



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2019

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, L. L. P
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2019-22787

Dear Mr. Narvaez:

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# 780987 (City ID Nos. P011606-052419, P011949-062819, P011976-070219, P0119993-070319).

The City of McKinney (the "city"), which you represent, received four requests from different requestors for information pertaining to a particular plane crash. You claim the submitted 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 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 city 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. § 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 states, in relevant part:

(b) 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). The city states the submitted information consists of records involved in a pending and ongoing investigation by the NTSB. The city states it is a participant in the NTSB's investigation. The city also states it 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 that unless the city receives consent to release the information at issue from the NTSB investigator-in-charge, the city must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 1113(f) of title 49 of the United States Code and section 831.13(b) of title 49 of the Code of Federal Regulations.

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,

A handwritten signature in black ink, appearing to read "Erin Groff". The signature is fluid and cursive, with the first name "Erin" written in a larger, more prominent script than the last name "Groff".

Erin Groff
Assistant Attorney General
Open Records Division

EMG/jxd

Ref: ID# 790987

Enc. Submitted documents

c: 4 Requestors
(w/o enclosures)