



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 18, 2012

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2012-14850

Dear Mr. Weir:

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# 465569 (COSA File No. W008588).

The San Antonio Police Department (the "department") received a request for crash investigation reports, police reports, and photographs related to a specified motor vehicle crash. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes copies of a CR-3 accident report form 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) or subsection (e), accident reports are privileged and confidential. *Id.* § 550.065(b). 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) the date of the accident; (2) the name of any person involved in the accident; and (3) the 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 of the items of information specified by the statute. *Id.* In this instance, the requestor has provided the department with two of the three specified items of information. Accordingly, the department must release the

submitted CR-3 accident report form in its entirety to this requestor pursuant to section 550.065(c)(4) of the Transportation Code.

Next, we note the submitted information contains court-filed documents subject to section 552.022(a)(17) of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). You seek to withhold these documents under section 552.108 of the Government Code, which is a discretionary exception to disclosure that protects a governmental body’s interests and may be waived. *See id.* § 552.108; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential under the Act. Therefore, the department may not withhold the court-filed documents under section 552.108. However, because section 552.130 of the Government Code makes information confidential under the Act, we will consider the applicability of this exception to the court-filed documents.<sup>1</sup>

Section 552.130(a)(2) of the Government Code excepts from disclosure information relating to a motor vehicle title or registration issued by an agency of this state. Gov’t Code § 552.130(a)(2). We note one of the court-filed documents includes a license plate and vehicle identification number. This information is generally confidential under section 552.130.

Next, we address your claim under section 552.108 of the Government Code for the rest of the submitted 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[.]” *Id.* § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information at issue relates to an open criminal case. Based on your representation, we conclude section 552.108(a)(1) is generally applicable to the remaining information. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Accordingly, we will consider whether federal law permits the 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.

49 U.S.C. § 30166(b)(1)(B).<sup>2</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 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 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. 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.

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<sup>2</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.

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. In addition, 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). Therefore, the department must allow the requestor to inspect and copy the remaining information pursuant to section 30166(c)(1) of title 49 of the United States Code.

In summary, the department must release the submitted CR-3 accident report form to this requestor pursuant to section 550.065(c)(4) of the Transportation Code. The department must allow the requestor to inspect and copy the remaining information pursuant to section 30166(c)(1) of title 49 of the United States Code.<sup>3</sup>

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/ag

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<sup>3</sup>If the department receives another request for this information from a different requestor, then the department should again seek our decision.

Ref: ID# 465569

Enc. Submitted documents

c: Requestor  
(w/o enclosures)