



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 23, 2019

Ms. DeAnne Lin
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2019-10743

Dear Ms. Lin:

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# 760714 (C.A. File Nos. 19PIA0081 and 19PIA0082).

The Harris County Voter Registrar (the "voter registrar's office") received two requests for information related to a specified voters list. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108. You also state release of the submitted information may implicate the interests of the Office of the Attorney General ("OAG") and the Secretary of State ("secretary's office"). *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 and the secretary's office. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹ We have also received and considered comments from the requestor. *See id.*

Initially, the requestor contends the voter registrar's office has publicly disclosed some of the information responsive to the instant request. The Act does not permit the selective

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.

disclosure of information. *See id.* §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If information has been voluntarily released to any member of the public, then that exact same information may not subsequently be withheld from another member of the public, unless public disclosure of the information is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). However, section 552.007 does not prohibit an agency from withholding similar types of information that are not the exact information that has been previously released. The requestor does not argue the voter registrar's office has previously released the exact same information it now seeks to withhold. Accordingly, we will consider the submitted arguments 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 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 information at issue. Accordingly, the voter registrar's office may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the OAG.²

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



Jahna Ward
Assistant Attorney General
Open Records Division

JW/jxd

Ref: ID# 760714

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

2 Third Parties
(w/o enclosures)