



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 18, 2019

Ms. Myrna S. Reingold  
Legal Department  
Galveston County  
722 Moody 5th Floor  
Galveston, Texas 77550-2317

OR2019-10488

Dear Ms. Reingold:

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# 758750.

The Galveston County Tax Assessor and Collector (the "tax assessor's office") received eight requests from different requestors for information related to Elections Advisory No. 2019-02. You state the tax assessor's office does not have some of the requested information.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.130, 552.137, and 552.147 of the Government Code. You also state the release of the submitted information may implicate the interests of the Office of the Attorney General (the "OAG"). 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. We have considered the submitted arguments and reviewed the submitted information.

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<sup>1</sup>The 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), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note some of the submitted information is not responsive to all of the present requests because it was created after the date the tax assessor's office received some of the instant requests. This ruling does not address the public availability of the non-responsive information and the tax assessor's office need not release it in response to these requests.

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[.]” Gov’t Code § 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 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 submitted information. Accordingly, the tax assessor’s office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.<sup>2</sup>

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

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

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 that reads "Paigelay". The signature is written in a cursive, flowing style.

Paige Lay  
Assistant Attorney General  
Open Records Division

PS/mo

Ref: ID# 758750

Enc. Submitted documents

c: 9 Requestors  
(w/o enclosures)