



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2021

Ms. Sarah E. Alexander
Chief Warrant Officer
Texas Military Department
P.O. Box 5218
Austin, Texas 78763-5218

OR2021-03956

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# 865820 (T21-09 and OOG PIR ID# 637-20).

The Texas Military Department (the "department") received a request for e-mail communications between named officials and the Office of the Texas Secretary of State regarding a specified topic during a certain date range. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.111 of the Government Code. Additionally, the department states release of some of the submitted information may implicate the interests of third parties. Accordingly, the department states it notified these third parties of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We received comments from the Office of the Governor (the "governor's office"). We have considered the submitted arguments and reviewed the submitted information.

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." *Id.* § 552.101. This exception encompasses information that is made confidential by other statutes. The department and the governor's office raise section 552.101 in conjunction with sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"), 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). 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 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).

The department and the governor's office state the information at issue reveals staffing requirement and tactical plans of emergency response providers in relation to operations at the Texas Capitol, as well as other strategic locations. The department and governor's office further argue the information is maintained by the department for the purpose of preventing, detecting, or investigating acts of terrorism or criminal activity, and possible vulnerabilities of critical infrastructure. Based on these representations and our review, we find the submitted information relates to staffing requirements or a tactical plan of the department, or to an assessment of the vulnerabilities of persons or property to an act of terrorism or related criminal activity 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 sections 418.176 and 418.177 of the Government Code.¹

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,

Katie Stallcup
Assistant Attorney General
Open Records Division

AKS/jxd

Ref: ID# 865820

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.