



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2006

Mr. Marc J. Schnall
Langley & Banack, Inc.
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OR2006-04507

Dear Mr. Schnall:

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# 248035.

The Selma Police Department (the "department"), which you represent, received a request for a specified offense report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.1175, 552.130, and 552.142 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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).
- (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 prohibits 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). 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 or regulatory purposes; non-criminal justice agencies listed in section 411.081(i); or the person who is the subject of the order. *Id.* In this instance, you provide documentation showing that an order of nondisclosure was issued pursuant to section 411.081(d) of the Government Code prohibiting the release of the requested information. In this instance, the requestor is the Texas State Board of Pharmacy Police Department. We note that the requestor is not a non-criminal justice agency listed in section 411.081(i), or the individual who is the subject of the order. *See id.* § 411.081(i). To the extent that the requestor qualifies as a criminal justice agency under section 411.081(d), the department must release the submitted information. *See id.* §§ 411.081(d), 411.082(3)(A) (criminal justice agency defined 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"). If the requestor does not qualify as a criminal justice agency, the requested information is excepted from disclosure under section 552.142 and must be withheld by the department in its entirety.¹

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

¹As our ruling is dispositive, we need not address your remaining arguments. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act).

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).

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/krl

Ref: ID# 248035

Enc. Submitted documents

c: Ms. Cynthia Fazin
Enforcement Specialist
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(w/o enclosures)