



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2016

Mr. Richard A. McCracken
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Forth Worth, Texas 76102

OR2016-06207

Dear Mr. McCracken:

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# 602069 (Fort Worth Request No. W048220).

The Fort Worth Police Department (the "department") received a request for information pertaining to a specified arrest. You claim the submitted 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 of criminal history record information with respect to the information has been issued under Subchapter E-1, Chapter 411 [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 criminal proceeding 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 411.0725 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 prohibits criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication community supervision. *See id.* § 411.0725. Section 411.0765 of the Government Code provides in relevant part,

(a) A criminal justice agency may disclose criminal history record information [{"CHRI"}] that is the subject of an order of nondisclosure of criminal history record information under this subchapter only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (b), or the person who is the subject of the order.

Id. § 411.0765(a). You explain, and have provided documentation reflecting, an order of nondisclosure was issued pursuant to subchapter E-1, chapter 411 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.

In this instance, we note the requestor is an examiner at the Federal Bureau of Investigation's National Instant Criminal Background Check System (the "NICS"). As noted above, section 411.0765(a) provides access to CHRI to a criminal justice agency for criminal justice or regulatory licensing purposes. *Id.* § 411.0765(a). 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 in this instance contains CHRI. A "criminal justice agency" is defined in part 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." *Id.* § 411.082(3)(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 of the Code of Criminal Procedure defines "administration of criminal justice" as the "performance of any of the following activities: detection, apprehension, 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 [CHRI]." Crim. Proc. Code art. 60.01(1).

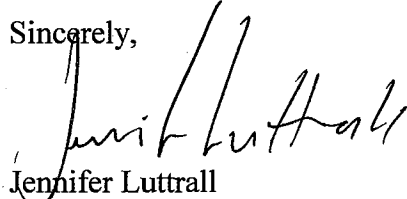
Although it appears the NICS is engaged in the administration of criminal justice under chapter 411, we cannot determine whether the requestor intends to use the CHRI for a criminal justice or regulatory licensing purpose. Consequently, if the department determines the requestor intends to use the CHRI for a criminal justice or regulatory licensing purpose, we conclude the department must make available to the requestor the CHRI from the submitted information that shows the type of allegation made and whether there was an

arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 411.0765(a) of the Government Code. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). In that instance, the department must withhold the remaining information under section 552.142 of the Government Code. However, if the department determines the requestor does not intend to use the CHRI for a criminal justice or regulatory licensing purpose, then the requestor does not have a right of access to the submitted CHRI pursuant to section 411.0765(a). In that instance, the department must withhold the submitted information under section 552.142 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.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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 602069

Enc. Submitted documents

c: Requestor
(w/o enclosures)