



ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of County Transportation

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Robert Bentley
Governor

John R. Cooper
Transportation Director

December 12, 2016

MEMORANDUM FY 2017-2

TO: County Engineers

CC: Region Engineers and Region County Transportation Engineers

FROM: 
D.E. (Ed) Phillips, Jr., State County Transportation Engineer

REFERENCE: Confidentiality Agreement

Please find attached the Revised Confidentiality Agreement (NDA) required by the ALDOT Legal Bureau to obtain crash data and access to privileged information upon approval. Please execute this agreement as the county engineer and return to this office.

Please feel free to contact me should you have any questions or comments concerning this matter.

DEP/dep
Attachment

Cc: Mr. John R. Cooper, Transportation Director
Mr. Don Arkle, Chief Engineer
Mr. Ed Austin, Assistant Chief Engineer, Policy & Planning
Mr. Waymon Benefield, Safety Administrator
Mr. Sonny Brasfield, ACCA

CONFIDENTIALITY AGREEMENT

This Agreement between the Alabama Department of Transportation (“ALDOT”) and <name of Government Entity/Organization>, (“<Governmental Entity/Organization>”), is for the purpose of allowing the <Government Entity/Organization> access to certain sensitive and protected ALDOT information.

The data <Government Entity/Organization> has requested data which is compiled, collected and utilized by the ALDOT for research and planning in its hazard elimination and rail/highway crossing safety improvement programs. The use of this data is governed by §§ 23 U.S.C. 148(h)(4) and 409, which state:

“§148(h)(4). Discovery and admission into evidence of certain reports, surveys, and information.

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose relating to this section, shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in the reports, surveys, schedules, lists, or other data.”

“§409. Discovery and admission as evidence of certain reports and surveys

Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 152 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mention or addressed in such reports, surveys, schedules, lists, or data. (Emphasis added)”

In addition, the Alabama Supreme Court has recognized the sensitivity of the data in Ex Parte Alabama Department of Transportation, 757 So. 2d 371 (Ala. 1999).

Accordingly, the requested data is confidential and may not be disclosed to third parties without the express written permission of ALDOT. The requested data is being provided solely and exclusively for the purpose stated in your communication dated <date> (attached) and is otherwise to be treated as confidential. The data shall not be referenced, disclosed, discussed or otherwise made public other than allowed by this Agreement. The provision of this data shall not be considered as a waiver of the provisions of §§ 23 U.S.C. 148(h)(4) and 409.

Upon execution of this Agreement, <City/County/Governmental Entity> agrees its agents, servants, officers, officials and employees in both their official and individual capacities that the data provided pursuant to the above referenced request shall not be discussed, disclosed, used, published or released without prior written consent of ALDOT. Furthermore, if the data should be released or published without the consent of ALDOT or should an attempt be made to use the data in an action for damages against the State, ALDOT, its officials or employees, this request for access to data shall terminate immediately, the State and ALDOT expressly reserve their right under §§ 23 U.S.C. 148(h)(4) and 409 to object to the use of the data and concluding any opinions drawn from the data and to recover damages caused by the improper and unauthorized release of the data.

Signature

Print

Organization

Date

Sworn to and subscribed before me this _____ day of _____.

Notary

My commission expires _____.