



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 17, 2016

Ms. Delietrice Henry
Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2016-23276

Dear Ms. 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# 630796 (ORR# LEEK080316).

The Plano Police Department (the "department") received a request for information concerning a named individual, including a specified report. 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. You explain, and have provided documentation reflecting, an order of nondisclosure was issued pursuant to former section 411.081(d) of the Government Code. You assert this order applies to the submitted information. We note the submitted order of nondisclosure was issued prior to September 1, 2015. Although section 552.142 of the Government Code was amended in 2015 by the 84th Legislature, an order of nondisclosure issued pursuant to former section 411.081(d) prior to September 1, 2015, is subject to the former version of section 552.142, which was continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Thus, we will

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.

address your argument under the former version of section 552.142 of the Government Code, which provides as follows:

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

Act of June 1, 2003, 78th Leg., R.S., ch. 1236, § 5, 2003 Tex. Gen. Laws 3502, 3504, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, §§ 26-27, Tex. Gen. Laws 4327, 4338 (current version at Gov't Code § 552.142). We note although Senate Bill 1902 amended and redesignated former subsections 411.081(d) through (i) of the Government Code, the former versions of these subsections were continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Former 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 ("CHRI") related to the offense giving rise to the deferred adjudication. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 4, Tex. Gen. Laws 4327, 4328 (current version at Gov't Code § 411.0725(b)-(e)). Under this provision, a criminal justice agency may only disclose CHRI that is the subject of the order to other criminal justice agencies, for criminal justice or regulatory purposes; non-criminal justice agencies listed in former section 411.081(i); or the person who is the subject of the order. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503 (amended 2015). You explain, and provide documentation demonstrating, an order of nondisclosure was issued pursuant to former section 411.081(d) 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 of the Government Code.

In this instance, however, the requestor is a representative of the Probation Office of the United States District Court for the Eastern District of Texas (the "probation office"). As noted above, former section 411.081(d) 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* Gov't Code § 411.082(2). Thus, the submitted information contains CHRI. Section 411.082 of the Government Code defines

a “criminal justice agency” as including “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” and “criminal justice purpose” as “an activity that is included in the administration of criminal justice[.]” *Id.* § 411.082(3)(A), (4)(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 defines “administration of criminal justice” as the “performance of any of the following activities: detection, apprehension, detention, 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 criminal history record information.” Crim. Proc. Code art. 60.01(1).

We understand the probation office is a criminal justice agency as defined by section 411.082. *See Gov’t Code* § 411.082(3). Further, the requestor states the named individual is a defendant under investigation by the probation office. Thus, we find the requestor is seeking the information for a criminal justice purpose. Accordingly, the requestor has a right of access to the CHRI in the submitted information pursuant to former section 411.081(d). Therefore, the CHRI must be released to this requestor under former section 411.081(d) of the Government Code. The department must withhold the remaining 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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 630796

Enc. Submitted documents

c: Requestor
(w/o enclosures)