

POLICY DIRECTIVE

TR-0011 (REV 9/2006)

TRAFFIC OPERATIONS POLICY DIRECTIVE	NUMBER: 09-05	PAGE: 1 of 10
ROBERT COPP Chief Division of Traffic Operations	DATE ISSUED: July 30, 2009	EFFECTIVE DATE: July 30, 2009
<p>SUBJECT: Release of Records from the Highway Safety Improvement Program (HSIP)</p> <p><i>Coco Brisenó</i></p> <hr/> <p>Concur:</p> <p>COCO BRISENO Chief Division of Transportation System Information</p>	<p>DISTRIBUTION</p> <p><input checked="" type="checkbox"/> All District Directors</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Traffic Operations</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Maintenance</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Construction</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Design</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Transportation Planning</p> <p><input checked="" type="checkbox"/> All Deputy District Directors - Administration</p> <p><input checked="" type="checkbox"/> Chief, Division of Engineering Services</p> <p><input checked="" type="checkbox"/> Chief Counsel, Legal Division</p> <p><input checked="" type="checkbox"/> Publications (California MUTCD Website) www.dot.ca.gov/hq/traffops/signtech/mutcdsupp/ca_mutcd.htm</p> <p><input checked="" type="checkbox"/> Headquarters Division Chiefs for:</p> <p><u>Design, Planning, Construction, Public Affairs, Local Assistance, Maintenance & Transportation System Information</u></p>	
DOES THIS DIRECTIVE AFFECT OR SUPERSEDE ANOTHER DOCUMENT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, DESCRIBE	
WILL THIS DIRECTIVE BE INCORPORATED IN THE CALIFORNIA MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IF YES, DESCRIBE	

DIRECTIVE

The California Department of Transportation (Department) shall not release records from the Highway Safety Improvement Program (HSIP) to any persons or entities outside of the Department until the Department's Legal staff have confirmed that the request is not related to claims or litigation against or involving the Department. Furthermore, all HSIP records that are released from the Department in either a hard copy or electronic format shall be accompanied by a notice that the records are privileged pursuant to United States Code, Title 23, section 409 (23 USC 409).

POLICY DIRECTIVE**IMPLEMENTATION**

When HSIP records (as identified below) are requested, the district claims officer or the headquarters (HQ) Division of Traffic Operations legal liaison shall be consulted to make determination on releasing the records. The claims officer or Traffic Operations legal liaison will determine if the request is related to a claim or litigation involving the Department. Once the determination is made the California Public Records Act (CPRA) coordinator will be advised as to which of the following response letters to transmit to the person requesting HSIP documents.

If it is determined that the request is related to a claim or litigation involving the Department, then the requestor will be notified that the request is denied as HSIP records are privileged pursuant to 23 USC 409. The requestor will be sent a properly edited version of the attached sample denial letter (attachment 1).

If it is determined that the request is not related to a claim or litigation involving the Department, then the request will be fulfilled unless otherwise exempt pursuant to the CPRA. The requestor will be sent a properly edited version of the attached sample transmittal letter (attachment 2).

In either case, a copy of the Department's response will be sent to the appropriate Deputy Chief Counsel or all Deputy Chief Counsels in Sacramento, San Francisco, Los Angeles, and San Diego if the request is of a statewide nature to inform them of the request for HSIP documents.

If the request for records was received by the Department under a CPRA request, then the provisions under Deputy Directive 79 CPRA and the associated CPRA Guidelines shall be followed. If a conflict between the two arises, this policy shall take precedence.

This process is not intended to apply to subpoenas or requests from the Department Legal Division.

HSIP Records Privileged Pursuant to 23 USC 409

The applicable records currently in the Department's HSIP (new records added as HSIP evolves) include:

1. Traffic Collision Reports (TCR)
2. Transportation System Network-Traffic Accident Surveillance and Analysis System (TSN-TASAS) Data
3. Statewide Integrated Traffic Records System (SWITRS) Data
4. Traffic Investigation Report (TIR) (Formerly an HT65 or TO21)
5. Safety Index Calculations
6. Median Barrier Monitoring Program Reports
7. 2- and 3-Lane Monitoring Program Reports
8. Skid Tests and Numbers
9. Engineering & Traffic Surveys (Speed Zone surveys)
10. Run-off-Road Program Reports
11. Clean Up the Roadside Environment (CURE) Program Report
12. Wrong Way Monitoring Program Reports
13. Site specific signal and beacon investigations

The first three items in the list of applicable records require some additional attention because these records are provided to Traffic Operations from the California Highway Patrol (CHP) (items 1 and 3) and the Division of Transportation System Information (item 2) as tools necessary to implement the Department's HSIP. These three

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 653-3657 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS89, Sacramento, CA 95814.

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items as well as the remaining ten items will be the topics of training for employees that carry out the CPRA policy for the Department.

1. Traffic Collision Report

The Traffic Collision Report (TCR) is for the confidential use of the Department and the CHP, per Vehicle Code Section 20012 and 20014, and is therefore exempt from disclosure pursuant to Government Code Section 6254(k). **Any requests for a copy of a TCR shall be denied (reference above statutes), unless the request is from the CHP who has responsible jurisdiction for these confidential documents. If a TCR is contained as part of a report maintained by the Department, then the TCR shall be removed from the document with an annotation that confidential data was redacted from the document.**

2. Transportation System Network-Traffic Accident Surveillance and Analysis System (TSN-TASAS) Data

The release of information from TSN-TASAS will be by either providing the specific data from within TSN-TASAS or a specific report produced by TSN-TASAS.

Table C and Wet Table C

If a Table C is requested for an entire district, it must be provided as it is a report produced as a normal course of business by the Department. If specific locations are requested from a Table C, only those locations need to be provided and additional locations can be redacted.

Table B

The Department is not required under the CPRA to produce reports or analysis for a CPRA Request. If a Table B is requested, the request can be denied as it is not a regularly produced report and requires analysis to produce the record. If the request can be satisfied by a TSN-TASAS Selective Accident Retrieval (TSAR) then a TSAR should be provided. If an existing Table B is contained as part of a report maintained by the Department, it must be provided (if the detail report is included, a Reference Card should also be included for clarity).

TSN-TASAS Selective Accident Retrieval (TSAR)

If the request is for the specific data within TSN-TASAS, then a TSAR must be performed to retrieve the data. If the request is for an editable electronic version of the data, the electronic version must be provided. If a detail report is included, a Reference Card should be provided for clarity.

3. Statewide Integrated Traffic Records System (SWITRS) Data

The SWITRS is maintained by CHP and all requests for this data should be referred to CHP. **If SWITRS data is contained as part of a report maintained by the Department, then the SWITRS data shall be disclosed as part of the report.**

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DELEGATION

No new delegations of authority are created under this policy.

BACKGROUND

The records that are contained in the Department's HSIP are privileged information pursuant to 23 USC 409. However, the provisions of 23 USC 409 are only applicable if the request is related to a claim or litigation against the Department. If the request is for non-litigious purposes then this privilege does not apply and the information should be released. The clarification of this distinction was what precipitated the creation of this policy.

This policy will expire when revised or incorporated into other documentation within the Department.

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DEFINITIONS

When used in this Traffic Operations Policy Directive, the text shall be defined as follows:

- 1) **Standard** – a statement of required, mandatory or specifically prohibited practice. All standards text appears in **bold** type. The verb, “**shall**” is typically used. Standards are sometimes modified by Options.
- 2) Guidance – a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All Guidance statements text appears in underlined type. The verb, “should” is typically used. Guidance statements are sometime modified by Options.
- 3) Option – a statement of practice that is a permissive condition and carries no requirement or recommendation. Options may contain allowable modifications to a Standard or Guidance. All Option statements text appears in normal type. The verb, “may” is typically used.
- 4) Support – an informational statement that does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements text appears in normal type. The verbs “**shall**,” “should” and “may” are not used in Support statements.

ATTACHMENTS

Attachments

- 1 Denial Letter
- 2 Transmittal Letter

DEPARTMENT OF TRANSPORTATION**DIVISION OF TRAFFIC OPERATIONS**

1120 N STREET, MS 36
P. O. BOX 942873
SACRAMENTO, CA 94273-0001
PHONE (916) 651-9377
FAX (916) 653-3055
TTY 711



*Flex your power!
Be energy efficient!*

The information in **RED** shall be edited to reflect the respondent for the Department and the specifics of the request.

July 30, 2009

Mr. Joe Citizen
111 Capitol Mall
Sacramento, CA 95814

Dear Mr. Citizen

In response to your **July 20, 2009** request for records related to the Highway Safety Improvement Program (HSIP), the California Department of Transportation (Department) **(the following shall be included only if the request is submitted as a California Public Records Act request) pursuant to the California Public Records Act (CPRA; Government Code Sections 6250-6276)**, is unable to disclose the records you have requested at this time.

The requested records are exempt from disclosure, pursuant to CPRA; Government Code Section 6254(k), Title 23 of United States Code, Section 409 as the Department has determined that your request is for purposes of litigation related to an incident of **January 1, 2008 on State Highway 1**. Therefore, the Department is unable to disclose the records you have requested.

(If the request for record is for a Traffic Collision Report (TCR), the following paragraph should be used)

Please note that a Traffic Collision Report (TCR) is for the confidential use of the Department and the California Highway Patrol. Your request for a copy of a TCR is denied, pursuant to California Vehicle Code Section 20012 and 20014, as well as exempt from disclosure pursuant to CPRA Section 6254(k) of Government Code.

This is a complete response to your request and it comprises all documentation that can be produced by the Department.

If you need any further assistance or have questions regarding the enclosed documents, please contact me at **(916) 651-9377**.

Sincerely,

CAL T. RANS
Public Records Coordinator

Mr. Joe Citizen

July 30, 2009

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District/Division X

bc: Deputy Chief Counsel, Sacramento
Deputy Chief Counsel, San Francisco
Deputy Chief Counsel, Los Angeles
Deputy Chief Counsel, San Diego
Jeanne Scherer, Assistant Chief Counsel

TP/xx

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July 30, 2009

Mr. Joe Citizen
111 Capitol Mall
Sacramento, CA 95814

Dear Mr. Citizen

In response to your **July 20, 2009** request for records related to the Highway Safety Improvement Program (HSIP), the California Department of Transportation (Department) (the following shall be included only if the request is submitted as a California Public Records Act request) pursuant to the California Public Records Act (CPRA; Government Code Sections 6250-6276), has provided the following enclosed records:

(The specific records, dates, locations and other descriptions of the records should be provided in this list.)

- 1) TSN-TASAS
- 2) TIR (formerly HT-65 or TO21)
- 3) Etc.

The records you have requested from the HSIP are privileged in accordance with Title 23 of United States Code, Section 409 (23 USC 409) and cannot be disclosed for purposes related to claims or litigation against or involving the Department. It is our understanding that your request is not related to a claim or litigation against or involving the Department and is intended solely for the purposes of conducting research on collisions. The disclosure of these records does not constitute a waiver of the privilege granted under 23 USC 409 should these records be offered into evidence in future litigation against the Department.

(If the request for records is for TSN-TASAS data, the following paragraph should be included)

Please note that TSN-TASAS is a dynamic database which is constantly changing (as new data is introduced). The enclosed records are a static excerpt that will only represent the content of TSN-TASAS at this time. In addition, please be aware that the records contained in TSN-TASAS are created for use by those individuals who have been trained to perform Traffic Safety Investigations.

Mr. Joe Citizen
July 30, 2009
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(If the request for records is for a Traffic Collision Report (TCR), the following paragraph should be used)

Please note that a Traffic Collision Report (TCR) is for the confidential use of the Department and the California Highway Patrol and your request for a copy of a TCR is denied, pursuant to California Vehicle Code Section 20012 and 20014, and exempt from disclosure pursuant to Government Code Section 6254(k).

The Department believes this to be the full and complete response to your request and it comprises all documentation that can be produced at this time. If you need any further assistance or have questions regarding the enclosed, please contact me at (916) XXX-XXXX.

Sincerely,

CAL T. RANS
Public Records Coordinator
District/Division X

Mr. Joe Citizen

July 30, 2009

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bc: Deputy Chief Counsel, Sacramento
Deputy Chief Counsel, San Francisco
Deputy Chief Counsel, Los Angeles
Deputy Chief Counsel, San Diego
Jeanne Scherer, Assistant Chief Counsel

TP/xx