



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Ms. Nicole Dempsey
Assistant County & District Attorney
Ellis County
109 South Jackson
Waxahachie, Texas 75165-5140

OR2019-10171

Dear Ms. Dempsey:

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# 759627.

The Ellis County Elections Department (the "department") received two requests from the same requestor for information pertaining to lists of ineligible voters. The department claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. Additionally, the department states release of the submitted information may implicate the interests of third parties. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the Office of the Attorney General (the "OAG") and the Office of the Texas Secretary of State. We have considered the submitted arguments and reviewed the submitted information.

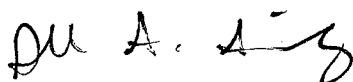
Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *Id.* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108(a)(1) must explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal

conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. The OAG states the submitted information relates to an open criminal investigation by the OAG's Election Fraud Section. Based upon this representation and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the department may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.¹

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/jxd

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 759627

Enc. Submitted documents

c: Requestor
(w/o enclosures)