



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 25, 2017

Ms. Lindsey Aston  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2060

OR2017-21947

Dear Ms. Aston:

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# 675255.

The Office of the Secretary of State (the "secretary's office") received a request for information pertaining to voters no longer registered to vote in Texas.<sup>1</sup> You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>2</sup>

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<sup>1</sup>We note the secretary's office asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public 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>The secretary's office explains some of the requested information is contained in its statewide computerized voter registration database, which it maintains pursuant to chapter 18 of the Election Code. We note the secretary's office informs us the requestor did not make her request to the secretary's office pursuant to chapter 18 of the Election Code. *See, e.g.*, Elect. Code § 18.066 (addressing availability of secretary's office's statewide computerized voter registration list information; providing to receive information, person must submit affidavit to secretary's office stating the person will not use information obtained in connection with advertising or promoting commercial products or services). Therefore, we do not address the requestor's access to the requested information under that chapter.

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. This section encompasses information protected by other statutes. The secretary’s office argues the cancellation code for each cancelled voter on the list of cancelled voters is derived from the United States Social Security Administration’s Limited Access Death Master File (the “Limited Access DMF”), and is therefore confidential under section 1110.102 of title 15 of the Code of Federal Regulations. 15 C.F.R. § 1110.102.

Section 1110.102 pertains to the certification of persons seeking access to the Limited Access DMF. The Death Master File (the “DMF”) consists of the “name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security . . .” and the Limited Access DMF consists of DMF information “with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual’s death.” *See* 42 U.S.C. § 1306c(d) (defining DMF for purposes of section 1306c); 15 C.F.R. § 1110.2 (defining DMF and Limited Access DMF for purposes of part 1110).

We understand the secretary’s office to assert section 1110.102(a)(4) makes the information at issue confidential. Section 1110.102(a)(4) provides:

In order to be certified to be eligible to access the Limited Access DMF under the certification program established under this part, a Person shall certify, in the manner set forth in this part and pursuant to section 1001 of title 18, United States Code, that

(a) Such Person’s access to the Limited Access DMF is appropriate because:

...

(4) Such Person shall not, with respect to Limited Access DMF of any deceased individual:

(i) Disclose such deceased individual’s Limited Access DMF to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section;

(ii) Disclose such deceased individual’s Limited Access DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Disclose such deceased individual’s Limited Access DMF to any person who further discloses the information to any person other than

a person who meets the requirements of paragraphs (a)(1) through (3) of this section; or

(iv) Use any such deceased individual's Limited Access DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty.

15 C.F.R. § 1110.102(a)(4)(i)-(iv). We note section 1110.2 states "Person" "[i]ncludes corporations, companies, associations, firms, partnerships, societies, joint stock companies, and other private organizations, and state and local government departments and agencies, as well as individuals." *Id.* § 1110.2. Section 1110.200 provides criminal penalties for the unauthorized disclosure of Limited Access DMF. *Id.* § 1110.200.

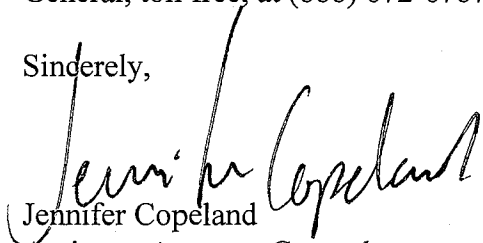
The secretary's office states it is required by section 16.001 of the Texas Election Code to "obtain from the United States Social Security Administration available information . . . relating to deceased residents of the state" and, pursuant to section 18.068(a) of the Election Code, compare the information received under section 16.001 to the statewide voter registration list. Elec. Code §§ 16.001(d), 18.068(a). The secretary's office explains it has become certified to receive the Limited Access DMF pursuant to part 1110 of the Code of Federal Regulations and matched it in accordance with section 18.068, which resulted in voters' registrations being canceled as a result of their inclusion in the DMF. The secretary's office explains the information it seeks to withhold consists of the codes the secretary's office uses to denote the reason for the cancellation of a voter's registration. The secretary's office asserts the codes at issue are confidential pursuant to section 1110.102(a)(4) because the secretary's office obtained knowledge of the deaths of the individuals at issue from the Limited Access DMF and releasing the codes at issue would reveal information contained in the Limited Access DMF. Upon review, however, we find the secretary's office has not demonstrated the information at issue consists of Limited Access DMF information under section 1110.2. Accordingly, we additionally find the secretary's office has not demonstrated section 1110.102 of the Code of Federal Regulations applies and the secretary's office may not withhold any of the information at issue under section 552.101 of the Government Code on that basis. As no further exceptions have been raised, the information at issue 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,

A handwritten signature in black ink, appearing to read "Jennifer Copeland". The signature is written in a cursive style with a large, sweeping initial "J".

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/sb

Ref: ID# 675255

c: Requestor