



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 25, 2016

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

OR2016-12030

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# 611546.

The Texas Department of Transportation (the "department") received a request for photographs pertaining to a specified accident and specified documents pertaining to repair of a bridge that was the site of the specified accident. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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. Section 552.101 encompasses information that other statutes make confidential. The department raises section 552.101 in conjunction with section 831.13 of title 49 of the Code of Federal Regulations, which applies to the release of information concerning accident investigations by the National Transportation Safety Board (the "NTSB"). 49 C.F.R. § 831.13; *see also* 49 U.S.C. § 1101 *et seq.*; *see also* 49 U.S.C. § 1113(f) (providing NTSB "may prescribe regulations to carry out [chapter 11 of title 49 of the United States Code]"). This office has determined a federal regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 552.101. *See* Open Records Decision No. 599 at 4 (1992). Section 831.13(b) reads as follows:

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<sup>1</sup>We 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.

All information concerning the accident or incident obtained by any person or organization participating in the investigation shall be passed to the [investigator-in-charge] through appropriate channels before being provided to any individual outside the investigation. Parties to the investigation may relay to their respective organizations information necessary for purposes of prevention or remedial action. However, no information concerning the accident or incident may be released to any person not a party representative to the investigation (including non-party representative employees of the party organization) before initial release by the Safety Board without prior consultation and approval of the [investigator-in-charge].

49 C.F.R. § 831.13(b). You state the submitted information consists of records involved in a pending and ongoing investigation by the NTSB. You also assert the department is a participant and named party to the NTSB investigation. We understand the department has not received approval from the NTSB investigator-in-charge to release the submitted information or that the submitted information has been released by the NTSB. Thus, we conclude, unless the department receives consent to release the information at issue from the NTSB investigator-in-charge, the department must withhold the submitted information under section 552.101 in conjunction with federal law.<sup>2</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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MHT/dls

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 611546

Enc. Submitted documents

c: Requestor  
(w/o enclosures)