



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 24, 2022

Mr. John P. Beauchamp
General Counsel
Texas Commission on Law Enforcement
6330 East Highway 290, Suite 200
Austin, Texas 78723-1035

OR2022-25612

Dear Mr. Beauchamp:

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# 965759 (TCOLE ID# 06 08 2022).

The Texas Commission on Law Enforcement (the "commission") received a request for information pertaining to the Texas school marshal program. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.152 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the commission has redacted portions of the submitted information. The commission does not assert, nor does our review of our records indicate, it has been authorized to withhold any such information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000). Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested"), .302.

Next, we note the requestor excludes any personal identifiable information. Accordingly, this type of information is not responsive to the request for information. This ruling does

not address the public availability of any information that is not responsive to the request and the commission is not required to release that information in response to the present request.¹

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 1701.260 of the Occupations Code, which provides, in relevant part, as follows:

(a) The commission shall establish and maintain a training program open to any employee of a school district, open-enrollment charter school, private school, or public junior college who holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code. The training may be conducted only by the commission staff or a provider approved by the commission.

(b) The commission shall collect from each person who participates in the training program identifying information that includes the person’s name, the person’s date of birth, the license number of the license issued to the person under Subchapter H, Chapter 411, Government Code, and the address of the person’s place of employment.

(l) All information collected or submitted under this section is confidential, except as provided by Subsection (j), and is not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 1701.260(a), (b), (l). You assert the responsive information consists of identifying information for the purposes of section 1701.260. However, upon review, we find you have failed to demonstrate this information consists of the identifying information collected under section 1701.260. Accordingly, we conclude the commission may not withhold this information under section 552.101 in conjunction with section 1701.260 of the Occupations Code.

Section 552.101 of the Government Code also encompasses information protected by other statutes. As part of the Texas Homeland Security Act (the “HSA”), sections 418.176 through 418.182 were added to chapter 418 of the Government Code. These provisions make confidential certain information related to terrorism. 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

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

(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.

Gov't Code § 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 statute, 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 responsive information is confidential under section 418.177 of the Government Code. However, upon review, we find you have failed to demonstrate the responsive information relates to an assessment by or for a governmental entity that was collected, assembled, or maintained by or for the commission for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity. Therefore, the commission may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.

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 the requirements of Section 552.021 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. You contend release of the responsive information would subject officers to harm by revealing certain information. Upon review, however, we find you have failed to demonstrate the release of the responsive information would subject an employee or officer to a substantial risk of physical harm. Therefore, the commission may not withhold any of the responsive information under section 552.152 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the commission has not demonstrated any of the responsive information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the commission may not withhold any portion of the responsive information under section 552.101 in conjunction with common-law privacy.

As no further exceptions to disclosure have been raised, the commission must release the responsive 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/jm

Ref: ID# 965759

Enc. Submitted documents

c: Requestor
(w/o enclosures)