



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 22, 2019

Mr. Adam Bitter  
General Counsel  
Office of the Secretary of State  
P.O. Box 12697  
Austin, Texas 78711-2697

OR2019-13667

Dear Mr. Bitter:

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# 766878.

The Office of the Secretary of State (the "secretary's office") received a request for any complaints filed by a named individual with the secretary's office and specified categories of information related to responses by the secretary's office to those complaints. The secretary's office states it will withhold certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> The secretary's office also states it does not have information responsive to one of the categories of information requested.<sup>2</sup> The secretary's office claims the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. Additionally, the secretary's office provides documentation showing it has notified the Office of the Attorney General (the "OAG") of the right to submit comments to this office stating why some of the submitted information should not be released. *See Gov't Code* § 552.304 (interested party may submit comments

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. *See Economic 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), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 representative sample of information.<sup>3</sup>

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 31.006 of the Election Code. Section 31.006 of the Election Code provides the following:

(a) If, after receiving a complaint alleging criminal conduct in connection with an election, the [secretary's office] determines that there is reasonable cause to suspect that the alleged criminal conduct occurred, the secretary shall promptly refer the complaint to the [OAG]. The secretary shall deliver to the [OAG] all pertinent documents in the secretary's possession.

(b) The documents submitted under Subsection (a) are not considered public information until:

(1) the [secretary's office] makes a determination that the complaint received does not warrant an investigation; or

(2) if referred to the [OAG], the [OAG] has completed the investigation or has made a determination that the complaint referred does not warrant an investigation.

Elec. Code § 31.006. You state Exhibit C consists of election complaints and related documentation that were referred to the OAG. The OAG informs us this information pertains to open criminal investigations with the OAG. You state Exhibit D consists of information pertaining to submitted election complaints that the secretary's office was still evaluating at the time of the request and had not made any determinations as to whether the complaints did or did not warrant an investigation. Based on these representations and our review, we agree the information at issue is not considered public information under section 31.006(b). Accordingly, the secretary's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 31.006(b) of the Election Code.<sup>4</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.

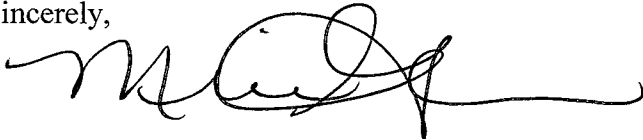
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<sup>3</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>4</sup>As our ruling is dispositive for this information, we need not address the remaining arguments.

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 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, appearing to read 'Michelle Garza', with a long horizontal flourish extending to the right.

Michelle Garza  
Assistant Attorney General  
Open Records Division

MG/gw

Ref: ID# 766878

Enc. Submitted documents

c: Requestor  
(w/o enclosures)