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RECEIVED

Greg Abbott
Attorney General
P.O. Box 12548
Austin, TX 78711-2548

APR 12 2004
OPINION COMMITTEE

FILE # ML-43623-0
I.D. # 43623

Re: Request for Opinion Interpreting Section 411.081, Texas Government Code

Dear General Abbott:

I am requesting an opinion from your office regarding interpretation of Section 411.081 of the Texas Government Code, with respect to two questions:

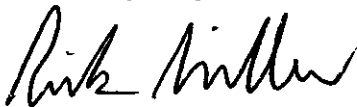
1. May a person affirmatively waive the prohibition on public access to his or her criminal history information that is subject to an order of nondisclosure; and
2. Upon inquiry for criminal history information that is contained in documents subject to an order of nondisclosure, what is the appropriate response from the custodian of the records? May a law enforcement agency respond "no disclosable record" to someone not authorized by such order to receive the information, as opposed to "no record," if there is an actual record under such an order? Section 411.081 does not appear to prohibit disclosure that a record exists, only the information contained therein.

Section 411.081, as amended by the Legislature in 2003, establishes a procedure whereby a person who has successfully completed a deferred adjudication community supervision authorized under Section 5, Article 42.12, Code of Criminal Procedure, may petition the sentencing court for an order of nondisclosure. Thereafter, a criminal justice agency is prohibited from disclosing the information to the public, with certain exceptions listed. Section 552.142, Government Code, excepts such information from public disclosure.

Our county recently had an inquiry from the United States Office of Personnel Management, accompanied by a signed "Authorization for the Release of Information" from the individual involved, who was seeking federal employment. One portion of the Authorization specifically authorized access to that individual's criminal history information, although no mention was made of the existence of an order of nondisclosure. The individual had a previous misdemeanor involving a deferred adjudication and a nondisclosure order had been entered. This presents all sorts of interesting questions that our Legislature did not address. For example, is the FBI or any other criminal justice agency prohibited from accessing a nondisclosable record when it is solely for employment background or security clearance information, or is that a "criminal justice" purpose between law enforcement agencies?

Your response to this query will be greatly appreciated.

Yours very truly,

A handwritten signature in black ink, appearing to read "Rick Miller". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Rick Miller
Bell County Attorney