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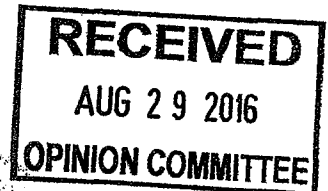
August 22, 2016

RQ-0125-KP

Honorable Ken Paxton
Attorney General
Office of the Attorney General
Attention: Opinion Committee
P. O. Box 12548
Austin, TX 78701

via CMRRR No.7014 2120 0002 6364 5313

FILE # ML-48067-16
I.D. # 48067



Re: **REQUEST FOR AN OPINION –
Regarding the access and availability of information subject to “non-disclosure” orders entered pursuant to the provisions of Chapter 411 Government Code**

Dear Mr. Paxton:

This request for an opinion is submitted to determine the access and availability of information subject to “non-disclosure” orders entered pursuant to the legal provisions of Chapter 411 Government Code, Subchapter F (“Criminal History Record Information”), and specifically, the persons or agencies that may have access to and view criminal history record information that is subject to an order of non-disclosure issued pursuant to Section 411.081 of the Government Code.

Several questions have been presented to this office by the Williamson County Information Technology Department and other County officials with respect to the implementation of non-disclosure limitations through information technology, as discussed herein below.

I.

FACTUAL BACKGROUND

In July, 2015 certain questions were presented to the Williamson County Attorney’s Office by the Williamson County Information Technology Department (“IT-Wilco”) as to the persons or agencies that may have access to and view criminal history record information that is subject to an order of disclosure (entered pursuant to the provisions of Chapter 411, Government Code). Court records are made available to the public and Williamson County personnel through computer access in the District Clerk or County Clerk’s offices that

access data/information systems managed by IT-Wilco through Williamson County's software/technology system's vendor, Tyler Technologies, Inc. Under the current system in use in Williamson County, non-disclosure "charges" (criminal offenses for which a person was charged and subsequently made subject to an order of non-disclosure) can be viewed by the public through the court records information system "Party Tab"; and all County Clerk and District Clerk employees have access to may view information subject to non-disclosure orders. Tyler Technologies has indicated that it would have to reprogram the current information system to limit access and viewing of criminal history record information subject to non-disclosure orders to only those persons or agencies considered as being allowed to view such information and to exclude public viewing. It is noted that this issue is also of interest to several other counties (Collin, Grayson and El Paso Counties) who use the same court record information system from Tyler Technologies, Inc. (See Exhibit A attached).

On February 12, 2016, this office furnished an opinion to IT-Wilco with conclusions on the question(s) presented in this request (See Exhibit B attached), but the matter remains unresolved with Tyler Technologies, Inc. (who has indicated they would like to see an Attorney General opinion prior to deciding any further course of action, if any, under pending contracts).

II.

DISCUSSION / ANALYSIS OF QUESTION(S) PRESENTED

A. Question(s) Presented

Pursuant to the provisions of Chapter 411 Government Code, what persons or agencies may have access to and view criminal history record information that is subject to an order of non-disclosure?

B. Analysis

Section 411.081, Government Code

In regard to non-disclosure orders, Section 411.081, Government Code provides in pertinent part:

(d) Notwithstanding any other provision of this subchapter ... the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the deferred adjudication. **A criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order.** (emphasis added)

Tex. Gov't Code § 411.081 (d).

The above limitations and restrictions are clear. A “criminal justice agency”¹ may disclose criminal history record information that is the subject of an order of non-disclosure to only:

- (1) other criminal justice agencies
- (2) an agency or entity listed in subsection (i), or
- (3) the person who is the subject of the order.

See, Id.

As noted above, subsections (i) (7) and (25) of Section 411.081, rather than simply naming the district clerk’s office or the county clerk’s office, enumerates specific functions of each office, indicating an intention that only the designated employees of the offices engaged in those particular functions should receive and view the information subject to an order of non-disclosure. *See, Tex. Gov’t Code § 411.081 (i) (7) and (25).* The relevant parts of Section 411.081 state as follows:

(p) A criminal justice agency may disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) to the following noncriminal justice agencies or entities only:

.....
(7) a district court regarding a petition for name change under Subchapter B, Chapter 45, Family Code;

.....
(25) a county clerk’s office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code;

Id.

C. Conclusions

Upon entry of an order of non-disclosure, Section 411.081 of the Government Code prohibits disclosure of criminal history record information to the public and criminal history record information may only be released to criminal justice agencies or to certain agencies or entities listed in Section 411.081 (i). *See, Tex. Gov’t Code § 411.081 (d), (i) (7) and (25).* Only those persons of a district clerk’s office or county clerk’s office involved in the functions specifically named in Section 411.081 (i) (7) and (25) are allowed to receive and view

¹ A “criminal justice agency” is defined as “(A) 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; or (B) a nongovernmental railroad or campus police department that has obtained an originating agency identifier from the Federal Bureau of Investigation.” *Tex. Gov’t Code § 411.082 (3).*

disclosed criminal history record information for the limited purposes named in those sub-sections (under subsection (7), a district court regarding a petition for name change under Subchapter B, Chap. 45 Family Code; or under subsection (25), a county clerk's office in relation to a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code). Information systems should be designed in a manner to avoid disclosure of criminal history record information to the public and to prevent disclosure of such information to any county employees other than those of a criminal justice agency or those designated clerks of the district courts or the county clerk's office involved in the above referenced functions listed in Section 411.081 (i) (7) and (25).

III.
SUMMARY

Only criminal justice agencies and those specific employees of a district court or district clerk's office involved with petitions for name change under Subchapter B, Family Code, or employees of a county clerk's office involved in proceedings related to the appointment of a guardian under Chapter XIII, Texas Probate Code should be allowed to receive and view criminal history record information subject to an order of non-disclosure.

Please issue an opinion on the above referenced question.

Thank you for your attention to this matter.

Sincerely yours,


DEE HOBBS

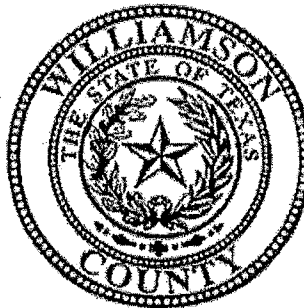
cc: Henry W. Prejean

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SEP 29 2016

September 29, 2016

FILE # RQ-0125-KP
I.D. # 48083

OPINION COMMITTEE

Virginia K. Hoelscher
Chair, Opinion Committee
Office of the Attorney General
P. O. Box 12548
Austin, TX 78701

via CMRRR No. 7014 2120 0002 6364 5368
and email to opinion.committee@texasattorneygeneral.gov

Attention: Opinion Committee

Re: **Supplement and Amendment to Request For Opinion RQ-0125-KP –**
Access to court records containing criminal history record information that is subject to an
order of non-disclosure order under Chapter 411 of the Government Code

Dear Ms. Hoelscher:

This letter is for purposes of supplementing and amending, for clarification purposes, certain points in the conclusion and summary of the above referenced request for an opinion previously submitted. Additionally, certain citations to Chapter 411 of the Government Code in the Request should be corrected to reflect the correct citation following the renumbering of those sections by the 84th Legislature, effective September 1, 2015

I. Corrections to Certain Citations to Chapter 411, Government Code

Please note that references to Section 411.081, (i) (7) and (25) of the Government Code in the Request refer to sub-sections which were renumbered by the 84th Legislature, effective September 1, 2015, and without change in wording to Sections 411.0765 (b) (7) and (25), Government Code. *See* Tex. Gov't Code § 411.0765 (b) (7) and (25) (2016), *formerly* Tex. Gov't Code § 411.081 (i) (7) and (25), [Renumbered to Tex. Gov. Code § 411.0765 by Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 11, effective September 1, 2015.]. Additionally, the reference to Section 411.081 (d) on page 3 of the Request should be changed to reflect the renumbering to Section 411.0725, Government Code. *See* Tex. Gov't Code § 411.0725 (2016), *formerly* Tex. Gov't Code § 411.081 (d) [Renumbered to Tex. Gov. Code § 411.0725 by Acts 2015, 84th Leg., ch. 1279 (S.B. 1902), § 4, effective September 1, 2015]. The pertinent part of Section 411.081 (d) cited and quoted in the Request on page 2 is now essentially stated in Section 411.0765 (a). *See* Tex. Gov't Code § 411.0765 (a) (2016).

II. Clarification of Conclusion and Summary Points Regarding Clerks Having Access to Information Subject to Non-Disclosure Orders

Since the submission of the Request, there has been an inquiry directed to us which has brought to our attention the need to clarify a certain point and conclusion stated in the Request. In the Request it was stated in the conclusions with respect to a district or county clerk's office that "Only those persons of a district clerk's office or county clerk's office involved in the functions specifically named in Section 411.081 (i) (7) and (25) are allowed to receive and view disclosed criminal history record information for the limited purposes named in those sub-sections...". However, *in addition to* the clerks involved in the functions described in renumbered Section 411.0765 (b) (7) and (25) (the deputy clerks involved in name changes or guardianship proceedings), the designated "clerk of court" or clerks of the court responsible for releasing information or sealing the file under Section 411.076 (a) or (b) of the Government Code (or the district or county clerks as clerks of the court) *should also be* considered clerks inherently having a right of access to the information subject to non-disclosure. Accordingly, the Conclusions and Summary sections of the Request should be read with these clarifications and revision noted.

The revised pertinent part of the "Conclusions" section of the Request should read as follows:

Conclusions

Upon entry of an order of non-disclosure, Sections 411.076 (a) and 411.0765 (a) of the Government Code prohibits disclosure of criminal history record information to the public and criminal history record information may only be released to criminal justice agencies or to certain agencies or entities listed in Section 411.0765 (b), as provided by Section 411.076 (a). *See*, Tex. Gov't Code § 411.076 (a), § 411.0765 (a) and (b) (7) and (25). Only those persons of a district clerk's office or county clerk's office involved in the functions specifically named in Section 411.0765 (b) (7) and (25) together with the clerk(s) of the court involved in the functions of sealing or releasing records as described in Section 411.076 are allowed to receive and view disclosed criminal history record information for the limited purposes named in those provisions.

The revised "Summary" section of the Request should read as follows:

Summary

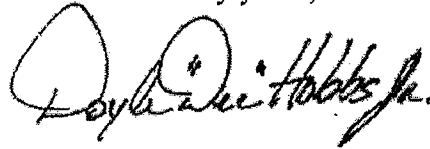
Only criminal justice agencies or those persons and entities listed under Section 411.0765 (a) and (b), Government Code (including those specific employees of a district court or district clerk's office involved with petitions for name change under Subchapter B, Family Code, or employees of a county clerk's office involved in proceedings related to the appointment of a guardian under Chapter XIII, Texas Probate Code) should be allowed to receive and view criminal history record information subject to an order of non-disclosure. Additionally, the clerk(s) of the court involved in the sealing and releasing of information from a file subject to a non-disclosure

order should inherently have access to records subject to an order of non-disclosure pursuant to the provisions of Section 411.076, Government Code.

Please accept and consider the above supplement and amendment for purposes of clarification in the briefing and conclusions of the previously submitted Request.

Thank you for your attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dee Hobbs". The signature is written in a cursive style with a large initial "D" and "H".

DEE HOBBS

cc: Henry W. Prejean