



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 20, 1997

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
Dewitt C. Greer State Highway Building  
125 East 11th Street  
Austin, Texas 78701-2483

OR97-1164

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 106714.

The Texas Department of Transportation (the "department") received a request for all documents reflecting the last five (5) inspections of the Jim Christal Bridge over the Dry Fork 3 Tributary of Hickory Creek. You assert that the requested information is excepted from required public disclosure based on Government Code section 552.101 in conjunction with section 409 of title 23 of the United States Code.

Section 552.101 excepts from required public disclosure information that is made confidential by law, including information that is made confidential by statute. You state that, as the requested inspections are prepared by department inspectors to identify possible safety problems related to highway construction improvement projects, they are protected from public release by section 409 of title 23 of the United States Code. Section 409 reads as follows:

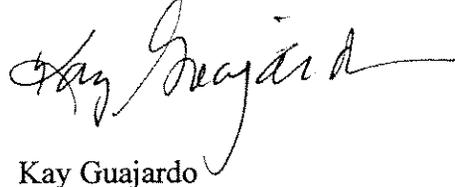
Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to section 130, 144, and 152 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, lists, or data.

This provision governs the release of information in the context of a court proceeding. The release of information pursuant to the Open Records Act is not a release in the context of a court proceeding. Therefore, section 409 on its face is not applicable. Moreover, this office has determined that section 552.101 does not cover discovery privileges; discovery privileges do not make information confidential by law for purposes of section 552.101. *See* Open Records Decision No. 575 (1990). Accordingly, the department may not withhold the requested information from public disclosure based on section 552.101 of the Government Code. *See e.g.*, Open Records Letter No. 96-2380 (1996).

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# 106714

Enclosures: Submitted documents

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(w/o enclosures)