



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2012

Ms. Michelle T. Rangel  
Assistant County Attorney  
Fort Bend County  
301 Jackson Street, Suite 728  
Richmond, Texas 77469

OR2012-11643

Dear Ms. Rangel:

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# 460114.

The Fort Bend County Fire Marshal's Office (the "fire marshal's office") received nine requests from different requestors for information pertaining to a specified case number. 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. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note some of the information you have submitted is not responsive to some of the requests at issue because it was created after the date the requests at issue were received. This ruling does not address the public availability of any non-responsive information, and the fire marshal's office need not release any non-responsive information in response to the requests at issue.

Next, we address one of the requestors' argument that the information at issue is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

*Id.* § 552.022(a)(1). We agree the information at issue is part of a completed investigation that is subject to subsection 552.022(a)(1). The fire marshal's office must release this information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. *See id.* The fire marshal's office seeks to withhold the information at issue under section 552.108 of the Government Code. Section 552.130 of the Government Code makes information confidential under the Act. Accordingly, we will consider the applicability of sections 552.108 and 552.130 to the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” *Id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). The fire marshal's office states that the responsive information pertains to a closed criminal case that concluded in a result other than conviction or deferred adjudication. One of the requestors argues that section 552.108(a)(2) does not apply to this case because the case did not involve a law enforcement investigation. We note, however, that the term “peace officer,” as defined by article 2.12 of the Code of Criminal Procedure, includes “the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code[.]” *See* Crim. Pro. Code art. 2.12(33); *see also* Open Records Decision No. 127 (1976) (arson investigation division of fire department is “law enforcement agency” under predecessor to current section 552.108). Thus, we agree that section 552.108(a)(2) is applicable to the information at issue.

We note, 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 Publishing 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). *See also* ORD 127 (summarizing the types of information considered to be basic information). We note basic information does not include

motor vehicle record information encompassed by section 552.130 of the Government Code. Thus, with the exception of the basic front page offense information, which the fire marshal's office must release, the fire marshal's office may withhold the responsive information from disclosure based on section 552.108(a)(2).

However, we note one of the requestors is an investigator with the United States Department of Transportation (the "DOT") and the National Highway Traffic Safety Administration. Accordingly, we will consider whether federal law permits this 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).<sup>1</sup> 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[.]

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<sup>1</sup>We 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.

*Id.* § 30166(c)(1). The requestor at issue 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 DOT requestor has the right to inspect and copy the information at issue. Thus, the DOT 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 responsive 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 responsive information contains motor vehicle record information that is generally excepted from disclosure under section 552.130, we again note the DOT requestor has a statutory right of access to the submitted information.

Thus, there is a conflict between this 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 responsive information are confidential under section 552.130, the DOT requestor's right of access under federal law preempts the state statute. Therefore, the fire marshal's office must allow this requestor to inspect and copy the responsive information pursuant to section 30166(c)(1) of title 49 of the United States Code.

In summary, the fire marshal's office must allow the DOT requestor to inspect and copy the responsive information pursuant to section 30166(c)(1) of title 49 of the United States Code. With the exception of basic information, the fire marshal's office may withhold the responsive information from the remaining requestors under section 552.108(a)(2) of the Government 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](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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a large, stylized flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/som

Ref: ID# 460114

Enc. Submitted documents

c: 9 Requestors  
(w/o enclosures)