



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 26, 2014

Mr. Brandon Carr
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2014-17163

Dear Mr. Carr:

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# 537518 (City of Fort Worth PIR No. W035272).

The City of Fort Worth (the "city") received a request for police records pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.107(2) of the Government Code provides information is excepted from disclosure if "a court by order has prohibited disclosure of the information." Gov't Code § 552.107(2). You have submitted for our review a copy of an "Order of Nondisclosure," which we understand was issued in accordance with section 411.081(d) of the Government Code. The submitted court order demonstrates the court ordered criminal justice agencies not to disclose the criminal history record information ("CHRI") related to the offense that is subject to the order. The court also noted a criminal justice agency may disclose the CHRI at issue to an individual or agency described by section 411.083(b)(1), (2), or (3). Thus, we conclude the submitted information is subject to the court order and generally must be withheld pursuant to section 552.107(2).

Section 411.081(d) of the Government Code authorizes a person placed on deferred adjudication community supervision for certain offenses to petition the court "for an order of nondisclosure," which would prohibit criminal justice agencies from disclosing to the

¹Although you raise section 552.101 of the Government Code in conjunction with a court order, we note the proper exception to raise in this instance is section 552.107(2) of the Government Code. See Gov't Code § 552.107(2). Accordingly, we will address your argument under this exception.

public CHRI related to the offense giving rise to the deferred adjudication. *Id.* § 411.081(d). When a nondisclosure order is issued, the clerk of the court shall send a copy of the order to the Department of Public Safety (“DPS”) Crime Records Service, and DPS shall send all relevant CHRI contained in the order to all law enforcement agencies that there is reason to believe have CHRI that is the subject of the order. *Id.* § 411.081(g), (g-1); *see also* Attorney General Opinion GA-0255 at 1 (2004). The information subject to the nondisclosure order may be disclosed in limited situations, however. Under section 411.081(d) of the Government Code, a criminal justice agency may disclose CHRI that is the subject of the order to the person who is the subject of the order. Gov’t Code § 411.081(d).

We find section 411.081 of the Government Code governs the availability of CHRI subject to a nondisclosure order. Thus, the submitted court order may not override the provisions of the statute. *Houston Chronicle Publ’g Co. v. Edwards*, 956 S.W.2d 813, 817 (Tex. App.—Beaumont 1997, orig. proceeding) (court has no inherent power to ignore express statutory provision that makes information public); *Houston Chronicle Publ’g Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App.—Beaumont 1997, orig. proceeding) (court may not seal search warrant affidavit that statute expressly provided is public). Accordingly, the court order at issue here does not prohibit the city from releasing the CHRI subject to the order if it chooses to because releasing the CHRI to the requestor, who is the subject of the order, is permitted under section 411.081(d) of the Government Code. However, in that instance, the city must withhold the remaining information under section 552.107(2). If the city chooses not to release the CHRI of the requestor, then it must withhold this information under section 552.107(2) 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 537518

Enc. Submitted documents

c: Requestor
(w/o enclosures)