



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 3, 2011

Mr. Steven M. Pena, Sr.  
Davidson & Troilo  
7550 W IH-10, Suite 800  
San Antonio, Texas 78229-5815

OR2011-01782

Dear Mr. Pena:

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# 408258.

The City of Helotes (the "city"), which you represent, received a request for a specified municipal court case and a specified incident report. You state a portion of the requested information is not subject to the Act. You claim that a portion of the remaining requested information is excepted from disclosure under section 552.130 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you claim the submitted order of nondisclosure from the municipal court is held by the judiciary and, thus, not subject to the Act. The Act only applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). The Act does not apply to records of the judiciary. *See id.* § 552.003(1)(B) (definition of "governmental body" under Act specifically excludes the judiciary). Information that is "collected, assembled, or maintained by or for the judiciary" is not subject to the Act. *Id.* § 552.0035(a); *see also* Tex. Sup. Ct. R. 12. Consequently, records of the judiciary need not be released under the Act. *See* Attorney General Opinion DM-166 (1992). In this instance, the request for information was received by the city secretary, who is the public information coordinator for the city. We note the requestor did not request the records from the city's municipal court. Therefore, if the order at issue is solely maintained by the city's municipal court, then it is not subject to the Act and need not be released in response to this request for

information.<sup>1</sup> However, if the order at issue is also maintained by the city, it is subject to the Act, and we will consider your arguments against disclosure of this and the remaining information.

Section 552.142 of the Government Code pertains to records of certain deferred adjudications and certain juvenile misdemeanor offenses.<sup>2</sup> This section provides the following:

(a) Information is excepted from the requirements of Section 552.021 if an order of nondisclosure with respect to the information has been issued under Section 411.081(d) or (f-1).

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 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.

Gov't Code § 552.142. Section 411.081(f-1) of the Government Code provides:

(f-1) In this subsection, "child" has the meaning assigned by Section 51.02, Family Code. Notwithstanding any other provision of this subchapter, on conviction of a child for a misdemeanor offense punishable by fine only that does not constitute conduct indicating a need for supervision under Section 51.03, Family Code, the convicting court shall immediately issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense. A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies for criminal justice purposes, to an agency or entity listed in Subsection (j), or to the person who is the subject of the order.

---

<sup>1</sup>We note records of the judiciary may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Loc. Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access is restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

*Id.* § 411.081(f-1); *see also id.* § 411.082(2) (defining criminal history record information as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions”). 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 purposes, agencies listed in section 411.081(j), or the person who is the subject of the order. *Id.* § 411.081(f-1).

You have submitted a court order of nondisclosure that was issued pursuant to section 411.081(f-1) of the Government Code prohibiting the release of the submitted information. The requestor is not an entity or individual entitled to receive information protected by section 411.081. *See id.* § 411.081(f-1), (j). Accordingly, the city must withhold the submitted information under section 552.142 of the Government Code.<sup>3</sup>

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,



Andrea L. Caldwell  
Assistant Attorney General  
Open Records Division

ALC/eeg

Ref: ID# 408258

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument for this information.