



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 16, 2019

Ms. Jennifer Smith
Assistant District Attorney
Hidalgo County
100 East Cano Street
Edinburg, Texas 78539

OR2019-10174

Dear Ms. Smith:

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# 759475 (File Nos. 2019-0011.DA.CO, 2019-0015.DA.CO, and 2019-0016.DA.CO.)

The Hidalgo County Elections Administration Office (the "election's office") received three requests for information related to a specified voters list. Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted information may implicate the interests of the Office of the Attorney General (the "OAG"); the Texas Secretary of State (the "secretary's office"); and the Texas Department of Public Safety ("DPS"). *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 OAG, the secretary's office, and DPS. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

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);

¹We 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.

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 non-law enforcement agency 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 a pending 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 election's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.²

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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/jxd

²As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

Ref: ID# 759475

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)

3 Third Parties
(w/o enclosures)