



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 14, 2010

Mr. David A. Mendoza
Assistant District Attorney
Hays County
110 East Martin Luther King Drive
San Marcos, Texas 78666

OR2010-15642

Dear Mr. Mendoza:

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#396724.

The Hays County District Attorney's Office (the "district attorney") received a request for any memorandum or letter sent by the district attorney to the Hays County Sheriff's Office regarding a named individual. You claim that the submitted information is excepted from disclosure under section 552.142 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.142 of the Government Code pertains to records of certain deferred adjudications and provides:

(a) Information is excepted from [required public disclosure] if an order of nondisclosure with respect to the information has been issued under Section 411.081(d).

(b) A person who is the subject of information that is excepted from [required public disclosure] under this section may deny the occurrence of the arrest and prosecution to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

¹Although you raise section 411.081 of the Government Code, we note section 552.142 is the proper exception to raise when asserting information is confidential pursuant to a non-disclosure order.

Gov't Code § 552.142. Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication for certain offenses to petition the court for an order of nondisclosure, which prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). Under this provision, a criminal justice agency may only disclose criminal history record information that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.* In this instance, you have provided documentation showing a court issued an order of nondisclosure pursuant to section 411.081(d) prohibiting release of the submitted information. The requestor is not an entity or individual enumerated in section 411.081(i) who is entitled to receive information subject to the order. Accordingly, the district attorney must withhold the submitted information under section 552.142 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 396724

Enc. Submitted documents

c: Requestor
(w/o enclosures)