



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 1, 2022

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

OR2022-06264

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# 928617 (Case T22-13).

The Texas Military Department (the "department") received a request for instructions sent to or received by the Texas National Guard and the department regarding certain topics and procedures for a specified period of time. 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. Section 552.301(b) requires that a governmental body 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 request for information on November 4, 2021. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. You state November 11 and 12, 2021, were holidays for the department; therefore, the ten-business-day deadline was November 22, 2021. You requested a decision from this office on November 30, 2021. Consequently, you failed to request a decision from this office within the ten-business-day period prescribed by section 552.301(b).

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 claim sections 552.101 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 consider your arguments under these sections for the submitted information. However, we find you have failed to establish a compelling reason to address your remaining exceptions.

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 sections 418.176 and 418.177 of the Texas Homeland Security Act (the “HSA”), chapter 418 of the Government Code. Section 418.176 provides, in relevant part, as follows:

(a) 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 a 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). Section 418.177 provides:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. 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 submitted information “contain[s] information related to training and protocols that could be used to identify possible vulnerabilities within the [department].” Further, the department states “release of the records at issue could aid terrorists and other criminals in exploiting perceived vulnerabilities and in the commission of crimes against critical infrastructure [and] jeopardize the [department’s] safety and proficiency[.]” Based upon your representations and our review, we find some of 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 information we have marked under section 552.101 in conjunction with section 418.176. However, we find you have failed to demonstrate the remaining information relates to staffing requirements or a tactical plan of an emergency response provider or relates to an assessment by or for a governmental entity that was collected, assembled, or maintained by or for the department for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the department may not withhold the remaining information under section 552.101 in conjunction with section 418.176 or section 418.177.

Section 552.101 of the Government Code also 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 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 under section 552.101 in conjunction with section 437.232.¹

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. 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 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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/mo

Ref: ID# 928617

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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