



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 20, 2013

Ms. Michelle T. Rangel
Assistant County Attorney
Fort Bend County
301 Jackson Street, Suite 728
Richmond, Texas 77469

OR2013-04595

Dear Ms. Rangel:

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# 481771.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for a specified offense report and a criminal history statement/background check on the requestor. You indicate the sheriff's office will release a portion of the requested information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

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 copies of three "Orders of Nondisclosure" issued in accordance with section 411.081(d) of the Government Code. The court ordered

¹Although you raise section 552.101(2), this subsection does not exist. However, by the language you quoted, we understand you to raise section 552.107(2). Section 552.101 of the Government Code does not encompass other exceptions in the Act.

²We assume 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 those records contain substantially different types of information than that submitted to this office.

all criminal justice agencies not to disclose the criminal history record information related to the specified offenses that are subject to the orders. The court also noted a criminal justice agency may disclose the criminal history record information at issue in each order to an individual or agency described by section 411.083(b)(1), (2), or (3).

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 public criminal history record information (“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. *Id.* § 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 sheriff’s office from releasing the CHRI subject to the order if it chooses to because releasing the CHRI to the requestor, who is the subject of one of the orders, is permitted under section 411.081(d) of the Government Code. If the sheriff’s office chooses not to release the CHRI of the requestor, then it must withhold this information under section 411.081(d) of the Government Code. However, the submitted information contains the CHRI of two other individuals who are the subjects of the two additional Orders of Nondisclosure. Thus, in either case, the sheriff’s office must withhold the CHRI of the two other individuals pursuant to section 411.081(d) 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.oag.state.tx.us/open/index_orl.php,

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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "DLW", with a horizontal line extending to the right.

David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/dls

Ref: ID# 481771

Enc. Submitted documents

c: Requestor
(w/o enclosures)