



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 23, 2019

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

OR2019-13766

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# 766963.

The Office of the Secretary of State (the "secretary's office") received a request for any communications between a named individual or named entity and the secretary's office. The secretary's office states it will withhold e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You state the secretary's office has released some of the requested information. The secretary's office claims the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code.<sup>2</sup> 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

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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, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>2</sup>We note, and you acknowledge, the secretary's office did not comply with section 552.301 of the Government Code with respect to raising section 552.101 of the Government Code as an exception to disclosure. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

comments stating why information should or should not be released). We have received comments from the OAG. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>3</sup>

Initially, we note the information submitted as Exhibit E was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2019-10080 (2019). In that ruling, we determined the secretary's office may withhold the information at issue under section 552.108(a)(1) of the Government Code on behalf of the OAG. We understand there is no change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the secretary's office may rely on Open Records Letter No. 2019-10080 as a previous determination and withhold the information subject to that ruling, submitted as Exhibit E, in accordance with that ruling.<sup>4</sup> See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts 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 [Office of the Attorney General ("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

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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, we need not address your arguments against disclosure of this information.

(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.

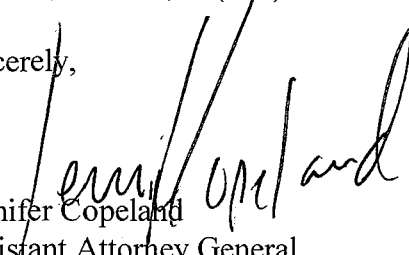
Elec. Code § 31.006. You state Exhibit C consists of election complaints and related documentation that were referred to the OAG and the secretary's office has no indication the OAG has completed the investigation or has made a determination that the complaint referred does not warrant an investigation. 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 your 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 Exhibits C and D under section 552.101 of the Government Code in conjunction with section 31.006(b) of the Election Code.<sup>5</sup>

In summary, the secretary's office may rely on Open Records Letter No. 2019-10080 as a previous determination and withhold the information subject to that ruling, submitted as Exhibit E, in accordance with that ruling. The secretary's office must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 31.006(b) of the Election 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/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,



Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/mo

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<sup>5</sup>As our ruling is dispositive for this information, we need not address the remaining arguments.

Ref: ID# 766963

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Third Party  
(w/o enclosures)