



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 22, 2019

Ms. Kira Talip Sanchez
County Attorney
Kleberg County
P.O. Box 1411
Kingsville, Texas 78364

OR2019-10622

Dear Ms. Sanchez:

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# 760625.

The Kleberg County Tax Assessor's Office (the "county") received two requests from the same requestor for information pertaining to a specified election advisory, including a specified list of registered voters and communications pertaining to the specified list. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have also received comments from the Office of the Attorney General (the "OAG"). *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the county's procedural obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The county

received the present requests for information on January 28, 2019, and January 31, 2019, respectively. We understand the county was closed on February 18, 2019, in observance of President's Day. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Therefore, you were required to provide the information required by section 552.301(e) by February 19, 2019, and February 21, 2019, respectively. However, the envelope in which the county provided our office with the submitted information was postmarked April 4, 2019. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we conclude the county failed to comply with the procedural requirements mandated by section 552.301 of the Government Code for both requests.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under sections 552.103 and 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). As we have received comments from the OAG stating that the OAG objects to the release of the information at issue, we will consider whether the county may withhold the submitted information under section 552.103 or section 552.108 of the Government Code on behalf of the OAG. However, we find you have failed to establish a compelling reason to address your argument against disclosure of the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency . . . 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 asserting section 552.108(a)(1) must explain how and why the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also 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 information at issue pertains to an open criminal investigation conducted by the OAG's Election Fraud Section, and release of the information at issue would interfere with the

ongoing investigation. Based on these representations, we conclude the 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). Accordingly, the county 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,



Blake Brennan
Attorney
Open Records Division

BB/eb

Ref: ID# 760625

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)

¹As our ruling is dispositive, we need not address the OAG's remaining argument against disclosure of this information.