



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2011

Mr. J. Kevin Dutton  
District Attorney  
Office of the District Attorney—First Judicial District of Texas  
P.O. Box 714  
San Augustine, Texas 75972

OR2011-05831

Dear Mr. Dutton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “Act”), chapter 552 of the Government Code. Your request was assigned ID# 415735.

The Office of the District Attorney for the First Judicial District of Texas (the “district attorney”) received a request for a specified grand jury indictment. You claim that the requested information is excepted from disclosure under sections 552.107(2) and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the submitted indictment indicates it is a court-filed document. Court-filed documents are subject to section 552.022 of the Government Code, which provides in part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(17) information that is also contained in a public court record[.]

Gov’t Code § 552.022(a)(17). You state the indictment at issue was dismissed and never served upon the defendant and, therefore, it was never entered in the records of the court

pursuant to article 20.22 of the Code of Criminal Procedure.<sup>1</sup> However, the indictment at issue bears a file-stamp marking, indicating it was filed with the district clerk. Court-filed documents are subject to section 552.022(a)(17) and must be released unless they are expressly confidential under other law. *See id.* Although the district attorney raises section 552.108 of the Government Code, this section is discretionary in nature and thus may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108). As such, section 552.108 does not constitute other law that makes information expressly confidential for the purposes of section 552.022. Therefore, if the indictment at issue has in fact been filed with the court, the district attorney may not withhold the indictment under section 552.108.

You also assert the indictment is excepted from release under section 552.107(2) of the Government Code, which allows a governmental body to withhold information if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). However, section 552.022(b) of the Government Code provides:

(b) A court in this state may not order a governmental body or an officer for public information to withhold from public inspection any category of public information described by Subsection (a) or to not produce the category of public information for inspection or duplication, unless the category of information is expressly made confidential under other law.

*Id.* § 552.022(b). Because section 552.022(b) prohibits a court from ordering the withholding of documents subject to section 552.022, if the indictment has been filed with a court, the district attorney may not withhold the indictment pursuant to section 552.107(2). If the indictment has not been filed with the court, section 552.022(a)(17) is not applicable and we will consider your arguments against disclosure.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming

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<sup>1</sup>Article 20.22 of the Criminal Code of Procedure provides:

The fact of a presentment of indictment by a grand jury shall be entered upon the record of the court, if the defendant is in custody or under bond, noting briefly the style of the criminal action and the file number of the indictment and the defendant's name. If the defendant is not in custody or under bond at the time of the presentment of indictment, the entry in the record of the court relating to said indictment shall be delayed until such time as the capias is served and the defendant is placed in custody or under bond.

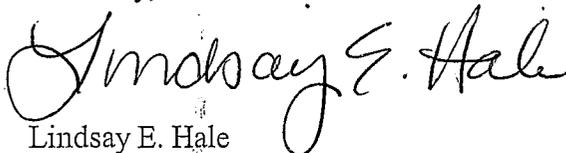
section 552.108 must reasonably explain how and why release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted indictment relates to a criminal case that is pending investigation. Based upon your representation and our review, we conclude that release of the indictment would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district attorney may withhold the submitted indictment under section 552.108(a)(1), if this document has not been filed with the court.<sup>2</sup> We note that the district attorney has the discretion to release any information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, if the indictment has been filed with the court, the district attorney must release the indictment pursuant to section 552.022(a)(17) of the Government Code. However, if the indictment has not been filed with the court, the district attorney may withhold the indictment under section 552.108(a)(1) of the Government Code.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

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<sup>2</sup>As our ruling is dispositive, we need not address your argument under section 552.107(2) for this information.

Ref: ID# 415735

Enc: Submitted documents

c: Requestor  
(w/o enclosures)