



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2016

Mr. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086

OR2016-21685

Dear Mr. Henry:

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# 628135 (ORR# GONZ071316).

The City of Plano (the "city") received a request for a specified arrest report pertaining to a named individual. You claim 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 is applicable to records of certain deferred adjudications. Section 552.142 provides as follows:

(a) Information is excepted from [required public disclosure] if an order of nondisclosure of criminal history record information with respect to the information has been issued under Subchapter E-1, Chapter 411 [of the Government Code].

(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 criminal proceeding to which the information relates and the exception of the

¹Although you raise section 552.101 of the Government Code in conjunction with section 411.081 of the Government Code, we note section 552.142 of the Government Code is the proper exception to raise when asserting information is confidential pursuant to a nondisclosure order.

information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

Gov't Code § 552.142. Section 411.0725 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 prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision. *See id.* § 411.0725. Section 411.0765 of the Government Code provides in relevant part,

(a) A criminal justice agency may disclose criminal history record information [{"CHRI"}] that is the subject of an order of nondisclosure of criminal history record information under this subchapter only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (b), or the person who is the subject of the order.

Id. § 411.0765(a). You explain, and have provided documentation reflecting, an order of nondisclosure was issued pursuant to subchapter E-1, chapter 411 of the Government Code prohibiting the release of the information at issue. Thus, we find the submitted information is generally confidential under section 552.142.

However, in this instance, the requestor is a representative of the United States Department of Justice - Drug Enforcement Agency ("DEA"). As noted above, section 411.0765(a) provides access to CHRI to a criminal justice agency for criminal justice or regulatory licensing purposes. *Id.* We note CHRI is defined 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." *See id.* § 411.082(2). Thus, the submitted information in this instance contains CHRI. A "criminal justice agency" is defined in part as "a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial portion of its annual budget to the administration of criminal justice." *Id.* § 411.082(3)(A). "Administration of criminal justice" has the meaning assigned to it by article 60.01 of the Code of Criminal Procedure. *See id.* § 411.082(1). Article 60.01 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of [CHRI]." Crim. Proc. Code art. 60.01(1).

Although it appears the DEA is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice or regulatory licensing purpose. Consequently, if the city determines the requestor intends to use the CHRI for a criminal justice or regulatory licensing purpose, we conclude the city must make available to the requestor the CHRI from the submitted

information that shows the type of allegation made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.0765(a) of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the city must withhold the remaining information under section 552.142 of the Government Code. However, if the city determines the requestor does not intend to use the CHRI for a criminal justice or regulatory licensing purpose, then the requestor does not have a right of access to the submitted CHRI pursuant to section 411.0765(a). In that instance, the city 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.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,



Sidney M. Pounds
Assistant Attorney General
Open Records Division

SMP/akg

Ref: ID# 628135

Enc. Submitted documents

c: Requestor
(w/o enclosures)