



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 9, 2019

Ms. Rosa Miranda Smith
Public Information Officer
Irving Independent School District
3620 Valley View
Irving, Texas 75062

OR2019-28377

Dear Ms. Smith:

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# 790349 (File No. I000739-071619).

The Irving Independent School District (the "district") received a request for a specified military duty schedule. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.136 of the Government Code.¹ Additionally, you state release of this information may implicate the proprietary interests of The Texas Military Department (the "department"). Accordingly, you state, and provide documentation showing, you notified the department 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 § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the submitted arguments and reviewed the submitted information.

The department raises sections 552(b)(6) and 552(b)(7) of title 5 of the United States Code, the Freedom of Information Act ("FOIA"). 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.*

¹ Although you do not raise sections 552.101 or 552.136 of the Government Code in your brief, we understand the district to assert these exceptions based on your markings.

Georgia, 622 F.2d 895, 897 (5th 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; 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 district may not withhold any portion of the department's information on the basis of FOIA.

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 section 437.232 only applies to military personnel records 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). We note the information you and the department seek to withhold is maintained in a personnel file by the district. Thus, section 437.232 is not applicable to the information at issue, and the district may not withhold it under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.

Section 552.136(b) 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"). We understand the employee identification numbers are used to access employee payroll and benefit information.

Accordingly, the district must withhold the information you marked under section 552.136 of the Government Code.² The district 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 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,



Emily Buchanan
Assistant Attorney General
Open Records Division

EBO/mo

Ref: ID# 790349

Enc. Submitted documents

c: Requestor
(w/o enclosures)

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.