



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2006

Mr. Renaldo Stowers
Associate General Counsel
University of North Texas System
Office of the Vice Chancellor and General Counsel
P. O. Box 310907
Denton, Texas 76203-0907

OR2006-01124

Dear Mr. Stowers:

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# 241535.

The University of North Texas System Police Department (the "department") received a request from the Arlington Independent School District (the "district") for all reports pertaining to a named district employee for the last five years, including a specified offense report. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.142 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.142 of the Government Code pertains to records of certain deferred adjudications. This section provides:

- (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).

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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(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 would prohibit 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). 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 a copy of the order . . . to all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order." *Id.* § 411.081(g); *see also* Attorney General Opinion No. GA-0255 at 1.

The information subject to the nondisclosure order may be disclosed in limited situations, however. Section 411.081(d) provides that "[a] criminal justice agency may disclose criminal history record information that is the subject of the order to an individual or agency described by Section 411.083(b)(1), (2), or (3)." *Id.* § 411.081(d). Thus, a criminal justice agency that maintains criminal history record information subject to a section 411.081(d) nondisclosure order may disclose the information to the following individuals or agencies:

1. criminal justice agencies;
2. noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;
3. the person who is the subject of the criminal history record information.

....

Id. § 411.083(b); *see also* Attorney General Opinion No. GA-0255 at 2. In this instance, the requestor, who represents the district, claims a right of access through section 22.083(c)(1) of the Education Code. Section 22.083(c)(1) of the Education Code authorizes a school district to obtain from any law enforcement agency all criminal history record information that relates to a district employee. Educ. Code § 22.083(c)(1); *see also* Gov't Code § 411.097(b) (school district is entitled to obtain criminal history record information that relates to a district employee from the DPS that district is authorized to obtain under

chapter 22 of the Education Code); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Criminal history record information consists of “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.” Gov’t Code § 411.082(2).

The district is an agency authorized by state statute to receive criminal history record information, and it is therefore within section 411.083(b)(2). Accordingly, in this instance, the department may release to the district criminal history record information that is subject to a nondisclosure order issued under section 411.081(d), and thus, such information is not excepted from disclosure under section 552.142 in this instance.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

²As we are able to reach this conclusion, we do not address your arguments under section 552.101 in conjunction with section 411.081 of the Government Code.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Brian J. Rogers
Assistant Attorney General
Open Records Division

BJR/krl

Ref: ID# 241535

Enc. Submitted documents

c: Mr. Rick Tice
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(w/o enclosures)