



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

March 28, 2017

Mr. Jonathan L. Almanza  
Assistant District Attorney  
County of Hidalgo  
100 North Closner, Room 303  
Edinburg, Texas 78539

OR2017-06245

Dear Mr. Almanza:

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# 650518 (ORR# 2016-0153-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received a request for Applications for Ballot by Mail ("ABMs") and carrier envelopes related to a specified election.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>2</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>You state the county sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although you do not cite to section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument. We note, and you acknowledge, the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b), (e). Nonetheless, because the exception you claim can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

<sup>3</sup>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.

Initially, we note you have not submitted any carrier envelopes related to the specified election. To the extent any information responsive to this portion of the request existed on the date the county received the request, we assume the county has released it. If the county has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts from 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 made confidential by section 86.014 of the Election Code, which states:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the latest occurring election for which the application is submitted.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You indicate voters may apply to vote by mail for a specific election by using an ABM. You state the submitted ABMs relate to a specific election that occurred on June 11, 2016. However, you state the election at issue was declared to be invalid and void by the district court in a lawsuit styled *Gilberto Perez v. Oziel Trevino*, Cause No. C-3025-16-G, in the 370th Judicial Court of Hidalgo County, Texas. You state the court further ordered the City of Hidalgo to conduct a new election on or before March 6, 2017. However, we understand the Thirteenth Court of Appeals has stayed the trial court's order, and that no new election has yet been held. *See Perez v. Trevino*, No. 13-17-00087-CV (Tex. App.—Corpus Christi, Feb. 17, 2017). Accordingly, upon review, we find the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 86.014(a) of the Election Code until the first business day after the election day of the latest occurring election for which the applications at issue were submitted.

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 "Claire Morris Sloan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 650518

Enc. Submitted documents

c: Requestor  
(w/o enclosures)