



TEXAS MILITARY DEPARTMENT
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February 17, 2022

Office of the General Counsel

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711

Dear Attorney General Paxton:

On January 26, 2022, our agency received an open records request (Case Number T22-43) via electronic mail from Mr. Robert Montoya (Exhibit A). Pursuant to section 552.301(a), the Texas Military Department (TMD) made a timely request for a decision from your office on whether the responsive information is excepted from disclosure under the Texas Public Information Act (Exhibit B). Our office now submits this brief in accordance with section 552.301(e). When calculating dates, please note that the TMD operated with a skeleton crew on February 3-4, 2022 due to inclement weather.

The TMD asserts the responsive information is excepted from required public disclosure under the Texas Homeland Security Act and sections 437.232, 552.101, 552.108, 552.152, and 552.117/552.1175 of the Government Code. Our responsive records are attached as Exhibit C. TMD has separated the releasable portions of our responsive records and provided those to the requester as an interim response. The TMD has copied the requester as a recipient of this brief pursuant to section 552.301(e-1).

Information Excepted From Required Public Disclosure Under Section 552.101 and the Texas Homeland Security Act

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, including 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 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;
[or]
 - (2) relates to a tactical plan of the provider[.]

Section 418.177 provides, in part:

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.* §§ 418.176(a), .177.

TMD is deployed under Operation Lone Star (OLS) in support of the Department of Public Safety (DPS) and DPS's mission to secure the Texas border. As such, a primary purpose of OLS is the collection, assembly, or maintenance of information for the purpose of preventing, detecting, or investigating terrorist or criminal activity in support of DPS. The information requested discloses sensitive personal information of TMD personnel and relates directly to staffing requirements of the TMD. The information requested is sensitive personal identifying information; and therefore, it increases the employee(s) vulnerability to criminal/terroristic activity and could be used to compromise or threaten them.

Additionally, the information requested may also be combined with other public information about the employee(s), that upon further analysis and elucidation, magnify the employee(s) vulnerabilities, which in turn, increases the vulnerability of TMD missions. Further, disclosure will not only prove to harm the employee, but also increases the risk to, and vulnerability of, OLS.

Accordingly, the TMD asserts the submitted information is excepted, in full, from required public disclosure under Section 552.101 of the Government Code in conjunction with sections 418.176 and 418.177 of the Government Code.

Information Excepted From Required Public Disclosure Under Section 552.108: Certain Law Enforcement, Corrections, and Prosecutorial Information:

Section 552.108 of the Government Code excepts from required public disclosure "information the release of which would interfere with the detection, investigation, or prosecution of crime or law enforcement." Your office has construed section 552.108 to encompass "records that would reveal law enforcement methods, techniques, and strategies."

The Texas Supreme Court has addressed the applicability of former section 552.108 to the internal records and notations of the comptroller's office. In *A & T Consultants, Inc. v. Sharp*,⁴⁹⁵ the supreme court stated that former section 552.108 has the same scope as section 552(b)(7) of the federal Freedom of Information Act,⁴⁹⁶ which prevents the

disclosure of investigatory records that would reveal law enforcement methods, techniques, and strategies.

Tex. Att'y Gen. Open Records Decision No. 531 (1989) detailed guidelines regarding a police department's use of force policy may be withheld, but not those portions of the procedures that restate generally known common-law rules, constitutional limitations, or Penal Code provisions; the release of the detailed guidelines would impair an officer's ability to arrest a suspect and would place individuals at an advantage in confrontations with police;

Tex. Att'y Gen. Open Records Decision No. 413 (1984) a sketch showing the security measures that the Texas Department of Criminal Justice (formerly the Texas Department of Corrections) planned to use for its next scheduled execution may be withheld because its release may make crowd control unreasonably difficult.

The records at issue discloses potential vulnerabilities in staffing personnel and places the employee(s) at risk, which in turn, affects mission readiness on OLS. The disclosure of this sensitive and personal information regarding the employee(s) would interfere with the detection, investigation, or prosecution of crime or law enforcement. The potential for harm is increased if the requested information is combined with other public information about the employee(s). The release of this information would aid criminal organizations in harming TMD employee(s) and would have an overall effect of decreasing TMD mission readiness on OLS and other missions. Accordingly, the TMD asserts the submitted information is excepted, in full, from required public disclosure under Section 552.108 of the Government Code.

Information Excepted From Required Public Disclosure Under Section 552.152: Confidentiality of Information Concerning Public Employee or Officer Personal Safety:

Section 552.152 of the Government Code provides as follows:

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.

In an informal letter ruling, your office considered a request to the Texas Department of Public Safety for information pertaining to travel expenses incurred by the Governor's security detail.¹ The Texas Department of Public Safety claimed section 552.152 of the Government Code excepted from disclosure travel vouchers and supporting documentation submitted by agents of the Executive Protection Bureau for reimbursement

¹ Open Records Letter No. 2014-02048 (2014).

of travel expenses.² Relying on representations the Texas Department of Public Safety made about protecting the Governor and his family from physical harm, it was concluded that release of the travel vouchers and supporting documentation would subject the Governor and the agents to a substantial threat of physical harm, and therefore, the information must be withheld from disclosure under section 552.152.³

The records requested detail the sensitive personal identifying information of TMD employee(s), including name, address, phone number, resume, etc . . . Essentially, all the information contained in a state job application and subsequent new hire orientation. Disclosure of such personal information, combined with the sensitive nature of TMD missions, puts the employee(s) at a substantial risk of physical harm from criminal/terroristic activity.

Information Excepted From Required Public Disclosure Under Sections 552.101, 437.232 Confidentiality of Military Personnel Information and 552.1175 Confidentiality of Certain Personal Identify Information of Peace Officer and Other Officials Performing Sensitive Governmental Functions:

Section 552.1175 of the Government Code excepts from required public disclosure for current or former members of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, or the Texas military forces, as that term is defined by Section 437.001. Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential when the individual chooses to restrict it and notifies the governmental body of the choice.

Section 437.232 of the Government Code excepts "military personnel information", meaning a service member's name, rank, official title, pay rate or grade, state active duty orders, deployments locations, military duty addresses, awards and decorations, length of military service, and medical records.

The records at issue contain this excepted by law information. Highlighting military personnel by name or their personal identifying information would jeopardize safety and diminish TMD's ability to effectively lead in future operations. Accordingly, the TMD asserts the submitted information is excepted from required public disclosure under Sections 552.101, 552.1175, and 437.232 of the Government Code.

On behalf of the Texas Military Department and pursuant to section 552.301 of the Government Code, I respectfully request an open records letter ruling as to the

² Open Records Letter No. 2014-02048 at 1 (2014).

³ Open Records Letter No. 2014-02048 at 3-4 (2014).

applicability of the above raised exceptions. If you have any questions or need additional information, please contact me at Sarah.e.alexander42.mil@army.mil or 512-782-6754.

Sincerely,

A handwritten signature in black ink that reads "Sarah Alexander". The signature is written in a cursive style with a large initial "S".

Sarah Alexander
Texas Military Department- Open Records