



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 28, 2015

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

OR2015-20284

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# 579250.

Texas Military Forces ("TMF") received a request for copies of all e-mail correspondence pertaining to Operation Jade Helm 15 from within this calendar year. TMF claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, TMF states release of this information may implicate the interests of the Department of Homeland Security ("DHS"). Accordingly, TMF states, and provides documentation showing, it notified DHS of the request for information and of its 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 part may submit written comments regarding availability of requested information). We have considered the exception TMF claims and reviewed the submitted information.

We note the submitted information carries a caveat stating DHS has determined the submitted information contains "FOR OFFICIAL USE ONLY" ("FOUO") information

subject to release restrictions as detailed in section 482 of title 6 of the United States Code. Section 482(e) provides:

(e) Federal control of information

Under procedures prescribed under this section, information obtained by State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

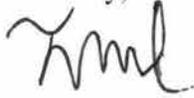
6 U.S.C. § 482(e). Accordingly, the Act does not control the release of the submitted information. *See English v. Gen. Elec. Co.*, 496 U.S. 72, at 79 (1990) (state law is preempted to extent it actually conflicts with federal law). Section 482(a)(1) states, in pertinent part, “[t]he President [of the United States] (the “President”)] shall prescribe and implement procedures under which relevant Federal agencies-- (A) share relevant and appropriate homeland security information with . . . appropriate State and local personnel.” 6 U.S.C. § 482(a)(1)(A). In section 1(a) of Executive Order No. 13,311, the functions of the President under section 482(a)(1) were assigned to the Secretary of Homeland Security. Exec. Order No. 13, 311, § 1, 3 C.F.R. 245 (2004), reprinted in 6 U.S.C.A. § 482 (West 2015). In January of 2005, DHS issued Management Directive Number 11042.1, establishing DHS policies and procedures regarding the safeguarding of FOUO information. This directive, in relevant part, instructs a state agency in possession of FOUO information from another governmental agency, to handle the information in accordance with the guidance provided by the other governmental agency. Department of Homeland Security Management Directive System, MD Number 11042.1 at 8 (Jan. 6, 2005). The aforementioned caveat contains guidance provided by DHS, stating the submitted information “is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy for FOUO information and is not to be released to the public, media, or other personnel who do not have an authorized ‘need-to-know’ without appropriate prior approval of an authorized DHS official.” Based on the scheme described above, we find the decision to release or withhold the submitted information is not for this office or TMF to make, but rather is a decision for an authorized DHS official. Therefore, TMF may not release the information at this time under the Act, but must refer the information to DHS to make a determination concerning disclosure of the 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 <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,

A handwritten signature in black ink, appearing to read 'Tim Neal', with a stylized, cursive script.

Tim Neal
Assistant Attorney General
Open Records Division

TN/som

Ref: ID# 579250

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)