



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 1, 2017

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

OR2017-27351

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# 686421.

The Office of the Secretary of State (the "secretary's office") received a request for certain categories of information pertaining to all state precinct chairs.¹ You state the secretary's office does not have information responsive to portions of the request.² You also state the secretary's office has released some information to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.1175 and 552.137 of

¹We note the secretary's office failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(b), .309(a) (requirement to submit information within specified period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). Nonetheless, because sections 552.1175 and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider your arguments under these sections against disclosure of the submitted information. *See id.* §§ 552.007, .302, .352.

²The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). An application for a place on an election ballot "is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the submitted information must be made available to the public, except as provided by the Act. Accordingly, we will address your arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."⁴ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to

³Although you also raise section 552.101 of the Government Code, you provide no arguments explaining how this exception is applicable to the information at issue. Therefore, we assume you no longer assert this exception. See Gov't Code §§ 552.301, 302.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we conclude the information we marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the secretary's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). The remaining information contains addresses and telephone numbers of individuals who may be subject to section 552.1175. Thus, the secretary's office must withhold the addresses and telephone numbers at issue under section 552.1175 only if such information (1) consists of home addresses or home telephone numbers, (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b). However, the secretary's office may not withhold this information under section 552.1175 if it does not consist of home addresses or telephone numbers, the individuals to whom the information relates are not subject to section 552.1175(a), or the individuals do not elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code.

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). We note section 552.137(c) provides section 552.137(a) does not apply to an e-mail address provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public. *Id.* § 552.137(c)(4). The e-mail addresses at issue are of a type specifically excluded by section 552.137(c). Accordingly, the secretary's office may not withhold the e-mail addresses at issue under section 552.137 of the Government Code.

In summary, the secretary's office must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the addresses and telephone numbers at issue (1) consist of home addresses or home telephone numbers; (2) pertain to individuals who are subject to section 552.1175(a); and (3)

the individuals whose information is at issue elect to restrict access to this information in accordance with section 552.1175(b), the secretary's office must withhold such telephone numbers and addresses under section 552.1175 of the Government Code. The secretary's office must release the remaining 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,



Kieran Hillis
Assistant Attorney General
Open Records Division

KH/sb

Ref: ID# 686421

Enc. Submitted documents

c: Requestor
(w/o enclosures)