



Office of Court Administration

Instructions and Letter
Requesting Court to Issue an Order of Nondisclosure
under Section 411.072

BEFORE BEGINNING MAKE SURE YOU ARE ELIGIBLE TO USE THE LETTER PROVIDED BELOW. THE INSTRUCTIONS AND LETTER ARE ONLY FOR PERSONS REQUESTING AN ORDER OF NONDISCLOSURE UNDER § 411.072, GOV'T CODE. DO NOT ATTEMPT TO USE THE LETTER BELOW WITHOUT FIRST REVIEWING THE NONDISCLOSURE OVERVIEW TO DETERMINE IF YOU ARE ELIGIBLE FOR AN ORDER OF NONDISCLOSURE AND TO IDENTIFY THE CORRECT FORM TO USE. THE NONDISCLOSURE OVERVIEW IS AVAILABLE AT <http://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

NOTE: You are ineligible for an order of nondisclosure under § 411.072, if your dismissal and discharge occurred prior to September 1, 2017. If your dismissal and discharge occurred prior to September 1, 2017, you cannot use this letter.

TO BE ELIGIBLE TO USE THIS LETTER EACH OF THE FOLLOWING STATEMENTS MUST BE TRUE.

1. You were placed on deferred adjudication for a qualifying misdemeanor.
2. The court did not enter an affirmative finding that it is not in the best interest of justice for you to receive an automatic order of nondisclosure.
3. You received a discharge and dismissal on or after September 1, 2017.
4. You have been or were on deferred adjudication for a minimum of 180 days.
5. You are a first-time offender, but fine only traffic tickets are okay.

Order of Nondisclosure under Section 411.072

If you are eligible for an order of nondisclosure under § 411.072, you do not have to file a petition or pay the filing fees that normally accompany the filing of a petition for an order of nondisclosure. **The letter provided herein is not a petition.** (NOTE: Some courts may set your case on the docket on the date that your period of deferred adjudication expires to determine your eligibility for an order of nondisclosure under § 411.072.)

The statute places the responsibility on the court to determine whether you qualify for an order of nondisclosure under this section and to issue the order if you do. However, you must present evidence necessary to establish that you are eligible to receive an order of nondisclosure under § 411.072 and pay a \$28 fee (**this is not a filing fee**) or submit a *Statement of Inability to Afford Payment of Court Costs* to the court before the court will issue the order.

As a general rule, you must pay the \$28 fee before the court will issue the order. However, you may be eligible to file a Statement of Inability to Afford Payment of Court Costs in lieu of paying the fee. The statement is described in Rule 145 of the Texas Rules of Civil Procedure. You may view Rule 145 online at <http://www.txcourts.gov/media/1435952/trcp-all-updated-with-amendments-effective-912016.pdf>. The form for the Statement of Inability to Afford Payment of Court Costs is available on the Office of Court Administration website at this link: <http://www.txcourts.gov/media/1435953/statement-final-version.pdf>.

To facilitate your ability to present the evidence necessary to establish that you are eligible to receive an order of nondisclosure under § 411.072, a letter is provided below. However, you must complete the letter before submitting it to the court. The court will use the letter to determine your eligibility for the order of nondisclosure.

A **proposed order** for the order of nondisclosure is provided in these materials as well. You should submit the proposed order with the letter. The court will complete the proposed order if the court determines that an order should issue.

Required Waiting Period

If the court finds that you satisfy the requirements for an order of nondisclosure under § 411.072, the court is required to issue the order of nondisclosure as follows:

- If the court dismisses the proceedings against you and discharges you **on or after** the 180th day after the court places you on deferred adjudication, the court is required to issue the order of nondisclosure at the same time the court dismisses the proceedings and discharges you; or

- If the court dismisses the proceedings against you and discharges you **prior** to the 180th day after the court places you on deferred adjudication, the court is required to issue the order of nondisclosure “as soon as practicable” after the 180th day after the court places you on deferred adjudication.

The court cannot issue the order of nondisclosure until you have been on deferred adjudication for at least 180 days.

Summary of Procedure

If you are eligible for an order of nondisclosure under § 411.072, Gov’t Code, you should take the following steps:

1. Complete the letter below, and if 180 days have passed since you have been on deferred adjudication, submit the letter and proposed order (*Order of Nondisclosure under Section 411.072*) to the clerk of the court (hereinafter “clerk”); and
2. Pay \$28 or submit a *Statement of Inability to Afford Payment of Court Costs*. Ask the clerk about their procedures for paying the fee or submitting the statement.

If the court has not already issued an order of nondisclosure, the court will review your letter and determine if you qualify for the order of nondisclosure. If the court determines that you qualify for the order, the court will issue the order if you have paid the fee or submitted a statement of inability to pay.

No later than 15 business days after the court issues the order, the clerk will send a copy of the order to DPS. After receiving the order, DPS will seal the criminal history record information that is the subject of the order and forward a copy of the order to the agencies listed in § 411.075(b), Gov’t Code. See § 411.075(b) for a complete list of the agencies and entities that DPS must notify.

Letter Requesting an Order of Nondisclosure under Section 411.072,
Government Code

_____ (1)

The Honorable _____ (2)

_____ (3)

c/o Court Clerk

_____ (4)

_____ (5)

Re: Criminal Cause No. _____ (6)

_____ (7)

To the Honorable Court,

I, _____ (8), respectfully request the court to issue an order of nondisclosure under § 411.072, Gov't Code, in the above-referenced case.

I entered a plea of _____ (9) to the offense of _____, (10) and this court placed me on deferred adjudication. My term of deferred adjudication began on _____ (11) and ended on _____ (12). I **have/ have not** (13) attached a copy of the Order of Deferred Adjudication in my case. On _____, (14) I received a dismissal and discharge from the court. I **have/have not** (15) attached a copy of the dismissal and discharge.

I believe that I am entitled to an order of nondisclosure under § 411.072 for the following reasons:

1. I was placed on deferred adjudication for a misdemeanor other than one under § 49.04 (Driving While Intoxicated) or § 49.06 (Boating While

- Intoxicated), Penal Code, or Chapter 20 (kidnapping, unlawful restraint, or smuggling of persons), 21 (sexual offenses), 22 (assaultive offenses), 25 (offenses against the family), 42 (disorderly conduct and related offenses), 43 (public indecency offenses), 46 (weapons offenses), or 71 (organized crime offenses), Penal Code;
2. Aside from the criminal offense reflected above, I have not been previously convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only;
 3. The court did not enter an affirmative finding that it is not in the best interest of justice for me to receive an automatic order of nondisclosure under § 411.072;
 4. I received a dismissal and discharge under Article 42A.111, Code Crim. Proc. (formerly, § 5(c), Article 42.12, Code Crim. Proc.) on or after September 1, 2017; and
 5. I meet the requirements of § 411.074, Gov't Code, because:
 - a. Including the offense for which the order of nondisclosure is requested, I have never been convicted of or placed on deferred adjudication for any of the following offenses:
 - (i) an offense requiring registration as a sex offender under Chapter 62, Code Crim. Proc.;
 - (ii) an offense under § 20.04 (aggravated kidnapping), Penal Code;
 - (iii) an offense under any of the following sections of the Penal Code:
 - § 19.02 (murder);
 - § 19.03 (capital murder);
 - § 20A.02 (trafficking of persons);
 - § 20A.03 (continuous trafficking of persons);
 - § 22.04 (injury to a child, elderly individual, or disabled individual);
 - § 22.041 (abandoning or endangering a child);
 - § 25.07 (violation of court orders or conditions of bond in a family violence, sexual assault or abuse, stalking, or trafficking case);
 - § 25.072 (repeated violation of certain court orders or conditions of bond in family violence, sexual assault or abuse, stalking, or trafficking case); or
 - § 42.072 (stalking); or
 - (iv) any offense involving family violence, as defined by § 71.004, Family Code;

- b. This court has not made an affirmative finding that the offense for which I am requesting an order of nondisclosure involved family violence, as defined by § 71.004, Family Code; and
- c. I was not convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only during the 180 days following my placement on deferred adjudication.

Based on this information, I respectfully request the court to find that I have met the requirements of §§ 411.072 and 411.074, Gov't Code, and to issue an order of nondisclosure for the criminal offense referenced above.

Sincerely,

_____ (16)

_____ (17)

_____ (18)

_____ (19)

_____ (20)

Instructions for Completing Letter

- (1) Please enter the current date.
- (2) Please enter the name of the judge that placed you on deferred adjudication.
- (3) Please enter the name of the court that placed you on deferred adjudication. Only the court that placed you on deferred adjudication can issue an order of nondisclosure in your case.
- (4) Please enter the address of the court that placed you on deferred adjudication.
- (5) Please enter the city, state, and zip code of the court that placed you on deferred adjudication.
- (6) Please enter the Criminal Cause Number of your case. This should be on the order that placed you on deferred adjudication.
- (7) Please enter your name as shown on the order of deferred adjudication.
- (8) Please enter your current legal name. This name may differ if your name has changed.
- (9) Please enter either “guilty” or “nolo contendere” as shown on the order that placed you on deferred adjudication under Plea to Offense.
- (10) Please enter the offense shown on the order that placed you on deferred adjudication under Offense.
- (11) Please enter the date your deferred adjudication began as shown on the order.
- (12) Please enter the date your deferred adjudication ended as shown on the order.
- (13) Please circle “have” if you will be attaching a copy of the order that placed you on deferred adjudication or “have not” if you are not attaching a copy of the order.
- (14) Please enter the date that you received a discharge and dismissal from the court.
- (15) Please circle “have” if you will be attaching a copy of the discharge and dismissal or “have not” if you are not attaching a copy of the discharge and dismissal.
- (16) Please sign above the line.
- (17) Please PRINT your name.
- (18) Please enter your mailing address.
- (19) Please enter your city, state and zip code.
- (20) Please enter your telephone number.

Cause No. _____

In the Matter of

§

In the

§

§

_____ County, Texas

Order of Nondisclosure **Under Section 411.072**

On this the _____, day of _____, 20__, the Court reviewed the evidence before it to determine if Petitioner is eligible for an order of nondisclosure under § 411.072, Gov't Code.

The Court

- conducted a hearing.
- did not conduct a hearing.

After reviewing the evidence made available to the Court, the Court FINDS that:

- On or about _____, Petitioner was placed on deferred adjudication community supervision (hereinafter "deferred adjudication") for the offense of _____ in Criminal Case No. _____;
- Petitioner was placed on deferred adjudication for a misdemeanor other than a misdemeanor under § 49.04 or 49.06, or Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code;
- Petitioner received a dismissal and discharge on or after September 1, 2017;
- An affirmative finding under Article 42A.105(f), Code Crim. Proc., indicating that it is not in the best interest of justice for Petitioner to receive an automatic order of nondisclosure was not filed in the papers of the Petitioner's case;

- Petitioner has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense punishable by fine only;
- Petitioner satisfies the requirements of § 411.074, Gov't Code, as follows:
 - During the 180-day waiting period, Petitioner was not convicted of or placed on deferred adjudication for any offense other than a traffic offense punishable by fine only;
 - The Petitioner has never been convicted of or placed on deferred adjudication for:
 - an offense requiring registration as a sex offender under Chapter 62, Code Crim. Proc.;
 - an offense under § 20.04, Penal Code;
 - an offense under § 19.02, 19.03, 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or
 - any other offense involving family violence, as defined by § 71.004, Family Code; and
 - The Court did not make an affirmative finding that the offense for which the order of nondisclosure is requested involved family violence, as defined by § 71.004, Family Code; and
- A minimum of 180 days has passed since the Petitioner's placement on deferred adjudication.

Accordingly, **IT IS HEREBY ORDERED** that criminal justice agencies are prohibited from disclosing to the public criminal history record information related to the offense of _____ for which Petitioner was placed on deferred adjudication on _____, 20____ in Criminal Cause No. _____ in District Court County Court County Court at Law No. _____ in _____ County, Texas.

IT IS FURTHER ORDERED that the criminal history record information pertaining to the arrest and prosecution of Petitioner for the offense of _____, as reflected in Criminal Cause No. _____, shall be sealed and disclosed by the court only to individuals or agencies listed in § 411.076(a), Gov't Code.

IT IS FURTHER ORDERED that no later than the 15th business day after the date this order issues, the clerk of the court (hereinafter "clerk") shall send all relevant criminal history record information contained in this order or a copy of this order to the Crime Records Service of the Texas Department of Public Safety (hereinafter "DPS") by

certified mail (return receipt requested) or secure electronic mail, electronic transmission, or facsimile transmission, in accordance with § 411.075(a), Gov't Code.

IT IS FURTHER ORDERED that no later than 10 business days after receiving the relevant criminal history record information contained in this order or a copy of this order from the clerk, DPS shall seal the criminal history record information that is the subject of this order and forward the information or copy of the order to all state and federal agencies listed in § 411.075(b), Gov't Code, by certified mail (return receipt requested) or secure electronic mail, electronic transmission, or facsimile transmission, in accordance with § 411.075(b), Gov't Code.

IT IS FURTHER ORDERED that an agency or entity shall seal any criminal history record information maintained by that agency or entity that is the subject of this order no later than 30 business days after the date the agency or entity receives the relevant criminal history record information contained in this order or a copy of this order from DPS or a clerk, in accordance with § 411.075(d), Gov't Code.

IT IS FURTHER ORDERED that the clerk shall seal all court records containing information that is the subject of this order as soon as practicable after the date the clerk sends a copy of this order or all relevant criminal history record information contained in this order to DPS, in accordance with § 411.076(b), Gov't Code.

Signed on _____.

By _____
Judge Presiding

Court/County