



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2008

Ms. Blanca E. Sanchez
Administrative Support Supervisor
Hidalgo County Sheriff's Office
P.O. Box 1228
Edinburg, Texas 78540

OR2008-15838

Dear Ms. Sanchez:

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# 328204.

The Hidalgo County Sheriff's Office (the "sheriff") received a request for a specified police report and supporting documentation for a specified incident. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 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. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under Chapter 261 of the Family Code. Based on your representations and our review, we find that the submitted information is within the scope of section 261.201 of the Family Code. *See id.* § 261.201(4) (defining “neglect” for purposes of chapter 261 of the Family Code). You have not indicated that the sheriff has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is generally confidential pursuant to section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).*

However, the requestor represents a company under contract with the United States Department of Transportation (“DOT”) and the National Highway Traffic Safety Administration. In his request letter, the requestor states that he is requesting the report under the authority of the DOT. In addition, attached to the request letter is a letter from the DOT identifying the requestor as a contractor of the DOT and raising various federal statutes to support his authority to access the information, including section 30166 of title 49 of the United States Code. 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)(2).¹ Motor vehicle accident is defined as “an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting

¹We 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 personal injury, death, or property damage.” 49 U.S.C. § 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)(2) 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 DOT has identified the requestor as a “crash investigator” contracted by the DOT 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 report 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 report at issue.

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 requirements in Chapter 261 of the Family Code. As a federal law, section 30166 of title 49 preempts any conflicting state provisions, including section 261.201 of the Family 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 information is confidential under chapter 261.201 of the Family Code, the requestor’s right of access under federal law preempts the state confidentiality statute. Therefore, the sheriff must allow the requestor to inspect and copy the submitted information pursuant to section 30166(c)(1) of Title 49 of the United States Code.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

²If the sheriff receives another request for this information from a different requestor, then the sheriff should again seek our decision.

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

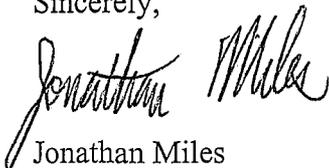
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 328204

Enc. Submitted documents

cc: Requestor
(w/o enclosures)
