



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2017

Ms. Sarah E. Alexander  
Warrant Officer 1  
Public Information Coordinator  
Texas Military Department  
P.O. Box 5218  
Austin, Texas 78763-5218

OR2017-23405

Dear Ms. Alexander:

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# 679660.

The Texas Military Department (the "department") received a request for information related to two specified purchases. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code.<sup>1</sup> Additionally, you state release of the submitted information may implicate the proprietary interests of Digital Receiver Technology, Inc. ("DRT"). Accordingly, you state, and provide documentation showing, you notified DRT of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from DRT. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>Although you do not raise sections 552.117 and 552.136 of the Government Code in your brief, we understand you to raise these exceptions based on your markings in the documents.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. DRT asserts a portion of the submitted information may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the federal Freedom of Information Act (“FOIA”), chapter 552 of the United States Code. We note FOIA is applicable to information held by an agency of the federal government. In this instance, the information at issue is held by a Texas agency, which is subject to the laws of the State of Texas. *See* Attorney General Opinion MW-95 (1979) (FOIA exceptions apply to federal agencies, not to state agencies); Open Records Decision Nos. 496 (1988), 124 (1976); *see also Davidson v. Georgia*, 622 F.2d 895, 897 (5<sup>th</sup> Cir. 1980) (state governments are not subject to FOIA); Open Records Decision No. 561 at 7 n.3 (1990) (noting federal authorities may apply confidentiality principles found in FOIA differently from way in which such principles are applied under Texas open records law). This office has stated in numerous opinions that information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure merely because the same information is or would be confidential in the hands of a federal agency. *See, e.g.*, Attorney General Opinion MW-95 (neither FOIA nor federal Privacy Act of 1974 applies to records held by state or local governmental bodies in Texas); ORD 124 (fact that information held by federal agency is excepted by FOIA does not necessarily mean that same information is excepted under ACT when held by Texas governmental body). Thus, the department may not withhold any portion of the submitted information on the basis of FOIA.

Section 552.117(a)(11) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former members of the Texas military forces, as that term is defined by section 437.001 of the Government Code, who request that this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(11). Section 552.117(a)(11) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). We note some of the information at issue pertains to current or former members of the Texas military forces as defined by section 437.001. Therefore, if the cellular telephone services are not paid for by a governmental body, the department must withhold the cellular telephone numbers you have marked under section 552.117(a)(11) of the Government Code.

Section 552.101 of the Government Code encompasses information protected by other statutes, section 437.232 of the Government Code, which provides as follows:

- (a) In this section, “military personnel information” means a service member’s name, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.

(b) A service member's military personnel information is confidential and not subject to disclosure under Chapter 552.

Gov't Code § 437.232. Upon review, we find the submitted information contains military personnel information maintained by the Texas military forces. *See id.* § 437.001(8) (providing "service member" for purposes of chapter 437 means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component), (13) (providing the department is the state agency charged with administrative activities in support of the Texas military forces), (14) (providing that "Texas military forces" for purposes of chapter 437 means the Texas National Guard, the Texas State Guard, and any other military forces under state law). Accordingly, with the exception of the information we have marked and indicated for release, the department must withhold the information you have marked, as well as the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code. However, you have failed to demonstrate section 437.232 is applicable to the information we have marked and indicated for release. Therefore, the department may not withhold the information we have marked and indicated for release under section 552.101 on that basis.

Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). Upon review, we find the department must withhold the information we have marked under section 552.136 of the Government Code. However, none of the remaining information you have marked is confidential under section 552.136 and the department may not withhold it on those grounds.

In summary, if the cellular telephone services are not paid for by a governmental body, the department must withhold the cellular telephone numbers you have marked under section 552.117(a)(11) of the Government Code. With the exception of the information we have marked and indicated for release, the department must withhold the information you have marked, as well as the additional information we have marked and indicated, under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code. The department must withhold the information we have marked under section 552.136 of the Government Code. The department must release the remaining information.

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,

A handwritten signature in black ink, appearing to read "Tim Neal", written in a cursive style.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 679660

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)