



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 23, 2009

Ms. Luz E. Sandoval-Walker  
Assistant City Attorney  
The City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR2009-15107

Dear Ms. Sandoval-Walker:

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# 359526.

The El Paso Police Department (the "department") received a request for information related to a specified incident. You state you have released some information. You claim that 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.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by statute.<sup>1</sup> Gov't Code § 552.101. Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065. 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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.101, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.* The submitted information includes a CR-3 accident report form that was completed pursuant to chapter 550 of the Transportation Code. *See id.* § 550.064 (officer's accident report). In this instance, the requestor has not provided the department with two of the three requisite pieces of information. Therefore, the department must generally withhold the CR-3 accident report form under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code.

Next, you raise section 552.108 of the Government Code for the submitted incident report. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Generally, 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you state the submitted information relates to a pending criminal investigation and prosecution. Based on your representation and our review, we conclude release of the information you have indicated 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. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, we find section 552.108(a)(1) is generally applicable to the submitted information.

However, the 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 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)(2).<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.” 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 requestor is a crash investigator with 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 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 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).

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<sup>2</sup>We 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.

Therefore, the department 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.<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,

A large, stylized handwritten signature in black ink, appearing to read 'Chris Schulz', is written over the 'Sincerely,' and extends across the middle of the page.

Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 359526

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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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.