



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 26, 2015

Mr. Matthew L. Grove  
Assistant County Attorney  
County of Fort Bend  
401 Jackson Street, 3rd Floor  
Richmond, Texas 77469

OR2015-17800

Dear Mr. Grove:

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# 577070.

The Fort Bend County Sheriff's Office (the "sheriff's office") received two requests from the same requestor for information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under section 552.101 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.<sup>1</sup> 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 (“CHRI”) related to the offense giving rise to the deferred adjudication. *See id.* § 411.081(d). 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 section 411.081(i); or the person who is the subject of the order. *Id.* You have provided 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 subject to the court order and generally must be withheld under section 552.142 of the Government Code.

However, we note the requestor may be the authorized representative of the subject of the order. 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, if the requestor is the authorized representative of the subject of the order, then 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 is permitted under section 411.081(d) of the Government Code. However, in that instance, the sheriff's office must withhold the remaining information under section 552.142 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 552.142 of the Government Code. Conversely, if the requestor is not the authorized representative of the subject of the order, then the sheriff's office must withhold the submitted information under section 552.142 of the Government Code. As our ruling is dispositive, we need not consider your arguments against disclosure.

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,

A handwritten signature in black ink, appearing to read "N. A. Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

Ref: ID# 577070

Enc. Submitted documents

c: Requestor  
(w/o enclosures)