



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 14, 2017

Ms. Shea Smith  
Assistant City Attorney  
City of Sugar Land  
P. O. Box 110  
Sugar Land, Texas 77487-0110

OR2017-05282

Dear Ms. Smith:

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# 650506.

The City of Sugar Land (the "city") received a request for information pertaining to a specified arrest involving a named individual. 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 is applicable to records of certain deferred adjudications. You explain, and have provided documentation reflecting, an order of nondisclosure was issued pursuant to former section 411.081(d) of the Government Code. You assert this order applies to the submitted information. We note the submitted order of nondisclosure was issued prior to September 1, 2015. Although section 552.142 of the Government Code was amended in 2015 by the 84th Legislature, an order of nondisclosure issued pursuant to former section 411.081(d) prior to September 1, 2015, is subject to the former version of section 552.142, which was continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Thus, we will address your argument under the former version of section 552.142 of the Government Code, which 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 [former] Section 411.081(d).

(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.

Act of June 1, 2003, 78th Leg., R.S., ch. 1236, § 5, 2003 Tex. Gen. Laws 3502, 3504, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, §§ 26-27, Tex. Gen. Laws 4327, 4338 (current version at Gov't Code § 552.142). We note although Senate Bill 1902 amended and redesignated former subsections 411.081(d) through (i) of the Government Code, the former versions of these subsections were continued in effect for that purpose. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 32, Tex. Gen. Laws 4327, 4339. Former 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. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503, *amended by* Act of May 27, 2015, 84th Leg., R.S., ch. 1279, § 4, Tex. Gen. Laws 4327, 4328 (current version at Gov't Code § 411.0725(b)-(e)). 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 former section 411.081(i); or the person who is the subject of the order. *See* Act of June 1, 2003, 84th Leg., R.S., ch. 1236, § 3, Tex. Gen. Laws 3502, 3503 (amended 2015). Upon review, we find the submitted information is generally subject to former section 552.142 of the Government Code.

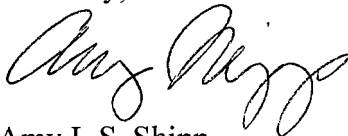
However, in this instance, the requestor is a recruiter for the United States Navy (the "Navy"), and one of the suspects named in the report is a potential enlistee in the Navy. The United States Department of Defense (the "DoD") is authorized to perform background investigations of persons seeking to enlist to determine the eligibility of applicants for acceptance into the armed services. 5 U.S.C. § 9101(b)(1)(C); *see also id.* § 9101(a)(6)(A) (DoD is a covered agency for purposes of section 9101). The Navy has a right to the criminal history record information ("CHRI") of state and local criminal justice agencies when its investigation is conducted with the consent of the individual being investigated. *See id.* § 9101(b)(1), (c); *see also* 10 U.S.C. § 111(b)(7) (DoD includes the Department of the Navy). CHRI is defined as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision and release" but does not include "identification information such as fingerprint records to the extent that such information does not indicate involvement in the criminal justice system" or "records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality." 5 U.S.C. § 9101(a)(2).

Federal law provides the Army's right of access to CHRI preempts state law. *Id.* § 9101(b)(4) (section 9101 "shall apply notwithstanding any other provision of law . . . of any State"). We conclude the Navy's right of access under federal law preempts the state law you claim. *See English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *see also La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). However, federal law also provides the Navy's right of access is contingent on receiving written consent from the individual under investigation for the release of such CHRI. *See* 5 U.S.C. § 9101(c). In this instance, the Navy has provided written consent from the individual named in the request. Therefore, the city must release CHRI pertaining to the named individual to this requestor and must withhold the remaining information under former 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](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,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/nmd

Ref: ID# 650506

Enc. Submitted documents

c: Requestor  
(w/o enclosures)