made by the Complainants, AG Paxton was not "friends" with Nate Paul before Nate Paul approached him regarding his criminal complaint against the FBI.

AG Paxton informed Nate Paul that he could not take action because the OAG does not have the authority to initiate an investigation. He also told Nate Paul that that TCDAO has jurisdiction. Nate Paul informed him that he did not know who to contact at TCDAO and the General said that he could connect Paul with First Assistant Mindy Montford. A meeting was set up with Montford and Montford invited Director of Special Prosecutions Don Clemmer to the meeting to meet with Paul.

Nate Paul met for lunch with TCDAO Director of Special Prosecutions Don Clemmer and First Assistant District Attorney Mindy Montford, at Capitol Grille. During this meeting, Nate Paul discussed his criminal complaints. AG Paxton was approximately an hour late to the meeting and arrived at the end of the conversation, missing most of the complaint presented by Nate Paul to the TCDAO team.

Between that lunch meeting and June 10, Nate Paul made a written criminal complaint to TCDAO alleging a violation of Texas Penal Code 37.10, Tampering with a Government Document, against employees of the State Securities Board, the FBI, the Department of Public Safety, the United States Attorney's Office for the Western District of Texas, and a federal magistrate. Specifically, Referral #1 involved allegations that the above potential defendants, illegally modified search warrants after they had been signed by a magistrate. Paul provided evidence that the metadata found within the search warrants PDFs demonstrated that the search warrants were modified after the magistrate signed them. Additionally, Paul alleged violations of Texas Penal Code 39.03, official oppression, against the above potential defendants.

Filing a criminal complaint against a law enforcement officer, including Federal Officers, for actions taken in their job, is common. Historically, these cases are investigated, many times with more resources than would be allocated to an investigation into a private citizen for several reasons. First, if there was a crime, it is important that the officer be held accountable and their position of authority is taken away. Second, many law enforcement agencies perform the investigation to clear the name of an accused law enforcement officer. An uncleared law enforcement officer will have difficulty on the witness stand, especially if the Defense Bar is aware of the uncleared allegations. No matter the outcome, a documented, written and thorough investigation is beneficial to all parties involved, especially if the allegations are false. As will be discussed later within this report, the accused persons within Referral #1 and Referral #2 have not been cleared, and the criminal investigation was never completed

Every complaint—including the one made by Nate Paul—made to the TCDAO is logged and assigned a number before a decision is made as what to do with it. Here, TCDAO had several options in handling Nate Paul's complaint:

- **Reject the complaint.** This happens when a complaint is received by a law enforcement agency and the complaint does not articulate a crime that can be investigated or does not include enough information to conduct an investigation. This commonly occurs when there is a civil violation of law that does not rise to the level of being a criminal violation.
- **Refer the complainant to another law enforcement agency.** The TCDAO could have directed Nate Paul to take his complaint to the Austin Police Department (“APD”) or the Travis County Sheriff’s office, as they are both equipped to conduct the investigation and may have had jurisdiction. Had TCDAO chosen this this option, an Assistant District Attorney (“ADA”) could have provided the introduction to APD or they could have instructed Nate Paul to call APD and make a report himself.
- **Ask the Texas Rangers or Department of Public Safety to investigate.** This type of complaint would normally be referred to the Public Integrity Unit of the Texas Rangers for investigation and would not have been sent to the Texas Attorney General’s Office. In fact, Nate Paul would not have known that this case would have been sent to the Texas Attorney General’s office at the time he made his complaint. Here, TCDAO chose not to take this option. Withing Referral #1, Don Clemmer wrote, “My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review.” *See* Exhibit 3, Referral #1. Since one of the individuals named in Nate Paul’s complaint worked for DPS, it would be improper for the investigating agency to be investigating their own employees for a crime.
- **Keep the investigation and conduct an investigation internally.** TCDAO and other District Attorneys’ offices in Texas can conduct their own investigations internally if they have the resources.

- **Keep the investigation and officially ask OAG to assist with the investigation (“OAG”). (This was the option chosen by ADA Don Clemmer.)** OAG assists in all forms of criminal investigations pursuant to section 41.102(b) and 402.028 of the Texas Government Code. Both Texas statutes authorize the OAG to “assist” a District Attorney’s office in their investigation or prosecution of a matter.³ In some situations (not this situation), an OAG attorney can be appointed as a “Pro-Tem” prosecutor and take on a non-subordinate role. See Tex Code Crim. Pro 2.07. See Exhibit 4, OAG Opinion KP-0273.⁴ However, unless the District Attorney is recused, the OAG’s assistance role is subordinate at all times to the District Attorney.⁵ The OAG has a team of law enforcement investigators and experts that can investigate whether government documents, including digital documents, have been tampered with. Also, the OAG can and commonly does hire outside counsel and outside experts to assist with all legal matters involving the OAG. Also, any lawyer may be appointed to be a “special prosecutor” to assist a District Attorney, including outside counsel for OAG. See Opinion KP-0273. The term “special prosecutor” is commonly confused with “pro-tem” prosecutor, and that distinction is material to what transpired in this situation. See Texas Code of Criminal Procedure Art. 2.07. The Court

³ Relevant part: “A prosecuting attorney may request the assistance of the attorney general, and the attorney general may offer to the prosecuting attorney the assistance of his office, in the prosecution of all manner of criminal cases *or in performing any duty imposed by law on the prosecuting attorney*. Tex. Gov’t Code 41.102(b). See *Coleman v. State*, 246 S.W.3d 76, at 82 n.19.

⁴ Jeff Mateer and Ryan Bangert are authors of KP-0273. KP-0273 directly contradicts Jeff Mateer and Ryan Bangert’s actions challenging the “Special Prosecutor” status given to Cammack by TCDAO. See “Cammacks Authority as Special Prosecutor” Section, Pages XXX. Penley’s letter (drafted by Bangert) and Mateer’s letter attack Cammack for not having authority as a “Special Prosecutor,” but the Complainants never contact TCDAO to determine if TCDAO had granted Cammack that authority.

⁵ If the OAG is appointed to be a “Pro-Tem” prosecutor, which can only occur if the District Attorney recuses themselves, then the OAG would have complete control of the case. When the OAG “assists” the OAG is taking on a subordinate role and the District Attorney retains control, even if the OAG takes on a “special prosecutor” status. See OAG Opinion KP-0273.

of Criminal Appeals described the difference between a Special Prosecutor and Pro-tem Prosecutor in a footnote in *Coleman v. State*, writing:

Although the terms “attorney pro tem” and “special prosecutor” are sometimes used interchangeably and have many similarities, the two are fundamentally different. See *State v. Rosenbaum*, 852 S.W.2d 525, 529 (Tex.Crim.App.1993) (Clinton, J., concurring). Both are attorneys who are not members of the district attorney's regular staff. *Id.* But a special prosecutor participates in a case only to the extent allowed by the district attorney and operates under his supervision. *Id.* An attorney pro tem assumes all the duties of the district attorney, acts independently, and, in effect, replaces the district attorney. *Id.* The special prosecutor need not take an oath of office. *Id.* The attorney pro tem, if not an attorney for the state, must take an oath. *Id.* Court approval for a special prosecutor is not required because the ultimate responsibility for the special prosecutor's actions remains with the elected district attorney. *Id.* In contrast, the trial court must approve the appointment of an attorney pro tem. *Id.* See also, *In re Guerra*, 235 S.W.3d 392, 409 (Tex.App.-Corpus Christi 2007, orig. proc.); *Rogers v. State*, 956 S.W.2d 624, 625 n. 1 (Tex.App.-Texarkana 1997, pet. ref'd).

See *Coleman v. State*, 246 S.W.3d 76, at 82 n.19. Special prosecutors remain subject to the authority of the elected District Attorney. It is important to note that Don Clemmer was aware that Nate Paul knew AG Paxton at the time he made the referral and did not believe this was a conflict that would bar his referral to the OAG, based on Clemmer's writings in the referral letter. Requesting OAG assistance is the option that the TCDAO chose. See Exhibit 3, Referral #1.

On June 10, 2020, Don Clemmer mailed Referral #1 to OAG. Referral #1 is stamped as received by OAG on June 17, 2020. The referral stated:

Dear Mr. Maxwell:

I am forwarding to you the attached complaint which was recently received by my office regarding allegations of misconduct by employees of the State Securities Board, the Federal Bureau of Investigations, the Department of Public Safety, the United States Attorney's Office for the Western District of Texas, and a federal magistrate. My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review. However, since an employee of the Department of Public Safety is one of the subjects of the complaint, referral to the Rangers would appear inappropriate. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

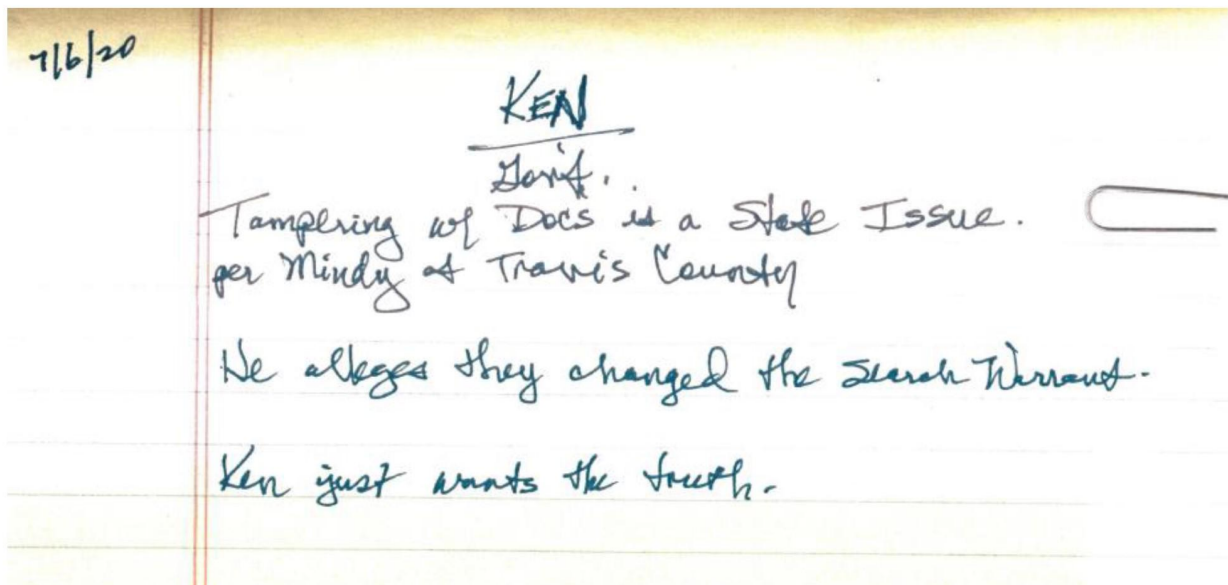
Sincerely,



Don Clemmer

See Exhibit 3, Referral #1.

Mark Penley, Deputy for Criminal Justice and member of the Complainants, kept a notepad with personal church sermon notes, office meeting notes, and legal research notes, and the notepads discovered are kept in what appears to be chronological order. Penley made the following note on July 6, 2020, which appears to be related to a meeting he had with General Paxton as it is titled, "Ken":



7/6/20

KEN
Duff.

Tampering w/ Docs is a State Issue.
per Mindy at Travis County

He alleges they changed the Search Warrant.

Ken just wants the truth.

Beyond two Penley handwritten notes, I found no proof that any OAG action taken on Referral #1 until July 17, 2020—five weeks after it was received. The criminal complaint was brought to the attention of General Paxton only when he was made aware that Texas Monthly was asking questions about Travis County’s referral to OAG. Additionally, Nate Paul contacted General Paxton asking why he had not been contacted about his criminal complaint. In response to this complaint and the Texas Monthly questions, General Paxton inquired on July 16, 2020, with his staff to find out what was happening with the criminal investigation. Once again, Penley made contemporaneous notes about his discussion with General Paxton:

Ken: We've had this for 6 weeks!
Concern @ TM article. TM concerning Paul.
He just wants the truth!
[*] → [REDACTED] NATE PAUL
Sheana Paul - Duke, #1 in class
[*] This hasn't been a priority at all 6 weeks.
Been asked to Texas Monthly.
SEEK THE TRUTH!!
has results be what they are
This was sent over by LE
Referred by Travis Co. DA.

It is commonplace in Texas politics for the head of an agency or elected official to look into concerns expressed over inaction regarding a complaint or when a journalist is asking questions regarding a pending complaint. It is notable that Penley quotes General Paxton’s words, “SEEK

THE TRUTH!! Let the results be what they are.” This is in *direct contradiction* to Penley’s allegations against General Paxton, and carefully omitted from the criminal complaint made against the General.

Within OAG, the normal procedure for processing referrals requires that the referral is first reviewed by a Chief Deputy within the Criminal Investigations division and entered into Webpass and/or the OAG offense report system. In this case, Referral #1 was located on Major Robert Sunley’s desk. David Maxwell took the referral off Sunley’s desk and informed Sunley that he was going to handle this investigation, himself. It was highly unusual for Maxwell, Director of Law Enforcement, to conduct an investigation himself.⁶ Chief of Criminal Investigations Division, Jason Anderson has done a due diligence search and has determined that Referral #1 was never entered into Webpass and did not exist within the offense report system. Maxwell did not write any reports and, with the exception of two videotaped interviews with Nate Paul and Michael Wynne, his conclusions during his investigation of Referral #1 was off-books and undocumented.⁷

Keeping an investigation off-books is highly unusual for any law enforcement officer and raises serious questions about what occurred within the OAG investigation and whether Maxwell’s personal connections and contacts with any of the subjects being investigated played a role in his actions. Nevertheless, I was able to ascertain that the following investigative actions were taken:

⁶ In my November 10, 2020 interview with Maxwell, while discussing his recent direct involvement in criminal investigations, Maxwell provided information that confirmed the fact that he rarely took part in actual investigations, and instead remained in a supervisory role.

⁷ Law enforcement officers are trained to keep an ongoing report as to their contacts on an investigation, information they have collected, and actions they have taken. This practice protects the investigating officer and promotes a thorough and objective process that can be analyzed and vetted in court if the case is prosecuted. Major Robert Sunley confirms that Referral #1 was never recorded in any law enforcement databases. Law Enforcement maintains a “Webpass” system and an “offense report” system which is specifically maintained for the purpose of recording referrals that come to OAG. See Exhibit 5, email from Robert Sunley. At the date of signing this initial report, I have been unable to locate any report written by Maxwell.

First, David Maxwell interviewed Nate Paul and Michael Wynne on July 21, 2020 and the entire meeting was videotaped at General Paxton's request. AG Paxton was concerned that Maxwell would not take the investigation seriously, and wanted his actions documented. Additionally, AG Paxton wanted the investigation to follow normal criminal investigation procedures, which required documentation.

Second, Maxwell and Mark Penley interviewed Nate Paul and Michael Wynne on August 5, 2020 and the entire meeting was videotaped, again pursuant to General Paxton's request.

Third, around August 5, 2020, David Maxwell instructed the members of OAG forensics team to analyze the PDF files that might have been tampered with, relating to Referral #1. The team conducted a review of evidence available at that time. The team did not have all of the evidence and would later determine that they needed more information and evidence to draw any conclusions. While the team had reviewed the PDFs metadata, they had not written a report or drawn conclusions about whether there had been a crime in this case.

On August 6, in response to a question from Penley about Referral #1, CIO Tina McLeod provided the definition of Metadata:

Penley, Mark

From: McLeod, Tina
Sent: Thursday, August 6, 2020 3:24 PM
To: Penley, Mark
Subject: 'metadata'

Metadata is "data that provides information about other data".

Example – the information in a PDF document is the 'data'. Metadata includes document properties such as when a document was created, modified, what template its based off of, the author, and the file size. Metadata can be automatically created or custom metadata can be 'tagged'.

Hope this helps 😊.

This is the first time Penley is learning about metadata, and yet he has been actively investigating whether a PDF was illegally modified *by analyzing the metadata* contained in the search warrant PDF's in Referral #1.

On August 12, 2020, there was a group meeting with Paxton, Maxwell Penley, Paul, Wynne, and two members of the forensics team. By all accounts, this meeting did not go well. The meeting was scheduled to be an update on the investigation and findings. Penley began the meeting notifying Paul that the investigation had been closed. This surprised Paxton, as he had been told that this was going to be an update on what the forensics team had found. The forensics team provided information to the parties. In response, Paul asked to see their computers, and demonstrated on the computer that the metadata had been modified. There are conflicting explanations as to why the forensics team had not been able to replicate what Paul demonstrated, so the forensics team determined that they would go back and review. What is uncontested, is that the forensics team believed that they needed more information and evidence to determine the meaning behind the modifications made to the documents, as reflected in the metadata. Within the meeting, there was conflict between Paul and Maxwell and Penley.

At the end of the August 12th meeting, Penley believed that there was more to investigate and requested more documents from Nate Paul and Michael Wynne. This is in addition to the forensics technicians needed more information to determine if the PDFs had been illegally modified.

Process of Hiring Outside Counsel to Investigate

Because the August 12th meeting went so poorly and raised more questions as to what had transpired, and given the fact that General Paxton knew Nate Paul, Mateer and Paxton began the

process of hiring outside counsel to further the investigation. Outside counsel are commonly used to get an objective, independent analysis of any legal situation. In this case, that was needed. While Mateer would later loudly protest the existence of an outside counsel conducting an investigation in this matter, he played a direct role in the decision to hire outside counsel. Mateer agreed with General Paxton that it was appropriate to hire outside counsel given how poor the interview went with Maxwell, and it was the only way for the investigation to be completed.

Several candidates were interviewed for the outside counsel position. Mateer and Paxton interviewed Brandon Cammack on August 26, 2020, Joe Brown on August 27, 2020. Cliff Stricklin was also considered for the job.⁸ *See* Exhibit 6, Visitor Logs. The interview went well enough for Brown and for Cammack that they both emailed Ryan Vassar regarding contract language. *See* Exhibit 7, Vassar emails with Cammack about the outside counsel contract; *see also* Exhibit 8, Vassar emails with Joe Brown about a potential outside counsel contract.

From September 3, 2020 through September 14, 2020, Penley was on vacation and not involved in OAG work or this matter.

Penley claimed that he had contact with Wynne on September 15th, renewing his asks for more documents. Penley also claimed that he learned about the interview and selection of outside counsel, on the same day.

On September 16, Penley claims that he talked with General Paxton. Penley provided General Paxton a written list of documents he thinks are outstanding from Wynne to assist Penley in determining if a crime had been committed. General Paxton told Penley that Paul and Wynne did not provide the documents because they likely did not trust Penley and Maxwell because of

⁸ A calendar entry was not located for Stricklin, but Penley confirmed in his interview that Stricklin was considered.

the sour August 12 meeting and prior treatment by Maxwell. Penley admits that General Paxton instructed Penley not to do anything further on the criminal investigation involving Referral #1.

Cammack's Authority as Outside Counsel

After interviews were completed, and on or before September 3, 2020, Ryan Vassar drafted an outside counsel contract for Cammack and provided that contract to General Paxton.

Subject: OAG OCC fy21 draft
Date: Thursday, September 3, 2020 4:09:43 PM
Attachments: [image001.png](#)
[OAG OCC fy21 draft_1.docx](#)
[image002.png](#)

General,

Per your request, attached is the draft contract. Please let me know if you have any questions.

Thank you,
Ryan

Ryan M. Vassar
Deputy Attorney General for Legal Counsel

Office of Attorney General Ken Paxton
P.O. Box 12548
Austin, Texas 78711-2548
(512) 475-4280

This message may contain confidential and/or privileged attorney-client communications or attorney work product and be excepted from required disclosure under the Texas Public Information Act, Texas Government Code chapter 552. The contents of this message should not be disclosed without the express authorization of the Attorney General.

See Exhibit 9, Vassar email to Paxton providing outside counsel contract for Cammack, with draft contract attached. The evidence known to AG Paxton and OAG at the time of entering into the contract and during the investigation was that Brandon Cammack certified in writing that he did

not have any conflicts (i.e., could be objective). *See* Exhibit 7, Vassar emails with Cammack about the outside counsel contract. Specifically, Vassar asked Cammack:

Please see attached for review.

Also, subsection 57.4(d) of Title 1, Part 3 of the Texas Administrative Code (linked below) requires a prospective outside counsel to disclose past and current conflicts of interest with the State and its agencies, boards, commissions, and other entities, and officials.

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=3&ch=57&rl=4](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=3&ch=57&rl=4)

We will need to obtain a list from you identifying relevant conflicts, or a written statement indicating that no such conflicts exist.

Thank you,

Ryan

Id. Cammack responded to this email stating,

This draft looks good. Please send an executed copy back.

Additionally, my firm does not have any conflicts of interest with regards to this investigation and OCC agreement. I will continue to look for potential conflicts that may arise in the future and inform the Attorney General's Office in the event a conflict arises.

Respectfully,

Brandon R. Cammack

Id. In addition to the written certification from Cammack stating that he had no conflict, *no documents* have been located that demonstrate Cammack had conflicts at the time of his retention as outside counsel.

AG Paxton met with Brandon Cammack in early September and Cammack signed the contract on paper instead of within DocuSign. *See* Exhibit 10, Cammack Affidavit; see also Exhibit 11, Signed outside counsel contract. Cammack again certified that he had no conflicts by signing the contract and promised to notify OAG of any conflicts:

9.8.3 Outside Counsel shall regularly conduct conflicts analyses on its interests and those of its clients and any subcontractor and immediately disclose, in writing, to Agency any actual or potential conflict with respect to Agency or the State of Texas.

9.8.4 Outside Counsel has a continual and ongoing obligation to immediately notify Agency, in writing, upon discovery of any actual or potential conflict to Agency or the State of Texas.

Id.

Brandon Cammack took his copy of the contract with him and proceeded to work on the investigation. The OAG copy of the contract was never scanned into the system by OAG employees.

Referral #2

At some time after June 10, 2020 and before September 23, 2020, Nate Paul made another criminal complaint to the TCDAO. On September 24, 2020, Director of Special Prosecution Don Clemmer emailed a second referral (Referral #2) to Brandon Cammack directly. *See* Exhibit 12, email communications between Cammack and Clemmer.

September 23, 2020

Mr. Brandon R. Cammack
Office of the Attorney General of Texas
4265 San Felipe Street, Suite 1100
Houston, Texas 77027

Dear Mr. Cammack:

I am forwarding to you the attached complaint which was recently received by my office from Mr. Nate Paul regarding allegations of misconduct taking place as part of a federal bankruptcy proceeding. The complainant alleges that the misconduct involves various attorneys and a federal magistrate, along with other individuals named in the complaint. My office would typically forward a complaint of this nature to the Public Integrity Unit of the Texas Rangers for review. However, because Mr. Paul has previously filed a complaint, which was also referred to your office, alleging misconduct in an unrelated matter by agents of the Department of Public Safety, of which the Rangers are a part, it would appear inappropriate to direct this matter to them. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

Sincerely,

/s/ Don Clemmer

Don Clemmer
Director, Special Prosecutions Division

See Exhibit 13, Referral #2.

Brandon Cammack was likely discussing this referral with Clemmer and Nate Paul before he obtained the actual document, based on the content of the Clemmer and Cammack emails. Also, in a criminal investigation, it is common to have contact with the complainant during the investigation, so it is not unusual that Nate Paul would have made Cammack aware of the fact that he had made a second complaint during communications about Referral #1. Cammack was also communicating with the TCDAO before September 24, 2020 and was made aware of the fact that Nate Paul had made a second criminal complaint.

Referral #2 alleged an on-going fraudulent financial scheme where private parties, lawyers, and one bankruptcy Judge, colluded to defraud mortgage borrowers. Paul identified third party witnesses that had information and had heard confessions of illegal activity from one of the

potential defendants. There is no overlap between the potential defendants in Referral #1 and the potential defendants in referral #2. Referral #2 alleged a criminal act that was *unrelated* to the acts and person's alleged in Referral #1.

Since the TCDAO was already working with Cammack and knew that he was outside counsel for this investigation, Referral #2 was sent directly to Brandon Cammack, addressed to OAG, but sent to Cammack's own mailing address:

September 23, 2020

Mr. Brandon R. Cammack
Office of the Attorney General of Texas
4265 San Felipe Street, Suite 1100
Houston, Texas 77027

Dear Mr. Cammack:

See Exhibit 13, Referral #2. While Cammack was aware of the referral and had begun assisting with TCDAO's investigation, all the evidence, including writings by the Complainants, indicate that the Complainants were completely unaware of Referral #2. I have completed a due diligence search, with the assistance of Chief of Criminal Investigations Division Jason Anderson and did not locate Referral #2 within any internal OAG database, nor was it located on any desk in the Criminal Investigations division. I also contacted the TCDAO and asked for information about Referral #2. *See* Exhibit 14, Email to Clemmer from Webster.

Cammacks Authority as Special Prosecutor

Based on emails provided by Cammack, TCDAO emails, emails located on OAG servers, and interviews with TCDAO employees, it is an uncontroverted fact that the TCDAO made Cammack a "Special Prosecutor." The Complainants were unaware of this fact.

TCDAO Chief of Public Integrity, Amy Meredith was instructed by Don Clemmer, to assist Cammack with obtaining grand jury subpoenas. On September 23, 2020, Brandon Cammack was contacted by TCDAO on September 23, 2020, offering Cammack assistance in his investigation:

On Sep 23, 2020, at 5:02 PM, Bailey Molnar <Bailey.Molnar@traviscountytexas.gov> wrote:

Good Afternoon Mr. Cammack,

I am the legal secretary for the Public Integrity Section at the Travis County District Attorney's Office and Amy Meredith, our section chief has asked me to contact you. Please let me know how we can help you with Grand Jury subpoenas. I create all the requests for our section so I am happy to assist in whatever way you need!

Thank you so much. I hope you have a wonderful night and look forward to working with you soon,

Bailey Molnar

See Exhibit 15, emails between Cammack and TCDAO to obtain Grand Jury Subpoenas. Grand Jury subpoenas are commonly used in the investigative phase of a criminal investigation and there is no requirement that anyone appear before a grand jury to obtain a grand jury subpoena. See Tex. Code Crim. Pro. §§ 24.01, 24.02, 24.15, and 20.11; *TDCAA Case Preparation for Investigators*, (Yellow Cover) page, 176; and Exhibit 17, excerpt from *TDCAA Case Preparation for Investigators*.

On September 24, 2020, Bailey Molnar described the process for Cammack:

On Sep 24, 2020, at 8:17 AM, Bailey Molnar <Bailey.Molnar@traviscountytexas.gov> wrote:

Good Morning Mr. Cammack,

Attached you will find our subpoena request form. If you already have a form created with the information in the form attached, go ahead and just send yours! You do not need to use our form, this is just a helpful go-by. As long as I have your contact information, the subpoenaed party information, and the description of requested material, I can make it work. Once I receive the requests, I will create the subpoenas, send them back to you for a final review, and then send them to the ADA and Judge for signature!

All of this can be done through email!

Thank you so much,

Bailey Molnar

See Exhibit 15, emails between Cammack and TCDAO to obtain Grand Jury Subpoenas. Molnar correctly pointed out that the grand jury subpoenas must be obtained through a state prosecuting attorney when she wrote that she would “send them to the ADA and Judge for signature.” *See* Tex. Code Crim. Pro. §§ 24.01, 24.02, 24.15, and 20.11. At the time the TCDAO obtained these grand jury subpoena requests, TCDAO could have an ADA sign the subpoena, or they could have Cammack sign the subpoenas and designate him a “Special Prosecutor.” *See Coleman v. State*, 246 S.W.3d 76, at 82 n.19; *see also* Opinion KP-0273. ADA Amy Meredith, or a person on her team, was responsible for entering the grand jury subpoenas into DocuSign with Cammack’s title, communicating these subpoena requests to the 460th District Judge presiding over the grand jury and submitting the subpoenas with Cammack’s signature and a signature line designating him a special prosecutor. Interviews revealed that TCDAO ADA’s knew what was being subpoenaed, discussed what was being subpoenaed, and made sure that the special prosecutor was the one signing the subpoenas. At the time TCDAO presented those subpoenas to the judge, the TCDAO officially documented their act of making Cammack a special prosecutor.

From September 23 through September 29, 2020, grand jury subpoenas were provided to Cammack relating to both Referral #1 and Referral #2. Cammack served those subpoenas on parties during that time period.

September 29, 2020 - Trigger of Criminal Complaint Against AG Paxton

On September 29th, Lacey Mase was in a meeting with Ryan Vassar, Lesley French, and two other OAG employees. During this meeting, Mase received a cell phone call from a lawyer of an employee at a financial institution notifying her about grand jury subpoenas being served on

said financial institution by Brandon Cammack. It is unknown who called Mase, but it likely was related to grand jury subpoenas served on two financial institutions.⁹ Coincidentally, on the same day Mase received this call, Stephen Lemmon called OAG Associate Deputy Lisa Tanner, claiming to represent a financial institution and questioning the validity of a grand jury subpoena he had received.¹⁰ See Exhibit 16, Lisa Tanner email summarizing her September 29th all with Steve Lemmon.

Lacey Mase left the meeting and went to Mateer's office. Mateer was in a Zoom meeting, and Mase told Executive Assistant to Mateer, Brittney Hornsey, that she had to get Mateer out of his meeting because it was an emergency. From eye-witness information, we learn that the Complainants began meeting frequently beginning at this point, and at times included David Maxwell and Missy Carey, former Chief of Staff, via telephone.

Email and documents recovered within OAG systems demonstrate that at the time of this meeting, the Complainants believed that Cammack had illegally obtained grand jury subpoenas, with the assistance of General Paxton. No one contacted General Paxton, Cammack, or TCDAO to verify these assumptions.

The first document to be drafted by the Complainants was a September 29, 2020, letter to Cammack instructing him to cease actions and accusing him of "illegal" acts. Around 5:21 PM, Ryan Bangert, who was in the office at the time, emailed himself the beginning draft Microsoft Word document of a letter that would eventually be sent to Brandon Cammack, which stated:

⁹ Lacey Mase, as Deputy of Administration, played no role in OAG criminal investigations OAG, and this phone call raises questions as to how or why she came to be called regarding the service of the grand jury subpoenas. Those questions remain unanswered to date.

¹⁰ Coincidentally, Stephen Lemmon is the attorney for the receiver in the "Mitte Foundation" lawsuit referenced in the Complainants' criminal complaint against General Paxton, and the receiver he represents is accused of a crime in Referral #2. Clearly this is a conflict and it remained undisclosed in any writings or emails.

Dear Mr. Cammack:

It has come to our attention that you appeared before the Travis County grand jury on September 28, 2020 and represented yourself to be a Special Prosecutor for the Office of Attorney General. It further has come to our attention that you served a subpoena today on at least one private business.

You have no authority to represent yourself to anyone as a “Special Prosecutor for the Office of Attorney General.” You have not been retained or authorized by this office and your actions are entirely inappropriate and may be illegal. We demand that you immediately cease and desist from taking any actions in which you purport to be acting pursuant to authority conferred by the Office of Attorney General.

See Exhibit 18, Documents demonstrating Drafting of Letter Accusing Brandon Cammack.

This document and subsequent versions demonstrate that the Complainants assumed Brandon Cammack had illegally represented himself before a grand jury, had obtained grand jury subpoenas for items not related to Referral #1 (see below), and was falsely holding himself out as a special prosecutor. Every single one of those underlying assumptions was false, but they did not know it at the time. The final draft of this letter the Complainants were working on is known as the “Penley Letter.”

At some point during the evening of September 29th, Hornsey was instructed by one of the Complainants to modify a blank Word document with OAG letterhead by deleting the words “Attorney General Ken Paxton” and only leaving the seal (“Unauthorized Letterhead”).

September 30, 2020 - The Penley Letter

The drafting efforts described above resulted in the Penley Letter, issued on the Unauthorized Letterhead. *See Exhibit 19, Penley Letter.* Around 8:06 AM on September 30th, Hornsey assisted Penley with scanning Penley’s letter to Brandon Cammack, which was sent to Brandon Cammack at 9:17 am. *Id.*; *See also Exhibit 20, Brittney Hornsey email scan.* Penley uses the unauthorized letterhead for this letter. Immediately after Penley’s letter was scanned, Mase

instructed all 8th-floor personnel (executive floor) to go home, with the exception of the Complainants and Hornsey.

The criminal complaint against AG Paxton

This investigation also revealed that the Cammack grand jury subpoena was the trigger for the Complainants' decision to write and submit a criminal complaint against General Paxton. Immediately after drafting the Penley Letter, the Complainants began writing their written criminal complaint. The initial draft circulated by Vassar was largely built around the allegations made against Cammack and the criminal investigation into the FBI. *See* Exhibit 21, process of drafting criminal complaint.

Vassar was tasked by the Complainants to write the first draft. This first draft reveals the Complainants' understanding of the events that had transpired. The first draft also demonstrates the seminal accusation against AG Paxton which is articulated within the context of the narrative. The first assertion of a criminal complaint against AG Paxton appeared in a draft complaint that was circulated at 7:53 PM on September 29th when Vassar emailed the Complainants, plus Missy Cary and David Maxwell. *Id.* Another draft was emailed at 12:22 AM on September 30.

Two documents appear to be the "close to final" or "final" drafts of the criminal complaints against General Paxton. *See* Exhibit 22, final draft of complaints. Since the Complainants made a criminal complaint to DPS and to the FBI, = there is likely a draft for each entity.¹² Both

¹² These two drafts are close to the final draft, or final, as the drafts were completed and printed on the same day the Complainants made their complaint to DPS on September 30th, and the other draft included a sentence that mentions that the Complainants made a report to the "Department," which is likely a reference to "Department of Public Safety," meaning that the second draft might have been the draft provided to FBI. As an observation, the Complainants' criminal complaint asks DPS and the FBI to investigate the OAG and Ken Paxton, for investigating them. *See* Exhibit 23, Word Document "information" relating to actions taken by Ryan Bangert. This is a clear conflict, as ADA Don Clemmer pointed out the principle, in his original referral. *See* Exhibit 3. If the FBI or DPS is investigating AG Paxton, involving facts relating to the TCD AO investigation into DPS and the FBI, then they cannot claim they are

documents were printed around noon on September 30, right before leaving the office to file their criminal complaint with DPS and/or the FBI. (Additionally, on October 15th, Ryan Bangert provided these two documents in response to a litigation hold placed on him. *See* email from Bangert to Lit Hold.)

Additional Events on September 30th

The only individuals present in the OAG executive leadership offices (OAG leadership floor) were the Complainants and Hornsey. That morning, Mase expressed concern to Hornsey about who had access to her and the Complainants' email accounts and instructed Brittany to make changes to email access.

At 10:55 AM, Stephen Lemmon emailed Mark Penley, with a grand jury subpoena attached and no written content. Based on this, it is likely that Penley had been communicating with Stephen Lemmon. *See* Exhibit 27, Email from Lemmon to Penley.

Bangert printed out copies of their criminal complaint around noon. *See* Exhibit 23, Word Document "information" relating to actions taken by Ryan Bangert. The Complainants stayed in the office for a short time, had Chick-fil-a together, then left the office together. The Complainants, with the exception of Mase, left their cell phones at the office, and told Hornsey that she could contact Mase if she needed anything. It is unknown where they went, but according to Blake Brickman's formal complaint filed with OAG regarding his termination, the Complainants made a criminal complaint on September 30th.

unbiased, as our investigation was into their actions, therefore they have a bias to redeem their own integrity and have personal/organizational interests that might conflict with seeking justice. [MOVE TO ANALYSIS][FOR DISCUSSION – WHERE DO WE PUT THIS?? Thoughts?]

Around 12:31 PM Cammack sent OAG General Counsel email address, Cammack's invoice for his services. *See Exhibit 24, Cammack and General Counsel email.* At 2:09 PM Hornsey emailed Mase the changes taking people off access to executive email. *See Exhibit 25, Hornsey email to Mase.*

At 5:12 PM, someone at the OAG General Counsel email address responded to Cammack and informed him that OAG cannot pay the invoice because they do not have a copy of the executed contract. *See Exhibit 24, Cammack and General Counsel email.* Ryan Vassar had access to the General Counsel email and could have written that email. Cammack responded at 9:52 PM, and notified Vassar that he would provide the contract in the morning:

From: [Brandon R. Cammack](#)
To: [Vassar, Ryan](#)
Subject: Fwd: OCC Invoice & Expense Submission
Date: Wednesday, September 30, 2020 9:52:01 PM

Hey Ryan,
I did not expect to run into this issue, however, I'll forward over the fully executed contract tomorrow.

Respectfully,

Brandon R. Cammack

See Exhibit 24, Cammack and General Counsel email.

At some point on this day, Mark Penley contacted TCDAO Director of Special Prosecution Don Clemmer and told him about what had transpired from the perspective of the Complainants. This probably alarmed Don Clemmer, as he was under the impression for a long period of time that Cammack had been hired as outside counsel for OAG. ADA Clemmer emailed Penley at 7:15

PM notifying him of some of the communications the TCDAO had with Cammack and providing an explanation of their impressions as to who Cammack was. *See* Exhibit 26, September 30 Emails from Clemmer to Penley. By this time, Cammack had been in contact with multiple people in the TCDAO by phone and email, so there is no way to piece together all of those communications without having access to the TCDAO email and phone systems.

October 1

At 8:21 AM, Cammack responded to the September 30 email from Vassar, providing the executed contract between the Attorney General and Cammack. *See* Exhibit 28, October 1 Vassar Cammack email; *see* Exhibit 11, signed outside counsel contract. This is the *first* time the Complainants saw the executed contract. Once again, the Complainants instructed all other employees in the Price Daniel building to not physically come to work.

Vassar notified the Complainants, including Mark Penley, about the existence of the contract between the Attorney General and Cammack. *See* Exhibit 29, Email from Vassar to Webster. Approximately four hours after Cammack sent the contract, Jeff Mateer and others drafted a letter to Cammack on the Unauthorized Letterhead, disavowing the outside counsel contract and, as a safeguard, declared the contract terminated effective immediately. *See* Exhibit 30, Mateer letter.

At 12:49 PM, Mateer group-texted with the Complainants and AG Paxton notifying him that they had made a criminal complaint against him and instructing AG Paxton to meet them at 3:00 PM. *See* Exhibit 31, Group Text.

At 12:56 PM, Bangert emailed Cammack the Mateer letter, again on the unauthorized letterhead. *See* Exhibit 30, Mateer letter.

At 1:04 PM, Mase emailed the “whistleblower letter” on unauthorized letterhead to Greg Simpson, head of OAG human resources. *See* Exhibit 1, Letter from the Complainants disclosing criminal complaint. Later, this letter is leaked to the press by one or multiple members of the Complainants.

Misleading Don Clemmer and Violation of Tex. Code Crim. Pro. 20.02

At 1:20 PM, Mark Penley emails the following to Don Clemmer at the TCDAO:

Dear Mr. Clemmer:

It has come to our attention that attorney Brandon Cammack of Houston, ostensibly acting as a “Special Prosecutor” for the Office of Attorney General, has recently requested and obtained the issuance of a number of subpoenas from the Travis County Grand Jury. To be clear, Mr. Cammack is not properly authorized to take any action on behalf of our office. Any representations he makes to the contrary are false, and he should not be permitted by you to take any further actions on behalf of our office.

Mr. Cammack has been notified that he is not properly authorized to act as a special prosecutor for the Office of Attorney General and has been directed immediately to cease and desist from all activities taken in that purported capacity. At your earliest convenience, please provide me, by email addressed to me at mark.penley@oag.texas.gov, with copies of each of those subpoenas for our review any further appropriate action.

See Exhibit 32, Email from Penley to Clemmer. Approximately four hours before this email was sent to Clemmer, Penley was provided the outside counsel contract which had been signed by Cammack and General Paxton. Penley omitted the existence of the contract from his email to Clemmer. Within Penley’s email communications, he never made Clemmer aware of the newly discovered contract. Instead, he simply writes, “Mr. Cammack is not properly authorized to take any action on behalf of our office.” The existence of an outside counsel contract was material to TCDAO’s understanding of Cammack’s authority.

At 2:51 PM, Vassar leaked grand jury information and criminal investigative information to private lawyer Johnny Sutton. *See* Exhibit 33, Vassar email to Johnny Sutton (Attachments

redacted to protect grand jury information). All of the Complainants were included on this email and aware of this act. This is a criminal violation of Texas Code of Criminal Procedure section 20.02.¹³ Additionally, the grand jury subpoenas he leaked include a warning on the face of the subpoenas that the subpoenas are to be kept secret. It is important to note that Johnny Sutton is a former US Attorney for the Western District of Texas and likely has personal and professional relationships with the potential defendants being investigated by TCDAO and OAG with Referral #1.

At 3:03 PM, Mark Penley went into DocuSign and rejected the Cammack outside contract without reading it. See Exhibit 34, DocuSign record for Cammack executive approval process. He did not open or read the contract until 4:06 PM. *Id.* DocuSign keeps a record of all actions taken with a document being routed through the agency, including when it was sent, when it was open, and any digital actions taken in response to the document.

At 3:08 PM General Paxton texted the Complainants back stating, “Jeff, I am out of the office and received this text on very short notice. I am happy as always to address any issues or concerns. Please email me with those issues so that they can be fully addressed.” See Exhibit 31, Group Text.

Meanwhile, on the same day, Penley obtained copies of the grand jury subpoenas for Referral #1 and Referral #2 directly from ADA Clemmer. Before releasing this Grand Jury information, Clemmer noted to Penley that he had concerns about violating Tex. Code Crim. Pro. § 20.02(h).

¹³ Art. 20.02. PROCEEDINGS SECRET. (a) The proceedings of the grand jury shall be secret. **FIX CITATION**
(h) A subpoena or summons relating to a grand jury proceeding or investigation must be kept secret to the extent and for as long as necessary to prevent the unauthorized disclosure of a matter before the grand jury

From: [Don Clemmer](#)
To: [Penley, Mark](#)
Subject: RE: [CAUTION EXTERNAL] Re: Grand Jury Subpoena
Date: Thursday, October 1, 2020 9:59:05 AM

I'm not positive that there will be a record of what subpoenas have been issued but I will try to find out. I'm also not sure about the application of Art. 20.02(h) given the extraordinary nature of this situation. I'll get back to you.

From: Penley, Mark <Mark.Penley@oag.texas.gov>
Sent: Thursday, October 1, 2020 9:42 AM
To: Don Clemmer <Don.Clemmer@traviscountytexas.gov>
Subject: Re: [CAUTION EXTERNAL] Re: Grand Jury Subpoena

Can you tell how many subpoenas he obtained, and to what entities? I want to withdraw those.

Thanks, Mark
512/936-1595

Sent from my iPhone

Beginning at 2:06 PM, Don Clemmer sent all grand jury subpoenas for Referral #1 and Referral #2 via email to Penley. Upon receipt of the secret grand jury subpoenas, and without notifying Clemmer of his intent, Penley promptly leaked this grand jury information to private lawyer Johnny Sutton. This was also violation of Texas Code of Criminal Procedure 20.02. *See* Exhibit 35, emails to Sutton from Penley (Exhibit redacted to protect grand jury information). There is no exception to 20.02 that allows for secret information to be provided to a private lawyer in this case, and no exception for secret grand jury subpoenas to the potential defendants being investigated.

Penley and Vassar's violation of Texas Code of Crim. Pro. 20.02 directly caused grand jury subpoenas of the Referral #1 criminal investigation to be leaked to a person (Johnny Sutton) that is connected to the potential defendants being investigated in Referral #1. TCDAO was investigating the FBI and DPS, and Mark Penley directly interfered with that investigation by providing secret grand jury subpoenas to the agencies and individuals being investigated. In effect,

Penley was asking the FBI and DPS to investigate the OAG and TCDAO for investigating the FBI and DPS.

On October 2, more than 24 hours after learning about the outside counsel contract, Penley, with the assistance of Assistant Attorney General Lisa Tanner, filed a motion to quash grand jury subpoenas. *See* Exhibit 42, Motion to Quash Grand Jury Subpoenas. Here too, Penley omitted the material fact that AG Paxton had authorized Cammack to act as outside counsel. Cammack's express authority to act would likely have been material to a court's analysis of whether to quash the subpoenas. Furthermore, contrary to Penley's understanding, Cammack could have obtained a grand jury subpoena without being a special prosecutor. *See* Exhibit 17, excerpt from *TCDA Case Preparation for Investigators*. TCDAO can make any private lawyer a "special prosecutor" and, unbeknownst to Penley, that was what had occurred here.

IV. PRELIMINARY ANALYSIS

A. Deletion, Removal, Leaks and False Statements by Complainants

Beginning October 5, 2020, OAG worked to preserve all documents within the agency that were connected to the allegations. The documents, litigation files, and other recordings made or created by members of the agency before the Complainants made their allegations, and the documents memorializing communications, were material. I immediately instructed OAG CIO to pull and preserve outlook communication files, and I began the process of walling off the Complainants, and other conflicted parties, from all cases relating to the accusations. Additionally, based on threats of a lawsuit made by Nate Paul, I instituted a litigation hold at the agency for all persons involved or relating to the allegations made by the Complainants. At the time of this report, I have not completed my review of the email files of all of the Complainants.

Ryan Vassar – Deletion of Evidence

On or around Monday, October 5, 2020, near the end of the day, Ryan Bangert, the Deputy First Assistant, notified me that he objected to my decision to meet with Cammack in the office. I responded, notifying Bangert that I was conducting an investigation into what had transpired within the office and that I was interviewing Cammack in connection with that investigation. Bangert appeared to be surprised by this information. It is probably that Bangert shared the fact that I was conducting an investigation with Ryan Vassar, because Bangert was in daily contact with the remaining members of the Complainants. Additionally, based on my preservation actions preserving email accounts and other relevant documents, word immediately spread around the OAG Leadership Floor, that I was conducting an investigation.

As mentioned above, Ryan Vassar illegally provided grand jury subpoenas to private attorney Johnny Sutton on October 1, 2020. (See Pages XXX) Ryan Vassar was keeping a separate folder in outlook, called “zNew” where he was selectively keeping emails related to the Complainants’ actions. After he likely learned about my investigation, he deleted the evidence of the Johnny Sutton email at 9:17 pm on October 6, 2020.¹⁴ Our CIO reviewed his outlook files and determined that the item was deleted. Once the file was moved to the deleted folder, the email is purged from the system in 3 days, instead of the customary 30 days. The deletion of the document that proves Vassar violated TCCP 20.02 is probable cause that Vassar committed the crime of “tampering with evidence,” a 3rd Degree felony. *See Texas Penal Code Section 37.09.* Further investigation is needed on this point, but once all evidence is collected, this should be reported to law enforcement for further investigation.

¹⁴ I would not have discovered this deletion had I not instructed the CIO to preserve his inbox immediately upon my arrival as the First Assistant.

Vassar may have deleted other documents or emails, and an ongoing investigation continues regarding whether he altered or deleted any other relevant documents or files.

Jeff Mateer – Disappearing evidence

Mateer had a long-standing practice of keeping a written journal of his days at the OAG. Chief of the Information Governance Division, April Norris, personally conducted an inventory of the items left in Mateer’s office after he resigned. See Exhibit 36, Inventory. The inventory includes the following journals for 2020:

- Two journals for 2020
 - 1/2020 - 3/2020
 - 4/2020 – 6/2020

Mateer did not resign until October 2, 2020, so presumably there is a journal missing. Mateer followed a disciplined system where he kept a written journal of his itinerary, which included notes and “to do” items. These journals likely included information about his interviews with candidates to serve as outside counsel for Referral #1. I instructed HR Director Greg Simpson to contact Mateer ask for the missing journal. Mateer responded that he did not have any journals in his possession. It is concerning that the most significant journal entries are missing from the office and Mateer denies its existence.

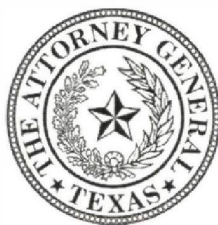
Leaked Documents

Many documents were intentionally leaked from the OAG, including the billing statement provided by Cammack to the OAG. Within that billing statement, there was information that would have been lawfully redacted by OAG’s public information team before it was released. The invoice contained confidential criminal investigation information.

Unbeknownst to the Complainants, it also contained information relating to Referral #2, which was not publicly known. One of the names on the invoice was connected to Referral #2. This name was not connected to Referral #1, and the relevance of the name would have only been meaningful to one person – the person being investigated. The person being investigated had confessed his scheme to this third-party person, and the person on the billing statement was the witness who heard the confession. As a result of that leak, AG Paxton has received veiled threats from the person being investigated, and the third-party witness on the invoice has been harassed. Neither of these things would have occurred had OAG employees not leaked criminal investigation information. The investigation into who leaked this information is on-going.

September 30 Penley Letter – False and Incorrect Statements

The Penley Letter is set out in full below. The highlighted and alphabetized portions are either factually incorrect or legally incorrect:



September 30, 2020

Brandon R. Cammack
Criminal Defense Attorney
Cammack Law Firm, PLLC
4265 San Felipe St. #1100
Houston, Texas 77027

Dear Mr. Cammack:

(Red Letters added for reference by Brent Webster)

(A) It has come to our attention that you appeared before the Travis County grand jury on September 28, 2020, and represented yourself to be a Special Prosecutor for the Office of Attorney General. It further has come to our attention that you served a subpoena today on at least one private business. **(B)** The subpoena you obtained and served has no connection to any criminal investigation authorized by, or referred to, the Office of Attorney General.

(C) You have no authority to represent yourself to anyone as a "Special Prosecutor for the Office of Attorney General." The Office of Attorney General may be authorized by a district attorney to provide assistance in the prosecution of criminal matters. TEX. GOV'T CODE § 402.028(a); *see id.* § 41.102(b). **(D)** Assistance in such matters, however, does not include prosecuting a criminal case, such as obtaining a subpoena from a grand jury without being appointed to do so by a district attorney. *Id.* **(E)** Moreover, the law only allows a district attorney to appoint an assistant attorney general as an assistant prosecuting attorney. *Id.* **(F)** You have no such appointment.

(G) You have not been retained, authorized, or deputized by this office as such and your actions are entirely inappropriate and may be illegal. We demand that you immediately cease and desist from taking any actions in which you purport to be acting as a Special Prosecutor pursuant to authority conferred by the Office of Attorney General or under a delegation of authority by the Travis County District Attorney.

Respectfully,

A handwritten signature in blue ink that reads "J. Mark Penley".

J. Mark Penley
Deputy Attorney General for Criminal Justice

Sentence A is false. Brandon Cammack never appeared before a grand jury. Grand jury subpoenas are obtained from a judge, and those subpoenas were submitted to the 460th District Judge by TCDAO staff.

Sentence B is false. The private business subpoena related to a criminal investigation into Referral #2. The Complainants did not know about Referral #2.

Sentence C is false. Penley did not know that OAG cannot appoint a special prosecutor and that TCDAO had made Cammack a special prosecutor. See Pages XXX.

Sentence D is incorrect. Law enforcement investigators in the State of Texas commonly use grand jury subpoenas to obtain information during the investigation phase of the criminal justice process. *TDCAA Case Preparation for Investigators*, (Yellow Cover) page, 176; and Exhibit 17, excerpt from *TDCAA Case Preparation for Investigators*. Nothing prevents TCDAO from designating Cammack to be a Special Prosecutor for the purpose of signing the grand jury subpoena.

Sentence E is incorrect. Penley does not know the difference between a pro-tem prosecutor, which cannot be a private practice attorney, and a “special prosecutor” which can be an attorney in private practice. See *Coleman v. State*, 246 S.W.3d 76, at 82 n.19; see also Opinion KP-0273; See Pages XXX.

Sentence F is false. Cammack did have this authority, pursuant to the TCDAO appointment.

Sentence G is false. Penley learned about the Outside Counsel contract approximately 24 hours after this letter was sent. See Pages XXX.

October 1 Mateer Letter – Proof of lack of knowledge and false statements

The Mateer letter is further proof that the Complainants did not know about the contract at the time they made the criminal complaint. The existence of the executed outside counsel contract undermined their theory that AG Paxton had committed a crime. The Mateer letter appears to be an attempt to deal with the executed contract by denying and/or rescinding Cammack's authority, *instead* of inquiring as to whether TCDAO had made Cammack a special prosecutor.

At the writing of the letter (October 1), Mateer was in possession of the outside counsel contract signed by AG Paxton, and Cammack. The day before he obtained the contract, he made a criminal complaint under the false assumption that there was no outside counsel contract with OAG. The existence of the contract was surprising to the Complainants and prompted the Mateer letter. Within the letter, Mateer does not articulate a legal basis for why the contract was invalid, nor does he articulate how AG Paxton's signature was not valid or not sufficient under Texas law. There is no legal authority that prohibits AG Paxton from signing outside counsel contracts.

Furthermore, instead of contacting TCDAO to ask them whether they had made Cammack a Special Prosecutor, Mateer writes a statement that communicates his lack of understanding about the difference between a pro-tem prosecutor and a special prosecutor:

Finally, the Office of Attorney General has been notified that you are representing yourself to members of the public and government officials as a "Special Prosecutor" of the Office of Attorney General. The Office of Attorney General does not employ an outside legal counsel as a special prosecutor. Impersonating a public servant is a third-degree felony. TEX. PENAL CODE § 37.11. Continuing to represent yourself as a special prosecutor or other representative of the Office of Attorney General may constitute a crime under state law. We demand, again, that you immediately

Id. Mateer has either forgotten, or failed to actually read, OAG Opinion KP-0273 that he signed, which covers what a special prosecutor is, and how the District Attorney creates and has *controls* special prosecutors. *See* Exhibit 4, OAG Opinion KP-0273. If he recalled this opinion, the prudent

and logical next step would be to contact TCDAO and determine if they had given Cammack a “special prosecutor” designation. If Mateer had been discussing pro-tem prosecutors, then he would have been correct in his statement that OAG does not employ outside counsel to be pro-tem prosecutors. However, Cammack never claimed to be a pro-tem prosecutor, and pro-tem case law and statutes were not applicable to this situation. At no time did Mateer or the Complainants contact AG Paxton to ask if he had signed the contract.

B. Cases in Referral #1 and #2 were never ruled out and questions remain

The investigation into what occurred within the OAG in regards to Referral #1 and #2 are still on-going. We are in the process of collecting statements from witnesses in the Criminal divisions of the OAG. It is confirmed that the investigation was never set up in webpass or in the offense report system, and actions taken to investigate were not documented, with the exception of video recordings of interviews with complainant Nate Paul. Regarding Referral #1 and its internal handling by David Maxwell and Mark Penley, based on the evidence reviewed so far, proper procedure was not followed and the claims against the potential defendants in Referral #1 were not ruled out.

During the November 2, 2020 interview with Mark Penley, he admitted that on August 12, 2020, he determined there were more investigative actions he could take, and he asked for Wynne to provide him with more documents and evidence. Mark Penley went on vacation two weeks later, and then returned to learn that there was an outside counsel and that he was to take no more action on the case. Between the August 12, 2020 meeting and vacation, he did not work further on the case. He led his fellow Complainants to believe that he had ruled the actions out, but his last act on the case was to identify things that he needed to investigate. He never finished those actions he identified as needing investigation. Other evidence was located in his office that

demonstrated he had a list of items to investigate, with only one of the several questions on the list having been answered. See Exhibit 37, Penley list. There is no evidence that Penley completed an investigation or documented any findings. And with the exception of two video recorded meetings (made at the request of AG Paxton), David Maxwell's actions and conclusions are also undocumented.

Maxwell and Penley articulated to some in the office that they believed the State of Texas should not investigate the federal authorities for crimes federal agents and lawyers may have committed in Texas. They expressed the opinion that only the FBI can investigate itself. That idea is incorrect, and it is well established that federal authorities can be investigated and prosecuted if they violate state law.¹⁵ The Travis County District Attorney's Office has investigated federal officers, most notably, their investigation and indictment of Charles Kleinert, who was a deputized Federal Agent at the time he was accused of committing an offense.¹⁶

Once the case passed to Outside Counsel/Special Prosecutor Cammack, it appears he was making progress on the investigation. Based on a cursory review of the criminal investigative file that Cammack turned over to the OAG and with Cammack, the outside counsel conducted his investigation in a way that met minimum investigative standards, including meeting with the complainant, interviewing witnesses, and collecting evidence, which includes obtaining grand jury subpoenas to assist in the collection of evidence.¹⁷

¹⁵ In some situations, federal authorities can assert immunity and have their case removed to federal court, but those are procedural and defensive actions; they are not a bar to investigation and prosecution.

¹⁶ Other law enforcement agencies around the nation have investigated federal authorities for crimes that were committed both on and off duty. See the following links for examples: [He had 76 bullet wounds from police guns. The DA is asking why | 11alive.com](#) ; [FBI agent charged with assault after accidental backflip shooting on dance floor \(ketv.com\)](#)

¹⁷ Traditionally, criminal investigations begin with a criminal complaint by a citizen. This is usually received by a uniformed police officer. The uniformed officer will meet with the complainant and get a summary of the complaint. If the information articulated presents facts that could be considered a crime, the complaint is forwarded to a

Cammack had no completed his investigation when District Attorney Margaret Moore unilaterally closed her investigations, including Referral #1 and #2. At the time Moore closed her criminal files into Referral #2, no one at the OAG was then aware of the existence of Referral #2, with the exception of Paxton and Cammack. Only Cammack had access to the contents of Referral #2. Paxton did not read Referral #2 until after this investigation had begun.

If Cammack had been allowed to continue, upon completion of his investigation, he would have provided his report and a presentation to the TCDAO as to his findings and the evidence. This meeting never happened and TCDAO Margaret Moore unilaterally terminated the investigation and was never briefed on the evidence discovered by Cammack.

C. TCDAO had legal control over the investigation into Referral #1 and #2

Based on the discovered evidence, we know the following facts:

- TCDAO leadership, First Assistant Mindy Montford and Director of Special Prosecutions Don Clemmer, voluntarily and with full knowledge of what they were investigating, opened two different investigations, known as Referral #1 and Referral #2.
- The TCDAO did not recuse themselves, therefore they retained legal care, custody, and control of the investigations.
- The OAG could only “assist” the TCDAO in their investigation.
- Cammack never appeared before a judge or before a grand jury, but relied on TCDAO to have the subpoenas issued.
- Chief of Public Integrity Unit, Amy Meredith, and her staff, including Bailey Molnar, were responsible for obtaining grand jury subpoenas and maintained control of that process, from entering the subpoenas into DocuSign, setting up the

detective for an investigation. The detective will likely contact the complainant and get more information. Then the detective might do the following actions as part of his investigation:

- Interview other witnesses;
- Collect public documents;
- Obtain grand jury subpoenas from a District Attorney’s office to obtain information from third parties or from the subjects of the investigation, including, bank records, phone records, video recordings, audio recordings, medical records,
- Surveillance;
- Controlled calls;
- And other law enforcement actions.

signature fields in DocuSign, communicating information about the subpoenas to the judge presiding over the grand jury, and providing the subpoenas to the judge presiding over the grand jury.

- The TCDAO made Cammack a special prosecutor, and this is clearly documented through the grand jury subpoena process. While it is not customary to actually supervise special prosecutors, the TCDAO is still legally responsible for the prosecutor. [See Opinion and Footnote.](#)
- On XXX date, after allegations were made by the Complainants and substantial press coverage began, the TCDAO exercised their legal and actual control to close their investigation.

Cammack had two different legal and authoritative designations because he was outside counsel for OAG, operating under the authority of OAG, and a special prosecutor for the TCDAO. Since TCDAO had not recused their office, TCDAO retained legal control over the investigation and any authority Cammack or the OAG operated under was subordinate to the TCDAO.

The TCDAO was, at all times, the gatekeeper for grand jury subpoenas and the only law enforcement authority that had the power to appoint a “special prosecutor.” *See Coleman v. State*, 246 S.W.3d 76, at 82 n.19. [See Pages XXX](#) At the time TCDAO presented those subpoenas to the judge, the TCDAO officially documented their act of making Cammack a special prosecutor. [See Pages XXX](#). TCDAO ADA’s knew what was being subpoenaed, discussed what was being subpoenaed, and made sure that the special prosecutor was the one signing the subpoenas. Complainants allegations that Cammack had any defect in obtaining grand jury subpoenas fail as a matter of fact and law, because TCDAO they retained legal and actual control over the grand jury subpoena process, and they retained actual control over any “special prosecutor” designated with the Judge presiding over the grand jury.

On October 8, 2020, after discovering the misrepresentations and false information provide by complainants to the TCDAO, I emailed TCDAO ADAs Meredith and Clemmer notifying them of my discoveries and asking for documents:

From: [Webster, Brent](#)
To: Don.Clemmer@traviscountytexas.gov; Amy.Meredith@traviscountytexas.gov
Subject: Nate Paul Complaint
Date: Thursday, October 8, 2020 7:51:45 PM
Attachments: [Fully Executed OAG OCC.pdf](#)
[image2020-10-07-122407.pdf](#)
[quash GJ subpoena.cammack \(002\).pdf](#)

Good Evening Don and Amy,

General Paxton recently appointed me to be his First Assistant Attorney General. One of my tasks is to collect our agency documents and other evidence to determine what has transpired internally with our agency, regarding the referral you sent to our office on June 10, 2020, which is attached. Is this the only referral? I understand there were two, but I have been unable to locate the second one. I also wish to update you on what I have discovered.

This collection of documents and emails is on-going. If you have any documents or email communications you are willing to release to me that would assist me in understanding what has transpired, I would appreciate it.

The Attorney General did contract with Brandon Cammock

I have confirmed that General Paxton did sign a contract with Brandon Cammock to fulfill the investigative role that your office requested in the referral(s). (See page 15 regarding job description) I am providing those documents to you with this email. General Paxton informs me that this outside contract was signed in early September, and before Brandon Cammock contacted your office for Grand Jury subpoena assistance. I do not know why there is no contract number. It is on my list to learn how those number are assigned and why no number was assigned. Regardless of the number issue, the General confirmed that he did sign it.

Termination by First Assistant Jeff Mateer

Then acting First Assistant Jeff Mateer mailed a letter to Brandon Cammock terminating the contract on October 1, 2020. Jeff Mateer resigned on October 2, 2020. The contract termination was not authorized by General Paxton.

Notice of Statements made by Mark Penley that should have been disclosed to the Judge

Deputy Assistant Attorney General Mark Penley prepared a motion to quash to submit to the court that omitted the fact that the Texas Attorney General had hired Brandon Cammock to address this investigation. Additionally, Brandon Cammock had also forwarded a copy of the signed contract to deputies in the Attorney General's office one day *before* the motion was filed. Having been a Texas prosecutor for 10 years, I believe this fact is so substantial, that the omission causes this motion to be substantially misleading, or at a minimum, was a fact any reasonable judge or ADA would want to know. Unfortunately, I am still investigating email communications and looking for internal documents relating to this specific issue, so I cannot provide you any further documents or explanations on this matter at this time. Mark Penley is currently on administrative leave.

Next Steps

Given the nature of what has transpired, I believe it is important that our office be completely transparent and up front with what has occurred so that we can continue to have a good working relationship with the Travis County District Attorney's Office.

Can we discuss this tomorrow at your convenience? If neither of you are available, is there an ADA in the office that I could talk with regarding this investigation? Moving forward, I will be the point of contact on this situation.

Thank you,

Brent Webster

I did not receive any responsive documents to my request.

However, soon after this, I received a letter from Margaret Moore. At the time Margaret Moore wrote her letter, she did not know that the Complainants had seen no evidence of bribery; she did not know that Complainants hid the existence of the outside counsel contract; and she was not aware that Penley had misled Clemmer to obtain grand jury subpoenas and then leaked them in violation of Texas Code of Criminal Procedure 20.02. For these reasons, it is likely that Moore wanted to distance herself from a situation that had a bad appearance. Moore's rapid response to my letter did not accurately reflect the legal authority of the investigation and did not accurately reflect the affirmative and intentional actions taken by her employees. Specifically, the following highlighted sentences are inaccurate and omit key information necessary to make them accurate:



**OFFICE OF THE
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone: 512/854-9400

Fax: 512/854-4206

MARGARET MOORE
DISTRICT ATTORNEY

MINDY MONTFORD
FIRST ASSISTANT

October 9, 2020

Ken Paxton
Attorney General of Texas
Office of the Attorney General

Red letters and highlights added by
Brent Webster for reference

Via email and by hand delivery

Dear Attorney General Paxton:

(A) On June 10, 2020, my office sent to David Maxwell a letter referring a Request to Investigate (RTI) filed in our office by Nate Paul. (B) The RTI was received by us after you asked my office to hear his complaints. The referral to the OAG was made with your approval. (C) We did not conduct any investigation into the merits of the matters complained of. (D) In referring the matter to the OAG, we concluded that ours was not the appropriate office to either address the matters raised in the complaint or to conduct an investigation into them.

(E) The referral cannot and should not be used as any indication of a need for investigation, a desire on the Travis County D.A.'s part for an investigation to take place, or an endorsement of your acceptance of the referral.

(F) My office has closed this file and will take no further action. Furthermore, I have instructed my employees to have no further contact with you or your office regarding this matter.

(G) Any action you have already taken or will take pursuing this investigation is done solely on your own authority as provided by Texas law. The newly surfaced information raises serious concerns about the integrity of your investigation and the propriety of your conducting it.

Sincerely,


Margaret Moore

Cc: Brent Webster

Ronald Earle Building, 416 W. 11th Street, Austin, Texas 78701

Sentence A references Referral #1 but fails to include information about Referral #2. This raises questions as to whether the TCDAO had closed its investigation into Referral #2. The TCDAO will not discuss this matter with our office (Sentence F), so out of an abundance of caution, OAG made the decision to cease our assistance on both matters until the TCDAO advises that either investigation remains ongoing or has been re-opened.

Sentence C ignores the legal requirement that for the OAG to be involved in an assisting role, the investigation must be conducted under the control of TCDAO. Furthermore, this sentence omits the fact that Montford and Clemmer both had substantive conversations and reviewed the allegations made by Nate Paul, which qualifies as investigation activity, even if it is minimal.

Sentence D is legally and factually wrong. See Pages xxx-xxx, breakdown of Travis County options and the law. As noted above, TCDAO did investigate.

Sentence E is legally and factually wrong. See Pages xxx-xxx, breakdown of Travis County options and the law. As a matter of law and practice, the TCDAO takes no action on some complaints it receives, refers some of the complaints to other agencies, and on other occasions asks for assistance with a TCDAO investigation from the OAG. If the OAG is involved, there are only two options for TCDAO: (1) recuse the TCDAO and ask the OAG to proceed on a pro-tem basis, or (2) open an investigation and ask the OAG to assist the TCDAO with its investigation. See Insert statutes. Texas statutes afford no other options in this situation. With that background, and as a matter of law, Referral #1 and Referral #2 undeniably indicated a need to investigate, expressed TCDAO's desire that an investigation take place, and constituted TCDAO's endorsement of the referral because at all times it was its investigation to conduct.

Sentence G is legally and factually wrong. As mentioned above, this was a TCDAO investigation at all times. It accepted the complaint, it did not recuse, and it requested OAG's assistance with its investigation. The OAG obtained no independent authority in this investigation and was at all times subordinate to TCDAO's authority. Although it references Texas law, Moore's sentence G in fact contradicts it.

D. The Criminal Complaint Against AG Paxton

Within the two draft criminal complaints against AG Paxton, the Complainants make statements that they present as facts, but that are actually opinions or false or misleading statements. The documents available to the Agency controvert their statements. Additionally, the Complainants omit key facts that undermine their assertions¹⁸

Recall that the early drafts of this complaint were built around Brandon Cammack and Referral 1. *See* Exhibit 21, process of drafting criminal complaint. The draft versions are important to this analysis because they demonstrate the process the complainants went through to accuse AG Paxton of wrongdoing. The complaint drafts start with Cammack, then goes fishing for other examples of ways that Nate Paul *might have been* benefited by some action taken by OAG. The drafting versions demonstrate lack of concrete facts and include personal opinions and speculative conclusory statements. Additionally, they fail to provide documentation or evidence relating to most of their statements and conclusions.

The Complainants' final draft complaint is broken into four sections, involving (1) an open records opinion, (2) an intervention in litigation involving a non-profit, (3) guidance on foreclosure

¹⁸ The criminal complaint against AG Paxton deserves a full and complete analysis as to its credibility, as there are substantial factual and legal defects present on its face. At the time of completing this initial report, however, there has not been adequate time to conduct a complete analysis of the complaint.

sales during Covid, and (4) Brandon Cammack and Referral 1. See Exhibit 22, final draft of complaints.

E. The Open Records Ruling (“Paragraph 1”)

The Complainants’ Paragraph 1 raises objections about an open records opinion that allegedly reached a “novel” result. The complaint states:

The Attorney General directed the Open Records Division (ORD) to issue a ruling more favorable to Mr. Paul’s interest than then-existing open records policy would allow. Specifically, ORD was requested to rule on whether records relating to the underlying investigation into Mr. Paul must be disclosed to the public under the Texas Public Information Act. The Attorney General Paxton announced his intent for the Agency to find a way to order that the records be released, because he did not trust law enforcement. Unable to reach such a conclusion under the law, ORD crafted a determination that it could not issue a ruling on the request submitted by Mr. Paul’s presumed representative in a manner that comports with the due-process requirements of the PIA, a novel result that ORD would not otherwise have reached absent pressure from the Attorney General.

Id. Within this paragraph, no crime is alleged, and no evidence of any crime is articulated. Upon investigation, the actions taken pursuant to the OAG’s authority, moreover, appear to have been correct and entirely appropriate under the circumstances.

When there is a dispute about whether a Texas governmental entity should release requested information to the public, OAG is responsible for resolving it. OAG does this by issuing opinions pursuant to Section 552 of the Texas Government Code. This section requires broad transparency:

Sec. 552.001. POLICY; CONSTRUCTION. (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.

(b) This chapter shall be liberally construed in favor of granting a request for information.

Texas Government Code Section 552.001.

At the time OAG's opinion was requested, there were several procedural obstacles to issuing an opinion. *See Exhibit 38, Open records opinion.* First, the information sought was already subject to pending litigation in Travis County District Court. Second, DPS had failed to timely notify the FBI that there had been an open records request. Third, the FBI failed to timely reply and only provided heavily redacted comments, which presented a problem for OAG.

OAG Chief of Open Records, Justin Gordon, decided that given the above facts, the pending litigation was the best place to resolve the records dispute. OAG then issued a closed letter and declined to issue a decision. *See Exhibit XXX, Open Records Ruling.* Within the letter, OAG noted that the late timing of the DPS notice to the FBI and the FBI's late-arriving and heavily redacted comments prevented OAG from issuing a decision in accordance with due process. Importantly, the letter issued by OAG maintained the status quo and allowed the trial court to independently review the claims. This result appears to be objectively correct; moreover, insofar as the OAG deferred to the determination of a District Court, there is no evidence of a crime or other wrongdoing arising from these acts.

F. The Non-profit intervention (“Paragraph 2”)

The investigation into what happened with the Mitte Foundation intervention is in its preliminary stages and many documents still need to be reviewed, but there are some key facts that are relevant and known at this time.

First, within Paragraph 2, no crime is alleged, and no evidence of any crime is articulated:

The Attorney General directed the agency's Financial Litigation Division (FLD) to intervene in a lawsuit between a charitable trust named the Mitte Foundation and Mr. Paul's company, World Class. The court had imposed a receivership on World Class assets in which Mitte had invested, and it became clear that counsel for World Class desired our office's intervention to prevent the receiver from fulfilling its court-ordered duty. After FLD intervened, the Attorney General pressured counsel to seek an immediate stay of all proceedings, to investigate the conduct of the charity and the

receiver, and to pursue a settlement whereby World Class would purchase Mitte's interests in the investment

See Exhibit 22, final draft of complaints. Paragraph 2 omits material facts and is contrary to actions taken by OAG employees involved in the intervention.

The Attorney General is authorized [by statute] to intervene in any lawsuit involving a non-profit to protect beneficiaries and the State's interest. The right to intervene is broad:

Sec. 123.002. ATTORNEY GENERAL'S PARTICIPATION. For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

Texas Property Code Section 123.002.

The Mitte Foundation has a troubled past and AG Paxton's interest in investigating the Mitte Foundation was warranted. The prior Attorney General and now Governor, Greg Abbott, also sued the Mitte Foundation in 2009. *See* Exhibit 39, the Greg Abbott Petition. The petition in that lawsuit included the following substantial allegations of wrongdoing:

5.6 The Attorney General's extensive investigation of the Mitte Foundation and Scott Mitte's role in the Mitte Foundation revealed the following improper actions by Scott Mitte in his capacity as a member and officer of the Mitte Foundation:

- a. improper use of Mitte Foundation credit cards for private use by Scott Mitte;
- b. improper personal use of Foundation property by Scott Mitte;
- c. Scott Mitte's failure to secure board approval for \$500,000 worth of renovations to the carriage house property behind the main Mitte Foundation offices, at a time when the Foundation was in financial difficulty;
- d. Scott Mitte's authorization and acceptance of excessive executive compensation;
- e. failure of the members of the Mitte Foundation to conduct a meaningful salary and performance review for Scott Mitte;
- f. failure to review the performance of Scott Mitte in his role as Mitte Foundation president;
- g. improper spending of Mitte Foundation assets on travel by Scott Mitte;
- h. breach of the duty of loyalty by Scott Mitte in his insistence on receiving full pay and benefits while taking a year's leave of absence in lieu of stepping down as requested by certain member of the Board;
- i. poor management and investing of Mitte Foundation funds by Scott Mitte;
- j. poor oversight by members of the Mitte Foundation over finances of the Mitte Foundation;
- k. retaliatory removal of a dissenting director by Scott Mitte.

Page 4 of 7

See Exhibit 39, Greg Abbott vs. Mitte Foundation. The Mitte Foundation has had conflicts and lawsuits with many individuals and institutions over the years. The University of Texas cut ties

with the Mitte Foundation when allegations of sexual harassment arose.¹⁹ Texas State University also cut ties with the Mitte Foundation over allegations of cocaine usage arose and financial mismanagement.²⁰

AG Paxton did direct the OAG Financial Litigation Division to intervene in a lawsuit involving the Mitte Foundation. Given the history of the Mitte Foundation, and the unusual payment terms for the receiver in the case, the AG had concerns as to whether something illegal might be happening with the Mitte Foundation.

The Complainants allege that the intervention was done to benefit Nate Paul and his company, World Class properties. But the act of intervening is a neutral act. Intervention, by itself, is not an adverse action against Mitte Foundation, nor is it necessarily an action taken in support of World Class Properties or Nate Paul. What matters are the actions taken within the case.

Our review of the matter affirms that the OAG's actions taken in the case were appropriate and that no attempts were made to help Nate Paul and his company. Both Darren McCarty and Josh Godbey confirmed that the OAG, after reviewing the situation, settled on the position that they would assist the parties to resolve their case cost-effectively, by mediation. McCarty, a member of the Complainants, wrote the following about the case with the assistance of Sarah Burgess:

¹⁹ <https://www.chronicle.com/article/mitte-foundation-withdraws-gift-to-u-of-texas/>

²⁰ <http://smmercury.com/2008/04/19/the-bottom-line-texas-state-says-it-will-not-take-money-from-foundation-after-arrest-of-its-director-on-cocaine-charge/>

From: [Burgess, Sarah](#) on behalf of [McCarty, Darren](#)
To: [Shannon Najmabadi](#)
Subject: RE: Request for comment
Date: Wednesday, October 21, 2020 12:10:46 PM

I never said that there would be “trouble” for the foundation or place the foundation under any pressure. I merely recommended that a mediation and a settlement, fully and independently approved by the foundation and its board, could serve the Foundation’s interests. Ultimately, the foundation made the decision not to settle.

Darren McCarty

Contrary to the Complainants’ allegations that the OAG intervened solely to benefit World Class Properties and Nate Paul, this investigation revealed that the OAG actually assisted in giving the Mitte Foundation an advantage during the mediation. Financial Litigation Division Chief Joshua Godbey, noticed that Sheena Paul, the lawyer for World Class, was eager to get to mediation. Godbey took this as a sign that the Mitte Foundation could get more money out of World Class at the mediation. Godbey provided this information and his opinion directly to Ray Chester, the attorney for the Mitte Foundation, before the mediation. Godbey also encouraged the Mitte Foundation to start with a higher monetary number when going into mediation negotiations. The intent of Godbey was to get more money for the Mitte Foundation. Additionally, Nate Paul expressed his frustration that the OAG was involved in the case:

The contention that the OAG intervention somehow benefitted my client is preposterous. The OAG intervention was non-productive and only served to create confusion, frustrate any resolution, and add to false media reporting about these events.

See Exhibit 40, Nate Paul Letter to OAG. OAG had every right to intervene, pursuant to statute, and the content in “Paragraph 2” articulates no criminal act.

AG Opinion on Foreclosure Sales (Paragraph 3)

Paragraph 4 of the Complainants' written complaint goes to great lengths to attribute wrongdoing to an otherwise logical and appropriate letter. Within this paragraph, again, no crime is alleged, and no evidence of any crime is articulated:

The Attorney General frantically insisted that an informal guidance document concerning foreclosure sales be drafted and released over the course of one weekend. The Attorney General indicated that the guidance document would help homeowners but could not identify an authorized requester who had asked for the guidance. Rather, he directed staff to a private citizen who had no knowledge of the issue, and then insisted that staff procure an elected state official to prepare a request for guidance. After the guidance was issued, the Attorney General insisted, against advice of staff, that a press release be issued concerning the guidance, eventually settling for a website posting. The guidance document appears directly suited to assist Mr. Paul, who has placed several of his properties into bankruptcy, and who faces the prospect of foreclosure sales by banks holding notes on those properties.

See Exhibit 22, final draft of complaints. Paragraph 3 omits material facts, and fails to disclose that the opinion letter was necessary during the Covid pandemic.

The opinion letter benefitted all Texans that might be subject to foreclosure during Governor Abbott's Covid-related shutdown. *See* Exhibit 41, Foreclosure opinion. During July 2020, the OAG received a legislative request relating to COVID-19 and certain courthouse foreclosure sales. Because it was an issue relating to the pandemic and similar to other property questions handled by the Disaster Counsel team, the request was forwarded to the Deputy AG for Legal Counsel, Ryan Vassar. This was routed to him as a disaster-related question and not set up as an official opinion request. Disaster-related questions did not go through the traditional official opinion process. The opinion affirms that foreclosure sales were subject to the Covid-related 10-person gathering limit, and also asserts that the foreclosure sales should not be held if the 10-person limit would negatively impact the bidding. Specifically:

If a foreclosure sale is subject to, and not exempted from, the 10-person attendance limit imposed in Executive Order GA-28, it should not proceed if one or more willing bidders are unable to participate because of the attendance limit. "[A] sale of real

See Exhibit 41, Foreclosure opinion. On its face, this opinion is good for Texans, and given the extraordinary circumstances of the Covid emergency, it cannot reasonably be contended that this was an unusual or unwarranted result.

Finally, the Complainants contend that AG Paxton acted illegally by procuring an elected official to request an opinion. The Disaster Council had received questions regarding foreclosures from many sources. However, to issue an opinion, an elected official must ask the question. The ability of the OAG to ask elected officials to request opinions was very important and useful for Texans during the statewide Covid Disaster, because the Governor's orders were regularly changing and required substantial interpretation and clarification from the OAG and the Disaster Council.

G. TCDAO Referral #1 (Paragraph 4)

Contrary to the Complainants' assertions in paragraph 4 of their complaint, the TCDAO maintained legal control over this case at all times, Brandon Cammack was outside counsel for the OAG and a special prosecutor for the TCDAO and, as noted above, AG Paxton acted appropriately in regards to Brandon Cammack and the criminal investigation. Beginning with the portions of the Complainants' complaint that deal with the TCDAO and Brandon Cammack, there are statements that are incorrect on their face. Given that this is a preliminary report, this is not a full analysis, but some examples of problems are provided below. The prime example of a false statement is the summary section of Paragraph 4:

“All facts considered, we have reasonable suspicion to believe Attorney General Paxton may have approved or may be directly supervising the unlawful use of criminal process to further private, nongovernmental interests. In particular, the information sought in the subpoena has no reasonable connection to the allegations contained in the Travis County complaint. And the appearance by Mr. Paul's private attorney at the location of Mr. Cammack's personal service of the subpoena

undercuts any reasonable argument that the subpoena was obtained for official purposes.”

See Exhibit 22, final draft of complaints. Unfortunately, “all facts considered” by Complainants did not include critical facts and information. They did not know that TCDAO had directly authorized these grand jury subpoenas and that those subpoenas were related to Referral #2. Therefore, there had been no evidence of “unlawful use of process.” Additionally, with no evidence supporting a connection, they concluded that AG Paxton “may be directly supervising the unlawful use of criminal process to further private, nongovernmental interests.” This ignores TCDAO’s involvement, is a logical leap, and pure speculation. Finally, Complainants discuss Nate Paul’s private attorney, Wynne, being present for the service of a grand jury subpoena. There was no evidence that General Paxton knew about Wynne being present for the grand jury subpoenas, nor did Vassar know if Wynne’s presence was required to waive any objections to releasing the information if Nate Paul, his client, was a party or owner of the subpoenaed bank records “unlawful use of process” is factually incorrect.

At the beginning of the section dealing with Brandon Cammack and Referral #1, the Complainants state,

The Attorney General submitted a complaint to the Travis County District Attorney’s Office alleging potential criminal conduct committed by employees of the State Securities Board, the Department, the FBI, and the United States Attorney’s Office for the Western District of Texas, as part of the investigation precipitating the search warrants that were executed in 2019.

See Exhibit 22, final draft of complaints, document saved as “This letter is intended...” This statement is misleading in that it incorrectly leads a reader to assume that AG Paxton himself submitted or wrote Referral #1. The Complainants knew that he did no such thing.²¹ AG Paxton has at all times acknowledged that he knew Nate Paul, and that he introduced Nate Paul to the

²¹ One of the versions has slightly different wording.

Travis County District Attorney's office. But an introduction is not the same thing as submitting a complaint. While AG Paxton introduced Nate Paul to ADA's Mindy Montford and Don Clemmer, Nate Paul and his attorneys made the criminal complaint to the TCDAO, both in writing and in a lunch meeting where AG Paxton was not present until after Nate Paul had verbally described his complaint to ADAs Montford and Clemmer.²² Additionally, the criminal complaint contained in Referral #2 was made without AG Paxton's knowledge and was directly between Nate Paul and TCDAO. (AG Paxton learned about Referral #2 after the complaint was made by Nate Paul to TCDAO.) Most importantly, Clemmer and Montford independently approved the criminal complaint, as opposed to receiving it and taking no action.



Another example of a controverted "fact" is found in this statement:

On or about September 16, 2020, OAG staff notified Attorney General Paxton that staff refused to approve the request to retain outside legal counsel to investigate the Travis County complaint because approving the request was not in the State's best interest.

See Exhibit 22, final draft of complaints, document saved as "This letter is intended..." This statement is misleading for several reasons. First, AG Paxton's unelected political appointees and staff cannot legally prevent the AG from obtaining outside counsel for actions taken by his office, and employees in the office do not have discretion separate and independent from the constitutionally-created and elected officer, the Attorney General. See Generally Texas Constitution Article 4, Section 1 and 22; Texas Government Code 402. Terrell v. Sparks, 135 S.W. 519 (Tex. 1911); 7 Tex. Jur. 3d Att'y Gen. § 5. Second, Mateer approved the decision to hire outside counsel and affirmatively participated in the interview process of selecting an outside

²² At the time Referral #1 was made by Don Clemmer to the OAG, Don Clemmer knew that AG Paxton knew Nate Paul and did not believe that to be a conflict in the same way he believed that the DPS investigating themselves was a conflict. This logically makes sense, since the OAG's job was to collect evidence and present that evidence to the TCDAO. This can be contrasted with the potential for DPS to ignoring omit evidence it in its presentation to the TCDAO, if DPS had conducted an investigation into one of its own employees. (See Exhibit 3, Referral #1)

counsel. See Page XXX. Third, this statement is contradicted by the DocuSign record. In accordance with internal OAG procedure, the Complainants staff members signed the DocuSign request. Contrary to the statement that “staff” notified the Attorney General that they would not approve the request, on September 16, Vassar had already personally approved the Cammack outside counsel contract on September 15. The only action taken on September 16th was the approval by Controller Michelle Price.

Signer Events	Signature	Timestamp
Ryan Vassar Ryan.Vassar@oag.texas.gov Chief General Counsel Office of the Attorney General of Texas Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 204.64.50.216	Sent: 9/5/2020 12:31:37 PM Viewed: 9/8/2020 9:23:15 AM Signed: 9/15/2020 10:18:23 AM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Michael Jones michael.jones@oag.texas.gov Office of the Attorney General of Texas Security Level: Email, Account Authentication (None)	Completed Using IP Address: 204.64.50.216	Sent: 9/16/2020 2:23:40 PM Viewed: 9/16/2020 3:32:37 PM Signed: 9/16/2020 4:46:33 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		
L. Michele Price Michele.Price@oag.texas.gov Controller Office of the Attorney General of Texas Signing Group: L. Michele Price Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 204.64.50.216	Sent: 9/16/2020 4:46:36 PM Viewed: 9/16/2020 6:40:40 PM Signed: 9/16/2020 6:43:09 PM
Electronic Record and Signature Disclosure: Not Offered via DocuSign		

See Exhibit 34, DocuSign record for Cammack executive approval process.

Oddly enough, the next “signer” within DocuSign, Mark Penley, did not even open the DocuSign until *after* making the September 30, 2020 criminal complaint. The first time Penley read the outside counsel contract within DocuSign was *after* he had made an entry in DocuSign rejecting the contract. [How is this possible??] Furthermore, this entry was made *after* learning that AG Paxton had signed this contract with Cammack.

L. Michele Price
Michele.Price@oag.texas.gov
Controller
Office of the Attorney General of Texas
Signing Group: L. Michele Price
Security Level: Email, Account Authentication (None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign



Signature Adoption: Pre-selected Style
Using IP Address: 204.64.50.216

Sent: 9/16/2020 4:46:36 PM
Viewed: 9/16/2020 6:40:40 PM
Signed: 9/16/2020 6:43:09 PM

Mark Penley
Mark.Penley@oag.texas.gov
Deputy Attorney General for Criminal Justice
Office of the Attorney General of Texas
Security Level: Email, Account Authentication (None)

Declined
Decline Reason: I cannot and will not sign this contract because the complainant has not provided all requested documents in his possession custody or control, and is thus non-cooperative. I believe the complainant is trying to manipulate the AG and me in an attempt to use the authority of this Office for his own personal legal and financial benefit. I cannot ethically proceed with the investigation or authorize another to do so under these circumstances.

Sent: 9/16/2020 6:43:14 PM
Viewed: 10/1/2020 4:06:37 PM
Declined: 10/1/2020 3:03:44 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

See Exhibit 34, DocuSign record for Cammack executive approval process. This paper trail is hard to reconcile with the assertions in the Complainants' criminal complaint. Furthermore, given the timeline, Penley's entry is probably made to bolster his own credibility, *after* Penley learned that his September 30th allegations that Cammack was a fraud, were false. And, Penley, moreover, reviewed the contents of the contract for the first time one hour after he "declined" it. Finally, this was plainly not an important issue for Penley, because the contract approval sat in his inbox for two weeks before he actually viewed it.²³

Penley conveyed that he learned about Cammack, and the interviews with other potential outside counsel, on September 15 -- after his return from a two-week vacation. In some form or fashion he did verbally object to the hiring of outside counsel, but this was only after Mateer and Paxton had interviewed outside counsel for the express purpose of taking over the investigation,

²³ DocuSign approval is the OAG's system of approval documentation, and it requires daily attention for all executives. It is unusual for an executive within OAG to not take action on a DocuSign request for two weeks.

and after the outside counsel contract had been signed.²⁴ While Mateer never signed the contract, he implicitly agreed that an outside counsel was needed by interviewing candidates. It is, therefore, perplexing that the Complainants would rely upon Penley's objection to outside counsel while knowing the role that First Assistant Mateer played in hiring Cammack.²⁵ Furthermore, Ryan Vassar knowingly drafted and submitted the contract for signature, and 7 other employees approved the contract through DocuSign. At a minimum, the statement that "staff refused to approve the request to retain outside legal counsel," omits material facts that render the statement highly misleading.

H. There Is No Evidence of Bribery

There is no evidence of any bribe or undue influence in the criminal complaint prepared by the Complainants. In my November 2, 2020 interview with Penley, he stated that he believed that the bribe in question was a campaign donation made by Nate Paul, to AG Paxton on [[[INSERT DATE]]] 2018. See Exhibit XXX, Campaign finance report. During this campaign reporting cycle, AG Paxton raised, [[[insert total raised]]]. In context, \$25,000.00 was not a large or significant amount for a Statewide elected executive race.

It would have been logically and legally impossible for this campaign donation to be a bribe for several reasons. Bribery and similar statutes require that there be some express, quid pro quo agreement. Texas statutes specifically require evidence of an express agreement for a campaign donation to be a bribe:

²⁴ It is unknown what Penley's motivations were by objecting. It is common for prosecutors to not want to have cases taken away from them, especially after they have devoted time to the case. Also, given the fact that Penley was a former AUSA, and we were investigating AUSA's, and given Penley's illegal actions with Johnny Sutton, it is unknown at this time if other relationships caused him to want to keep control of the investigation.

²⁵ While it is likely that Mateer shared this fact with his fellow members of the Complainants, it is unknown whether he actually notified them of his involvement with obtaining outside counsel.

Any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

See Texas Penal Code Section 36.02(a)(4).

Federal law carries a similar standard, “[A]ccepting a campaign contribution does not equal taking a bribe unless the payment is made in exchange for an explicit promise to perform or not perform an official act. Vague expectations of some future benefit should not be sufficient to make a payment a bribe.” *United States v. Biaggi*, 909 F.2d 662, 695 (2d Cir. 1990)

Given the timing of the donation, it would be impossible for the donation to support a quid pro quo agreement for future, as-yet unknown acts. At the time he made his 2018 donation, Nate Paul did not know and could not have anticipated that federal authorities would execute a search warrant on his properties in 2019. Nate Paul also did not know that COVID would occur and that foreclosures sales would be restricted to 10 participants, pursuant to CDC-generated guidance. Nate Paul did not know what would happen in the Mitte Foundation case and did not know that there would be pending litigation over whether government records would be released. Literally everything articulated in the Complainants’ complaint was unknown by Nate Paul at the time he made a donation to AG Paxton, Governor Greg Abbott, Lt. Governor Dan Patrick, and others. It seems impossible that such an alleged quid pro quo arrangement for things unknown could support a Texas law bribery prosecution.

Beyond that, the Complainants articulate no theory of a criminal act including bribery. The concept of “undue influence” is not criminally cognizable from their writings.

The Complainants' theory of bribery and undue influence, moreover, could subject every elected official in Texas to criminal prosecution -- in the event that an elected official could be said to have taken any action that happens to benefit a contributor. The Attorney General of Texas has the authority to act in hundreds of different ways within the State of Texas. *See* Exhibit 43, 73 page list of statutes requiring or authorizing action by the Attorney General. The potential for those actions to impact a donor in some manner is very high. No law or rule prevents the Attorney General from taking actions in cases involving a past donor, and if that rule were to exist, it would significantly impair the efficient execution of the duties the legislature has given to the Attorney General.

CONCLUSION