



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 14, 2022

Ms. Sarah Alexander
Open Records Coordinator
Texas Military Department
P.O. Box 5218
Austin, Texas 78763-5218

OR2022-04339

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# 928628 (Ref. No. T22-14).

The Texas Military Department (the "department") received a request for certain information pertaining to specified figures reported in a specified press briefing. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations 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. 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. Gov't Code § 552.301(b). The department received the original request on November 3, 2021, after normal business hours. We note the department sought clarification of the information requested on November 4, 2021, and received a response from the requestor on November 9, 2021; thus, the department is deemed to have received the request for information on November 9, 2021. You state the department observed skeleton crew days on November 11, 2021, November 12, 2021, November 25, 2021, and November 26, 2021. This office does not count the date the request was received or holidays, including skeleton crew days observed by a governmental body, for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the department's ten-business-day deadline was November 29, 2021. However, the department did not request a ruling from this office until November 30, 2021, via electronic submission. *See*

Gov't Code § 552.309(a) (requirement to submit information within specified time period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). Consequently, we find the department failed to comply with the requirements of section 552.301 in requesting this decision from our office.

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). You raise sections 552.101, 552.108, 552.111, and 552.117 of the Government Code for the submitted information. Because sections 552.101 and 552.117 can provide compelling reasons to overcome the presumption of openness, we will address your arguments under these sections for the information at issue. However, we find you have failed to establish a compelling reason to address your remaining arguments 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. This section encompasses information made confidential by other statutes, such as the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

Id. § 418.176(a). The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996). As with any confidentiality provision, a governmental body asserting these sections must adequately explain how the responsive information falls within the scope of the provisions. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the information at issue “discloses specific military capabilities, personnel counts and locations, and details related to route planning[,]” and “show[s] specific movement trends and equipment capabilities[.]” You also state the information at issue “contain[s] information related to training and protocols that could be used to identify possible vulnerabilities within the [department.]” You assert “[r]elease of the [information] at issue could aid terrorists and other criminals in exploiting perceived vulnerabilities and in the commission of crimes against critical infrastructure[,]” and “would jeopardize the [department’s] safety and proficiency.” Based upon your representations and our review, we find the submitted information relates to staffing requirements or a tactical plan of the department and is maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity. Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.¹

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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/mo

Ref: ID# 928628

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.