



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 28, 2020

Mr. Thomas L. McMillian  
Assistant City Attorney  
City of Amarillo  
200 Southeast Third Avenue, Fourth Floor  
Amarillo, Texas 79101-1514

OR2020-18692

Dear Mr. McMillian:

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# 839148 (ORR# 20-1360).

The Amarillo Police Department (the "department") received a request for information pertaining to a specified arrest of a named individual. The department claims the submitted information is excepted from disclosure under section 552.142 of the Government Code. We have considered the claimed exception 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.
- (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 411.0725 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. The department has submitted an order of nondisclosure issued pursuant to subchapter E-1, chapter 411 of the Government Code that prohibits the release of the information at issue.

Thus, we find the submitted information is generally subject to section 552.142 of the Government Code.

However, the requestor is with the Defense Counterintelligence and Security Agency (“DCSA”). Executive Order Number 13869 transfers the responsibility of background investigations from the Office of Personnel Management to the Department of Defense (“DoD”). Executive Order No. 13869. The DCSA is a component of the DoD and is the primary federal entity responsible for conducting background investigation for the federal government. Exec. Order No. 13869, § 2(c)(i), (iii). As a component of a covered agency, the DCSA has a right of access to the criminal history record information (“CHRI”) of state and local criminal justice agencies when it receives the consent of the individual being investigated for release of such information. *See* 5 U.S.C. § 9101(b)(1), (c); *id.* § 9101(a)(6)(A) (defining “covered agency” to include DoD). 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.” *Id.* § 9101(a)(2).

The requestor has submitted written consent from the individual under investigation for the release of that individual’s CHRI. Furthermore, federal law provides the DCSA’s right of access to CHRI preempts state confidentiality provisions. *Id.* § 9101(b)(4) (section 9101 “shall apply notwithstanding any other provision of law of any State”). Accordingly, the department must release the CHRI pertaining to the named individual to the requestor.<sup>1</sup> The department must withhold the remaining 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/rm

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<sup>1</sup> Because the requestor has a special right of access to the information being released, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

Ref: ID# 839148

Enc. Submitted documents

c: Requestor  
(w/o enclosures)