



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2010

Mr. John Ohnemiller
First Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-02072

Dear Mr. Ohnemiller:

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# 370002.

The Midland Police Department (the "department") received two requests for information pertaining to a specified incident. You state you have released some information to the requestor. You claim that 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted information pertains to a pending criminal investigation. Based upon this representation, we conclude that the 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, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the department may withhold the submitted information from the December 1, 2009 requestor under section 552.108(a)(1) of the Government Code.

However, the November 17, 2009 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-

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.

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

Id. § 30166(c)(1). The November 17, 2009 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).

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 November 17, 2009 requestor has a statutory right of access to the submitted information.

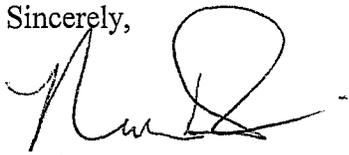
Thus, there is a conflict between the November 17, 2009 requestor's right of access under section 30166(a) of title 49 of the United States Code and the confidentiality provision found in section 552.130 of the Government Code. As federal law, section 30166 of title 49 preempts any conflicting state 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 November 17, 2009 requestor's right of access under federal law preempts the state statute. Therefore, the department must allow the November 17, 2009 requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of title 49 of the United States Code.

In summary, with the exception of basic information, the department may withhold the submitted information from the December 1, 2009 requestor under section 552.108(a)(1) of the Government Code. The department must allow the November 17, 2009 requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of title 49 of the United States Code.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/jb

Ref: ID# 370002

Enc. Submitted documents

cc: Requestor
(w/o enclosures)