



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2010

Ms. Natasha Brooks
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2010-02761

Dear Ms. Brooks:

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# 371081.

The Midland Police Department (the "department") received two requests from different requestors for information concerning a specified incident. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In this instance, the second requestor has provided the department with two of the three pieces of information pursuant to section 550.065(c)(4). You claim the accident report form at issue is excepted from

disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. However, the exceptions found in the Act generally do not apply to information that is made public by other statutes. *See* Open Records Division No. 525 (1989) (statutory predecessor). Therefore, the department must release the accident report form, which we have marked, to the second requestor pursuant to section 550.065(c)(4) of the Transportation Code. However, the first requestor did not provide two of the required pieces of information; accordingly, the submitted CR-3 form must generally be withheld from this requestor under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Law enforcement records relating to juvenile conduct, whether delinquent conduct or conduct indicating a need for supervision, that occurred on or after September 1, 1997, are confidential under section 58.007 of the Family Code. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of the Family Code). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). Although you state the submitted law enforcement records involve a child, we note that the only suspect listed in the submitted information is over the age of seventeen. Accordingly, section 58.007 of the Family Code is not applicable to the remaining information and the department may not withhold the remaining information under section 552.101 of the Government Code on that basis.

We now address your argument under section 552.108 of the Government for the remaining information. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). 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 relates to a pending prosecution. Based on this representation, we conclude that release of the remaining 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find that section 552.108(a)(1) is generally applicable to the remaining information.

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* 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 remaining information from the second requestor under section 552.108(a)(1) of the Government Code.¹

However, the first 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 first requestor to obtain information that is otherwise protected by the exceptions 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.

¹As our ruling is dispositive, we need not address your remaining argument for this information.

49 U.S.C. § 30166(b)(1)(B).² 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 submitted information 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 states 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 first 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 submitted information concerns a motor vehicle accident as defined by section 30166(a) of Title 49 of the United States Code. Therefore, under federal law, the first requestor has the right to inspect and copy the information at issue.

Thus, there is a conflict between the first requestor’s right of access under section 30166(a) of Title 49 of the United States Code and the confidentiality requirements in section 550.065 of the Transportation Code. As federal law, section 30166 of title 49 preempts any conflicting state provisions, including section 550.065 of the Transportation Code. *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 the submitted crash report is confidential under section 550.065 of the Transportation Code, the first requestor’s right of access under federal law preempts the state statute. In addition, the first 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). Therefore, the department must allow the first requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of Title 49 of the United States Code.

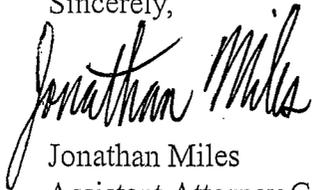
²We note that the purpose of Chapter 301 of the United States Code is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents” and (1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and (2) to carry out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

In summary, the department must release the accident report form, which we have marked, to the second requestor pursuant to section 550.065(c)(4) of the Transportation Code. With the exception of basic information, the department may withhold the remaining information from the second requestor under section 552.108(a)(1) of the Government Code. The department must allow the first 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 371081

Enc. Submitted documents

c: Requestor
(w/o enclosures)