



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 1, 2022

Ms. Sarah Alexander
Open Records
Texas Military Department
Post Office Box 5218
Austin, Texas 78763-5218

OR2022-02997

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# 927693 (TMD# T22-08).

The Texas Military Department (the "department") received a request for documents and e-mails regarding a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the obligations of the department under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). In this instance, you provide documentation showing the department received the request for information on

¹ Although you do not cite to section 552.101 of the Government Code in your brief, we understand you to raise this exception based on your markings. Additionally, although you raise section 552.1175 of the Government Code, we note section 552.117 of the Government Code is the proper exception to raise for information the department holds in its capacity as an employer.

² We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

October 25, 2021. This office does not count the date the request was received for the purpose of calculating a governmental body's deadlines under the Act. Therefore, we find the department's ten-business-day deadline was November 8, 2021. However, the envelope in which you submitted the information under section 552.301(b) bears a post meter mark of November 11, 2021. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the department has 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, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). You claim sections 552.101, 552.111, and 552.117 of the Government Code. Because sections 552.101 and 552.117 can provide compelling reasons to overcome the presumption of openness, we will address the applicability of these exceptions to the submitted information. However, we find you have failed to establish a compelling reason to address your remaining claim against disclosure.

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 the information you marked and the additional information we marked consists of 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, the department must withhold the information you marked and the additional information we marked under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.³

³ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Section 552.117(a)(11) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a current or former member of the Texas military forces, as well as information that reveals whether the individual has family members. *See id.* § 552.117(a)(11). Section 552.117(a)(11) applies to the Texas military forces as that term is defined by section 437.001 of the Government Code. *See id.* § 437.001. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone services are not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Therefore, the department must withhold the cellular telephone number we marked under section 552.117(a)(11) of the Government Code if the cellular telephone services are not paid for by a governmental body. Conversely, if the cellular telephone service is paid for by a governmental body, the department may not withhold the information at issue under section 552.117(a)(11) of the Government Code. In either event, we conclude section 552.117(a)(11) of the Government Code is not applicable to the remaining information, and the department may not withhold any portion of it on that basis.

In summary, the department must withhold the information you marked and the additional information we 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 number we marked under section 552.117(a)(11) 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 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/be

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Enc. Submitted documents

c: Requestor
(w/o enclosures)