



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 5, 2010

Mr. Gary A. Scott
Assistant City Attorney
City of Conroe
P.O. Box 3066
Conroe, Texas 77305

OR2010-00111

Dear Mr. Scott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 366618.

The Conroe Police Department (the "department") received a request for photographs and crash investigation reports pertaining to a specified incident. You state some responsive information has been released. You claim the submitted information is excepted from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state the submitted information relates to a pending criminal investigation which may be subject to future prosecution. Based on your representation and our review, we conclude release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is generally applicable to the submitted information.

However, the requestor is an investigator with the United States Department of Transportation ("DOT") and the National Highway Traffic Safety Administration.

Accordingly, we will consider whether federal law permits the requestor to obtain information that is otherwise protected by the exception discussed above.

Section 30166(b)(1)(B) of title 49 of the United States Code provides:

(b) Authority to Inspect and Investigate.-

(1) The Secretary of Transportation may conduct an inspection or investigation-

(B) related to a motor vehicle accident and designed to carry out this chapter.

49 U.S.C. § 30166(b)(1)(B).¹ Motor vehicle accident is defined as “an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.” *Id.* § 30166(a). The report at issue concerns a motor vehicle accident as defined in this chapter. Therefore, the DOT has the authority to conduct an investigation concerning the motor vehicle accident at issue pursuant to section 30166(b)(1) of title 49.

Further, section 30166(c) of title 49 reads in part:

(c) In carrying out this chapter, an officer or employee designated by the Secretary of Transportation-

(1) at reasonable times, may inspect and copy any record related to this chapter[.]

Id. § 30166(c)(1). The requestor is a crash investigator with the DOT who seeks the information for the purpose of performing motor vehicle safety research. Therefore, we conclude this requestor has the right to inspect and copy records related to motor vehicle accidents pursuant to an investigation under chapter 301 of title 49 of the United States Code. As discussed above, the information at issue concerns a motor vehicle accident as defined by section 30166(a) of title 49 of the United States Code. Therefore, under federal law, the requestor has the right to inspect and copy the information at issue. Thus, the requestor’s right of access under federal law preempts the protection afforded by section 552.108 of the Government Code. *See* U.S. Const. art. VI, cl. 2 (Supremacy Clause); *Delta Airlines, Inc. v. Black*, 116 S.W.3d 745, 748 (Tex. 2003) (discussing federal preemption of state law).

¹We note the purpose of Chapter 301 of the United States Code is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents” and (1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out needed safety research and development. 49 U.S.C. § 30101.

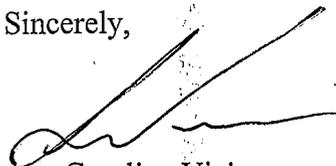
You also assert portions of the submitted information are excepted from disclosure under section 552.130 of the Government Code which excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130(a)(1), (2). Although we agree the submitted information contains Texas motor vehicle record information that is generally excepted from disclosure under section 552.130, we again note the requestor has a statutory right of access to the submitted information.

Thus, there is a conflict between the requestor's right of access under section 30166(a) of title 49 of the United States Code and the confidentiality provision found in section 552.130 of the Government Code. As federal law, section 30166 of title 49 preempts any conflicting state provisions, including section 552.130. See *English v. General Elec. Co.*, 496 U.S. 72, 79 (1990) (noting that state law is preempted to extent it actually conflicts with federal law); *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 369 (1986) (noting that federal agency acting within scope of its congressionally delegated authority may preempt state regulation). Thus, although portions of the submitted information are confidential under section 552.130, the requestor's right of access under federal law preempts the state statute. Therefore, the department must allow the requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of title 49 of the United States Code.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

²If the department receives another request for this information from a different requestor, then the department should again seek our decision.

Ref: ID# 366618

Enc. Submitted documents

c: Requestor
(w/o enclosures)