

DEPARTMENT OF TRANSPORTATION

DIVISION OF PLANNING AND POLICY

Statutory Authority: 29 Delaware Code, Section 8404(8) (29 **Del.C.** §8404(8))
2 DE Admin. Code 2306

FINAL

ORDER

2306 Crash Data Release

Pursuant to the authority provided by 29 **Del.C.** §8408(8), the Delaware Department of Transportation ("DelDOT") hereby issues this Order. The proposed change was published in the Delaware *Register of Regulations* on January 1, 2019 (Vol. 22, Issue 7). Following notice and opportunity for public comment on the proposed change, DelDOT makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. DelDOT received written information pertaining to the proposed change, which included two questions or comments regarding clarification of the change. Neither inquiry requires any further revision.
2. The change to this regulation was proposed to eliminate the overlap of crash data release regulations between DelDOT and the Delaware Department of Safety and Homeland Security ("DSHS"), as DSHS is the owner of all crash data.

Findings of Fact

3. The public was given notice and the opportunity to provide comments in writing on the proposed amendments. The written comments received are described in paragraph 1.
4. DelDOT finds that the elimination of this regulation is in the best interest of the State of Delaware for the reasons described in paragraph 2.

Decision and Effective Date

Based on the provision of Delaware law and the record of this docket, DelDOT hereby rescinds the Crash Data Release regulation, as set forth in the version attached hereto, to be effective March 11, 2019.

It is so ordered on this 13th day of February 2019.

Jennifer Cohan, Secretary
Delaware Department of Transportation

2306 Crash Data Release

Authority

~~29 **Del.C.** §10002(g)(6) states that any records that are specifically exempted from public disclosure by statute or common law shall not be deemed public in accordance with the Freedom of Information Act.~~

~~21 **Del.C.** §313(b) of the Delaware Code, states that accident reports shall not be open to public inspection.~~

~~23 USC§409 states, "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 148 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 mentioned or addressed in such reports, surveys, schedules, lists or data."~~

~~29 **Del.C.** §8404(8) states, "The Secretary [of the Department of Transportation] shall have the following powers, duties and functions: to establish and to promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof;"~~

1.0 Purpose

This regulation describes the requirements and procedures to be followed by all DelDOT employees with respect to releasing, to any entity or personnel outside of DelDOT, crash data and/or information related to sites identified under the Highway Safety Improvement Program (HSIP). For purposes of this regulation, the HSIP includes the Hazard Elimination Program (HEP), High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX) and the Transparency Report

2.0 Definitions

“Crash (Accident) Rates”—A distribution of the numerical data of the number of crash occurrences per year.

“Crash (Accident) Report”—The State of Delaware Uniform Traffic Collision Report supplied by the Delaware Department of Safety and Homeland Security and the Delaware Criminal Justice Information System (DELJIS) via the E-Crash program, on which all reported crashes involving an impaired driver, apparent property damage to the extent of \$1,500 or more or personal injury or death to a person, when such crashes occur within that agency's jurisdiction.

“Crash (Accident) Summaries”—A summary of the numerical data classified by several crash criteria such as Manner of Impact, Surface Conditions, Lighting Conditions, Weather Conditions, Time of Day, Day of Week etc. that pertains to the crash events.

“GIS (Geographical Information System) Crash Data”—The geographic location of a crash as well as the attributes that are related to the crash. This data can be used to conduct analyses and produce maps of the crash data.

“Highway Safety Improvement Program (HSIP)”—The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established 23 USC §148 to create the Highway Safety Improvement Program (HSIP) as a core Federal Highway Administration (FHWA) program. The overall purpose of the program is to achieve a significant reduction in traffic fatalities and incapacitating injuries through the implementation of infrastructure-related highway safety improvements on all state-maintained roadways. Components of Delaware's HSIP include the Strategic Highway Safety Plan (SHSP), the Hazard Elimination Program (HEP), the High Risk Rural Roads Program (HRRRP), the Highway Rail Grade Crossing Safety Program (HRGX), and the Transparency Report.

“Requestor”—Any person, employee, consultant, or other state agency, who requests crash data for analytical purposes.

“State Agency”—Any department of State Government that is recognized under the applicable sections of Delaware Code. This includes the Federal Highway Administration, Office of Highway Safety, Wilmington Area Planning Council and the Dover/Kent County Metropolitan Planning Organization for the purposes of this regulation.

3.0 Regulation

The Delaware Department of Safety and Homeland Security are the owners of all crash data received by DelDOT. Given the responsibilities of DelDOT, crash data is transferred from the Department of Safety and Homeland Security databases to DelDOT databases and the use of this data by DelDOT is solely for the purposes of reviewing crash data to make engineering decisions to improve safety on the roadways under the jurisdiction of the Department. Given the sensitive personal nature of this data, it is important that this data and all HSIP-related information be handled with the utmost responsibility and not released outside of the Department except for Department business purposes. DelDOT personnel must ensure that all released crash data, associated police reports, and HSIP-related information be used for official purposes only and shall not be transmitted, copied, distributed or provided to any other entity or personnel unless written approval is received from the Delaware Department of Transportation Traffic Safety Programs Section or the Statistics and Research Section in the Division of Planning.

The purpose of this regulation is to outline a list of personnel or entities that request such privileged information on a regular basis as well as define the level of disclosure or exemption that should be followed based on the requestor (see Table 1: Crash Data Release Guideline Matrix).

When data is approved to be released to any requestor outside of DelDOT, a concurrence letter shall be prepared by the DelDOT section that is releasing the data, and this letter shall be signed by the requestor and returned to DelDOT prior to the data being released. This concurrence letter shall be a binding agreement between DelDOT and the requestor and shall require the requestor to seek approval from DelDOT to release the data to a third party individual or agency. A copy of the concurrence letter shall be provided electronically to the Deputy Attorney General assigned to DelDOT, the DelDOT Safety Programs Manager in the Traffic Section

and the Manager of the Statistics and Research Section in Planning. An example of a concurrence letter is provided at the end of this regulation.

4.0 Responsibility

The Division of Planning shall have primary responsibility for implementation of this regulation since they are the distributors of crash data.

5.0 Effective Date

This regulation shall become effective ten (10) days after it is published in its final adopted form in the Register of Regulations in accordance with 29 Del.C. §10118(e).

Table 1: Crash Data Release Guideline Matrix

Requestor	Raw Crash Data (Number of Crashes Only)	Crash Rates	Crash Summaries	Crash Reports	GIS Crash Layers	HSIP Site Listing
Citizen	Yes	Yes	Yes	No	No	No
Legislator	Yes	Yes	Yes	No	No	Yes
DelDOT (internal operations)	Yes	Yes	Yes	Yes	Yes	Yes
DelDOT Consultant	Yes	Yes	Yes	Yes	Yes	Yes
Non-DelDOT Consultant ¹	Yes	Yes	Yes	Yes	No	No
Other State Agency	Yes	See Note 2	Yes	No	See Note 2	See Note 2
Media	Yes	No	Yes	No	No	No

NOTES:

1. Non-DelDOT Consultant must provide proof that the work they are doing involves state maintained roadways (i.e., developer's consultant)
2. This data may be released to FHWA, Office of Highway Safety, WILMAPCO or Dover/Kent County MPO. Release of data to other state agencies requires the approval of the Safety Programs Manager.

Example Concurrence Letter

September 7, 2011

Mr. John Smith
Sample Area Planning Council (SAPCO)
123 Main Avenue
Newark, Delaware 19711

Dear Mr. Smith:

The Delaware Department of Transportation (DelDOT) has received your request for crash data. As you might be aware, the Delaware Department of Safety and Homeland Security are the sole owners of the crash data and DelDOT is strictly the end user of the data. Hence, any information contained within the requested crash data are privileged, confidential and/or exempt from disclosure under applicable law. As such, any crash data that will be provided is for SAPCO business use only and shall not be transmitted, copied, distributed or provided to any other entity unless written approval is received from the Delaware Department of Transportation.

DelDOT will release the requested crash data on the terms and conditions set forth herein. By your signature below, SAPCO acknowledges that this letter has been read and understood and agrees to terms and conditions stated in this letter.

The requested crash data will be released as soon as the letter is signed and sent back at your earliest convenience.

Future requests for crash data should be sent to my office for review, and the request should be in the form of a letter and on SAPCO letterhead. Should you have any questions regarding this information, please contact me at (302) 659-4073 or by e-mail at Adam.Weiser@state.de.us.

Sincerely,
Donna Robinson
Statistics, Planning & Research
Division of Planning

Cc: Tyrone Crittenden, Planning Supervisor
Frederick Schranck, Deputy Attorney General
Adam Weiser, Safety Programs Manager

Concurrence Date

15 DE Reg. 1192 (02/01/12)

22 DE Reg. 786 (03/01/19) (Final)