



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2014

Ms. Sarah Parker
Associate General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR2014-22875

Dear Ms. Parker:

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# 549504.

The Texas Department of Transportation (the "department") received two requests for information pertaining to a specified intersection. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.111 of the Government Code and privileged under section 409 of title 23 of the United States Code. We have considered the exceptions and privilege you claim and reviewed the submitted representative sample of information.¹

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. This section encompasses information protected by other statutes, such as chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) states, except as provided by subsection (c) or subsection (e), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release

¹We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 department 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.² You seek to withhold the submitted CR-3 accident reports in Exhibit C under section 550.065(b) of the Transportation Code. In this instance, the first requestor has provided the department with two of the requisite pieces of information specified by the statute for one of the CR-3 accident reports. Accordingly, the department must release the CR-3 accident report, which we have marked, to the first requestor pursuant to section 550.065(c)(4) of the Transportation Code. However, the first requestor has not provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4) for the remaining CR-3 accident reports. Accordingly, the department must withhold the remaining CR-3 reports from the first requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. Further, the second requestor has not provided the department with two of the three pieces of required information pursuant to section 550.065(c)(4) for any of the CR-3 accident reports. Accordingly, the department must withhold the submitted CR-3 reports from the second requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Next, we note the remaining information contains Crash Review Forms. This information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless the information is expressly confidential under the Act or other law or excepted from disclosure under section 552.108 of the Government Code. *See* Gov’t Code § 552.022(a)(1). Although you seek to withhold the information at issue under section 552.111 of the Government Code, section 552.111 is a discretionary exception to disclosure and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Therefore, the department may not withhold the information at issue under section 552.111. However, you also contend the information at issue is excepted from disclosure under section 409 of title 23 of the United States Code. We note section 409 is “other law” that makes information confidential for purposes of section 552.022(a). *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *see also Pierce County v. Guillen*, 537 U.S. 129 (2003) (upholding constitutionality of section 409, relied on by county in denying request under state’s Public Disclosure Act). Accordingly, we will consider your argument under section 409 for the information at issue. Further, we will consider your argument under section 552.111 for the remaining information.

²*See* Transp. Code § 550.0601 (“department” means Texas Department of Transportation).

You contend the Crash Review Forms are excepted from disclosure under section 409 of title 23 of the United States Code. Section 409 provides:

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

23 U.S.C. § 409. Federal courts have stated section 409 excludes from evidence data compiled for purposes of highway and railroad crossing safety enhancement and construction for which a state receives federal funding, in order to facilitate candor in administrative evaluations of highway safety hazards and to prevent federally required record-keeping from being used for purposes of private litigation. *See Harrison v. Burlington N. R.R.*, 965 F.2d 155, 160 (7th Cir. 1992); *Robertson v. Union Pac. R.R.*, 954 F.2d 1433, 1435 (8th Cir. 1992); *see also Pierce*, 537 U.S. at 129.

You state the information at issue was created for highway safety purposes. You state the subject roadway is part of the National Highway System under section 103 of title 23 of the United States Code and is, therefore, a federal-aid highway for the purposes of section 409 of title 23. Based upon your representations and our review, we conclude the department may withhold the Crash Review Forms pursuant to section 409 of title 23 of the United States Code.

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. You claim the remaining information in Exhibit B is excepted from disclosure under section 552.111 because it would be privileged from discovery under section 409 of title 23 of the United States Code. Upon review, we find section 409 of title 23 of the United States Code would protect the information at issue from discovery in civil litigation. Therefore, based on your representations and our review, we conclude the department may withhold the remaining information in Exhibit B under section 552.111 of the Government Code.

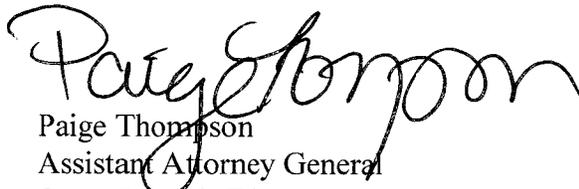
In summary, the department must release the CR-3 accident report, which we have marked, to the first requestor pursuant to section 550.065(c)(4) of the Transportation Code. The

department must withhold the remaining CR-3 reports from the first requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code and all of the submitted CR-3 reports from the second requestor under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The department may withhold the Crash Review Forms pursuant to section 409 of title 23 of the United States Code and the remaining information in Exhibit B under section 552.111 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 549504

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)