



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 6, 1997

Ms. Jennifer Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 East 11th Street  
Austin, Texas 78701-2483

OR97-0289

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 103794.

The Texas Department of Transportation (the "department") received a request for a "record of name(s) of [department] inspector(s) and their reports on 1-25-95 guardrail: I-20, 1/4 mile West of Mansfield Highway, Fort Worth." You assert that the requested information is excepted from required public disclosure based on Government Code section 552.101.

Section 552.101 of the Government Code excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You say that the requested information is subject to the proscriptions of section 409 of title 23 of the United States Code, which provides as follows:

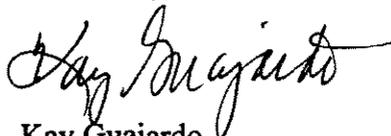
Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying, evaluation, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to section 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, list, or data.

You state that the department prepared the requested information to identify possible safety problems related to highway construction improvement projects.

Assuming the requested information is subject to this statute, we do not believe the statute makes such information confidential for purposes of section 552.101 of the Government Code. The federal provision states that such information "shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages." Thus, the statute's prohibition on the use of the information is limited to the context of a court proceeding. It follows that, as the prohibition is limited by its terms to a court proceeding, the statute does not control the release of information to the public outside of the context of a court proceeding, such as a request for information under the act. We note that a governmental body may not ask a requestor why he or she is seeking information. *See* Gov't Code § 552.222. Moreover, section 552.101 does not incorporate discovery or evidentiary privileges, since information is privileged only to the extent that the court in a particular case deems it to be so. *See* Open Records Decision No. 575 (1990) at 2. Accordingly, the department may not withhold the requested information from public disclosure based on section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 103794

Enclosures: Submitted documents

cc: Mr. Norm Cooper  
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(w/o enclosures)