



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2022

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

OR2022-11201

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# 941912 (Ref. No. T22-43).

The Texas Military Department (the "department") received a request for certain employment information. You state the department has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.152 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

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 protected by other statutes, including section 1324a of title 8 of the United States Code. Section 1324a provides that an Employment Eligibility Verification Form I-9 and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Accordingly, the department must withhold the I-9 form and attachments we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.<sup>2</sup>

---

<sup>1</sup> 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.

<sup>2</sup> As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Section 552.101 of the Government Code also 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.

Gov’t Code § 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 assert the remaining information is confidential under sections 418.176 and 418.177 of the Government Code. However, upon review, 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 remaining 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. *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)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. 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.). 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 any of the information at issue would interfere with law enforcement or crime prevention. Accordingly, the department may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>3</sup> Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the employee's date of birth we have marked under section 552.102(a) of the Government Code.<sup>4</sup>

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

---

<sup>3</sup> The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>4</sup> As our ruling is dispositive, we need not address your arguments against disclosure of this information.

that reveals whether the individual has family members. *See* Gov't Code § 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 information we have marked under section 552.117(a)(11) of the Government Code; however, the cellular telephone numbers may only be withheld under section 552.117(a)(11) if the cellular telephone services are not paid for by a governmental body.<sup>5</sup> However, 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.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). As noted above, section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code.<sup>6</sup> Conversely, if the employee at issue did not timely request confidentiality under section 552.024 or 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)(1) of the Government Code. In either event, we conclude section 552.117(a)(1) of the Government Code is not applicable to the remaining information, and the department may not withhold any portion of it on that basis.

Section 552.101 of the Government Code also encompasses section 437.232 of the Government Code, which provides, as follows:

---

<sup>5</sup> As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

<sup>6</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(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 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 remaining information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code.<sup>7</sup>

Section 552.130 of the Government Code provides information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See id.* § 552.130. Accordingly, the department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>8</sup>

Section 552.152 of the Government Code provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

*Id.* § 552.152. Upon review, we find you have failed to demonstrate the release of any of the remaining information would subject an employee of the department to a substantial threat of physical harm. Thus, the department may not withhold any of the remaining information under section 552.152 of the Government Code.

In summary, the department must withhold the I-9 form and attachments we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The department must withhold the employee’s date of birth

---

<sup>7</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>8</sup> As our ruling is dispositive, we need not address your argument against disclosure of this information.

we have marked under section 552.102(a) of the Government Code. The department must withhold the information we have marked under section 552.117(a)(11) of the Government Code; however, the cellular telephone numbers may only be withheld under section 552.117(a)(11) if the cellular telephone services are not paid for by a governmental body. If the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the department must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. The department must withhold the remaining information you have marked and the additional information we have marked under section 552.101 of the Government Code in conjunction with section 437.232 of the Government Code. The department must withhold the motor vehicle record information we have marked under section 552.130 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,

Alexandra C. Burks  
Assistant Attorney General  
Open Records Division

ACB/mo

Ref: ID# 941912

Enc. Submitted documents

c: Requestor  
(w/o enclosures)