



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2022

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

OR2022-13473

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# 944858 (Ref. No. T22-63).

The Texas Military Department (the "department") received a request for information regarding the deployment of National Guard members to a specific operation.¹ You state the department will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.1175 of the Government Code. 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 that is 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:

¹ The department sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

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). Section 418.177 provides that information is confidential if it:

- (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 relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the submitted information "includes military personnel locations by latitude and longitude . . . [and] directly discloses [operational] tactical plans and actions related to preventing, detecting, responding to, or investigating actual or potential acts of terrorism or related criminal activity." Further, you argue release of the information would "increase the risk to, and the vulnerability of, [s]oldiers serving in [the operation at issue]." Based on these representations and our review, we find the information you marked relates to staffing requirements and tactical plans of emergency response providers or assessments of vulnerabilities related to the border maintained by the department for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal

activity. *See* Open Records Decision Nos. 542, 532 (1989), 515 (1988), 252 (1980). Accordingly, the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code.²

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,

Timothy Neal
Assistant Attorney General
Open Records Division

TN/jxd

Ref: ID# 944858

c: Requestor

² As our ruling is dispositive, we need not address your remaining arguments against disclosure.