



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2014

Ms. Patricia M. Crawson  
Public Information Officer  
Texas Military Forces  
P.O. Box 5218  
Austin, Texas 78763-5218

OR2014-20468

Dear Ms. Crawson:

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# 542769.

Texas Military Forces ("TMF") received a request for records from May 1, 2014 to the date of the request pertaining to a specified TMF operation, specifically (1) all guidance documents applicable to members of TMF currently assigned to the Texas-Mexico border; (2) all communications between TMF and the United States Border Patrol concerning the deployment of TMF along the Texas-Mexico border; and (3) all communications to, or from, the Office of the Governor or the Texas Department of Public Safety ("DPS") concerning the deployment of TMF along the Texas-Mexico border.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.111, 552.1175, 552.137, and 552.152 of the Government Code. Additionally, you state release of some of the submitted information may implicate the interests of DPS. Accordingly, you notified DPS of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or

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<sup>1</sup>You state TMF sought and received clarification of this request from the requestor. *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).

should not be released). We have received comments from DPS. We have considered the submitted arguments and reviewed the submitted information.

Initially, you have marked some of the submitted information as not responsive to the instant request because it was created after the request was received. This ruling does not address the public availability of any information that is not responsive to the request and TMF is not required to release such information in response to this request.

Next, you inform us some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2014-20020 (2014). In that ruling, we determined TMF (1) may withhold the information we marked under sections 552.108 and 552.111 of the Government Code; (2) must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code; and (3) must release the remaining submitted responsive information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, TMF must continue to rely on Open Records Letter No. 2014-20020 as a previous determination, and withhold or release the requested information that is identical to the information that was at issue in Open Records Letter No. 2014-20020 in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will consider whether it is excepted under the Act.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). A governmental body claiming section 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted).

You contend portions of the submitted information are excepted from disclosure under section 552.108(b)(1). You state this information includes “law enforcement structure, operation locations, number of personnel per location, personnel capabilities, types of equipment and their capability, timelines, tactical planning, operation hours, and use of force procedures.” You assert release of the information at issue could provide criminals and terrorist organizations the information necessary to anticipate weaknesses, avoid detection, and circumvent the law. You further assert release of the information at issue could pose an operational risk to other law enforcement agencies operating along the border. Based on your representations and our review, we agree the release of the information at issue, which we have marked, would interfere with law enforcement. Accordingly, TMF may withhold the information we have marked under section 552.108(b)(1) of the Government Code.<sup>2</sup>

The remaining information contains the cellular telephone number of a TMF employee subject to section 552.117(a)(1) of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Therefore, to the extent the employee whose information is at issue timely elected confidentiality under section 552.024 and a governmental body does not pay for the cellular telephone service, TMF must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. To the extent the employee at issue did not make a timely election under section 552.024, or a governmental body pays for the cellular telephone service, this number may not be withheld under section 552.117(a)(1) of the Government Code.

Section 552.1175 of the Government Code applies to certain information held by a governmental body in a non-employment capacity and provides, in part:

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<sup>2</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(b) 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 and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* ORD 506 at 5-6. We note the remaining information contains the cellular telephone number of an individual not employed by TMF. However, we are unable to determine from the information provided whether the individual whose information is at issue is among the types of individuals listed in section 552.1175(a). Thus, we must rule conditionally. Accordingly, to the extent the individual whose information is at issue is among the types of individuals listed in section 552.1175(a), he elects to restrict access to his information in accordance with section 552.1175(b), and a governmental body does not pay for the cellular telephone service, TMF must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code. Conversely, to the extent the individual whose information is at issue is not among the types of individuals listed in section 552.1175(a), he does not elect to restrict access to his information in accordance with section 552.1175(b), or the service is paid for by a governmental body, the number at issue may not be withheld under section 552.1175.

Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Upon review, we find the only e-mail addresses at issue belong to government employees. Therefore, TMF may not withhold any of the e-mail addresses it has marked under section 552.137 of the Government Code.

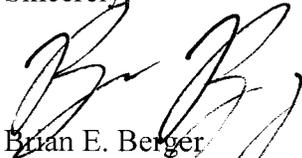
In summary, to the extent the requested information is identical to the information that was at issue in Open Records Letter No. 2014-20020, TMF must continue to withhold or release it in accordance with that ruling. TMF may withhold the information we have marked under section 552.108(b)(1) of the Government Code. TMF must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code, if the employee whose information is at issue timely elected confidentiality under section 552.024 and a governmental body does not pay for the cellular telephone service. TMF must

withhold the cellular telephone number we have marked under section 552.1175 of the Government Code, if the individual whose information is at issue is among the types of individuals listed in section 552.1175(a), he elects to restrict access to his information in accordance with section 552.1175(b), and a governmental body does not pay for the cellular telephone service. The remaining information must be released.

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 [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/ac

Ref: ID# 542769

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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