



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 21, 2019

Ms. Sarah E. Alexander
Chief Warrant Officer
Texas Military Department
P.O. Box 5218
Austin, Texas 78763-5218

OR2019-23271

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# 781721.

The Texas Military Department (the "department") received a request for the requestor's military records, including records pertaining to a specified incident. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it was created after the department's receipt of the instant request. This ruling does not address the public availability of the non-responsive information, which we marked, and the department need not release it in response to this request.

Next, we must address the department's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is exempted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to

¹ We note although we understand you to raise section 552.107 of the Government Code based on your brief, you make no argument to support this assertion. Therefore, we assume you have withdrawn your claim that this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You state, and provide documentation showing, the department received the request for information on May 29, 2019. The department does not inform us it was closed for any business days between May 29, 2019, and June 19, 2019. Thus, the department's office fifteen-business-day deadline was June 19, 2019. However, the envelope in which you submitted the information required under section 552.301(e) to this office bears a postmark of June 20, 2019. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ). The department claims sections 552.101 and 552.111 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address your argument under this section for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exception.

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 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.

Id. § 437.232. Upon review, we find most of the information you marked 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 marked for release, the department must withhold the information you marked 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 marked for release. Therefore, the department may not withhold the information we marked for release under section 552.101 of the Government Code on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.² See Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. See Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Upon review, we find the department must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code if the cellular telephone services are not paid for by a governmental body.

In summary, with the exception of the information we marked for release, the department must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code. The department must withhold the cellular telephone numbers we marked under section 552.117(a)(2) of the Government Code if the cellular telephone services are not paid for by a governmental body. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/be

Ref: ID# 781721

Enc. Submitted documents

c: Requestor
(w/o enclosures)