



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2019

Ms. Kristie L. Lewis
Staff Attorney
Houston Police Department
1200 Travis, 21st Floor
Houston, Texas 77002-6000

OR2019-00095

Dear Ms. Lewis:

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# 744496 (PIR No. 18-10372).

The Houston Police Department (the "department") received a request for all reports pertaining to the requestor's client. You claim the submitted information is excepted from disclosure under section 552.142 of the Government Code.¹ 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. 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

¹Although you raise section 552.101 of the Government Code in conjunction with section 441.081 of the Government Code, we understand you to raise section 552.142 of the Government Code.

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). We note, for the purposes of former section 411.081, 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* Gov't Code § 411.082(2). Thus, in this instance, the submitted information contains CHRI.

Upon review, we find the submitted information is subject to the order of nondisclosure and generally must be withheld under former section 552.142. However, we note the requestor's client is the subject of the order. Thus, pursuant to section 411.081(d), the department is permitted to release the CHRI to the requestor. The department must withhold the remaining information under former section 552.142. If the department chooses not to release the

CHRI of the requestor, then it must withhold this 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, 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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/mo

Ref: ID# 744496

Enc. Submitted documents

c: Requestor
(w/o enclosures)