



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 5, 2015

Mr. Guillermo Trevino
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-08741

Dear Mr. Trevino:

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# 562550 (Fort Worth PIR No. W040490).

The Fort Worth Police Department (the "department") received a request for all offense reports and narratives pertaining to a named individual. You claim the requested information is excepted from disclosure under section 552.142 of the Government Code. 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 with respect to the information has been issued under 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.

Gov't Code § 552.142. Section 411.081(d) of the Government Code provides, in relevant part,

Notwithstanding any other provision of [subchapter F], if a person is placed on deferred adjudication community supervision . . . subsequently receives a discharge and dismissal . . . and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure[.] . . . A criminal justice agency may disclose criminal history record information [(“CHRI”)] that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order.

Id. § 411.081(d). You explain, and provide documentation reflecting, an order of nondisclosure was issued pursuant to 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, the requestor is a representative of the Probation Office of the United States District Court for the Western District of Texas, Midland/Odessa Division (the “probation office”). As noted above, 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 id.* § 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 section 411.081(d). We note the requestor's statutory right of access prevails over the

doctrine of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S.W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *see also CenterPoint Energy Houston Elec. LLC v. Harris County Toll Rd.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Thus, the CHRI must be released to this requestor under section 411.081(d). The department must withhold the remaining information under section 552.142.

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,



Lauren Dahlstein
Assistant Attorney General
Open Records Division

LMD/som

Ref: ID# 562550

Enc. Submitted documents

c: Requestor
(w/o enclosures)