



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2022

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

OR2022-10817

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# 939044 (Case Number T22-34).

The Texas Military Department (the "department") received a request for a certain type of incident reports generated during a specified time period. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

¹ Although you claim section 552.1175 of the Government Code for portions of the submitted information, section 552.117 is the proper exception for information the department holds in an employment capacity.

Gov't Code § 552.022(a)(1). The submitted information consists of completed reports that are subject to section 552.022(a)(1). The department must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under sections 552.101, 552.108, 552.111, and 552.117 of the Government Code. However, section 552.111 is discretionary in nature and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver).* Therefore, the department may not withhold any portion of the submitted information under section 552.111 of the Government Code. However, as information subject to section 552.022(a)(1) may be withheld under section 552.108 of the Government Code, we will consider your argument under section 552.108 for the information. Further, as sections 552.101 and 552.117 of the Government Code make information confidential under the Act, we will consider your arguments under these exceptions for the information at issue.

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 claim the submitted information is confidential under sections 418.176 and 418.177 of the Government Code. However, we find you have failed to demonstrate the information at issue 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 any portion of the submitted information under section 552.101 of the Government Code in conjunction with sections 418.176 or 418.177 of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. See *id.* § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” See *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that subsection 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. See Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. See, e.g., Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. See, e.g., ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques

requested were any different from those commonly known). Upon review, we find you have failed to demonstrate release of the information at issue would interfere with law enforcement or prosecution efforts. Therefore, the department may not withhold any of the submitted information under section 552.108(b)(1) of the Government Code.

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.

Gov’t Code § 437.232. Upon review, we find some of the information at issue 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 we 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 remaining information. Therefore, the department may not withhold any of the remaining information under section 552.101 on that basis.

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. Upon review, 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 we 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 939044

Enc. Submitted documents

c: Requestor
(w/o enclosures)