



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 1, 2019

Ms. Lauren Downey  
Assistant Attorney General  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, Texas 78711 -2548

OR2019-11528

Dear Ms. Downey:

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# 761386 (PIR No. R000316).

The Office of the Attorney General (the "OAG") received a request for documents aggregating or indicating the number of mail-in ballots rejected during a specified election and documents that itemize the rejected ballots. The OAG claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we must address the requestor's claim the OAG failed to comply with the procedural requirements a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301.

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<sup>1</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

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). In this instance, the OAG received the request for information on February 20, 2019. Accordingly, the OAG's fifteen-business-day deadline was March 13, 2019. The requestor asserts the "OAG's conclusory statements [in its February 27, 2019, brief] are insufficient to explain why the stated exception applies" and insufficient to comply with section 552.301(e). The information required by section 552.301(e) was delivered to our office on February 27, 2019. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Upon review, we find the OAG complied with the requirements of section 552.301(e) in requesting this decision from our office.

Next, we note the OAG states it does not maintain documents that aggregate or itemize the rejected ballots but does maintain the ballots themselves. The Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision Nos. 563 at 8, 561 at 8-9 (1990), 555 at 1-2, 534 at 2-3 (1989). Because the OAG submitted the information at issue for our review, we find the OAG made a good faith effort to locate information responsive to the instant request. Accordingly, we will address the OAG's claimed exception to disclosure of the submitted information.

Next, the requestor contends the requested information has previously been disclosed to the public by other governmental bodies. The Act does not permit the selective disclosure of information. Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See id.* § 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 states the requested information "has already been provided directly to [the voters that cast rejected mail in ballots] by correspondence from the counties." We note section 552.007 pertains to the requirements of a governmental body regarding its own previous release of information,


not to the previous release of information by a different governmental body. Accordingly, we find section 552.007 is inapplicable to the submitted information. Accordingly, we will consider the OAG's 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 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 claiming section 552.108(a)(1) must explain how and why the release of 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). The OAG states the information at issue relates to open criminal investigations by the OAG's Criminal Investigations and Criminal Prosecutions Divisions. The OAG also states release of the information at issue would interfere with the OAG's current investigative and prosecutorial interests. Based on the OAG's representations, we conclude the release of this 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 OAG may withhold the information at issue under section 552.108(a)(1) of the Government Code.

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/our\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/our_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,

  
Paige Thompson  
Assistant Attorney General  
Open Records Division

PT/eb

Ref: ID# 761386

Enc. Submitted documents

c: Requestor  
(w/o enclosures)