



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 14, 2022

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

OR2022-31692

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# 975235 (TMD Case No. T22-118).

The Texas Military Department (the "department") received a request for information tracking specified statistics during a specified time period. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.152 of the Government Code. Additionally, we note you notified an interested party of the request for information and of the right to submit arguments to this office. *See* Gov't Code §§ 552.304, .305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the Texas Department of Public Safety ("DPS"). We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes. The department raises section 552.101 in conjunction with sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"),

¹ We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 of the HSA provides in relevant part:

(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 the 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). 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).

The department asserts the submitted information reveals “tactical plans including [department] specific locations of involvement, locations of law enforcement, equipment levels, and staffing levels in relation to operations at the border of the State of Texas. The information identifies areas of vulnerabilities related to the military personnel and equipment on the border. The release of the information at issue could aid terrorists and other criminals in avoiding detection and in the commission of crimes against critical infrastructure related to the state’s border.” DPS further states the information at issue “relate[s] to staffing requirements and tactical plans related to the provision of security along the border of Texas and Mexico [and release of the information at issue] would provide wrong-doers, terrorists, and other criminals with invaluable information concerning law enforcement procedures and intelligence regarding border security.” Based upon these representations and our review, we find 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 submitted information under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code.²

² As our ruling is dispositive, we need not address the remaining arguments against disclosure of this 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,

Michael Pearle
Assistant Attorney General
Open Records Division

MAP/pt

Ref: ID# 975235

c: Requestor