



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 27, 2019

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

OR2019-17765

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# 770317 (Reference No. 19PIA0063).

The Harris County Voter Registrar's Office (the "voter registrar's office") received a request for four categories of information related to voter registration. We understand you to argue some of the submitted information is not subject to the Act. Alternatively, you claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, you argue the submitted information includes records of the judiciary. The Act applies only to information that is "written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business . . . by a governmental body[.]" Gov't Code § 552.002(a)(1). The judiciary is expressly excluded from the requirements of the Act. *Id.* § 552.003(1)(B). Information "written, produced, collected, assembled, or maintained by or for the judiciary" is not subject to the Act but instead is "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." *Id.* § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under Gov't Code § 552.003(1)(B) prior to enactment of Gov't Code § 552.0035). In determining whether a governmental entity falls within the judiciary exception of the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ)). Upon review,

we find you have failed to demonstrate any portion of the submitted information consists of judicial records maintained solely by the voter registrar's office on behalf of the judiciary. Therefore, we find this information is subject to the Act. *See id.* § 552.002 (providing information written, produced, collected, assembled, or maintained in connection with the transaction of official business by a governmental body is "public information"). Accordingly, we will address your remaining arguments against disclosure of the submitted information.

We note the requestor in this instance is Texas State Representative Briscoe Cain ("Representative Cain"), a member of the State Legislature. Section 552.008 of the Government Code grants access to information, including confidential information, requested by individual members, agencies, or committees of the Texas Legislature, and provides as follows:

(a) This chapter does not grant authority to withhold information from individual members, agencies, or committees of the legislature to use for legislative purposes.

(b) A governmental body on request by an individual member, agency, or committee of the legislature shall provide public information, including confidential information, to the requesting member, agency, or committee for inspection or duplication in accordance with this chapter if the requesting member, agency or committee states that the public information is requested under this chapter for legislative purposes. A governmental body, by providing public information under this section that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future. The governmental body may require the requesting individual member of the legislature, the requesting legislative agency or committee, or the members or employees of the requesting entity who will view or handle information that is received under this section and that is confidential under law to sign a confidentiality agreement that covers the information and requires that:

- (1) the information not be disclosed outside the requesting entity, or within the requesting entity for purposes other than the purpose for which it was received;
- (2) the information be labeled as confidential;
- (3) the information be kept securely; or

(4) the number of copies made of the information or the notes taken from the information that implicate the confidential nature of the information be controlled, with all copies or notes that are not destroyed or returned to the governmental body remaining confidential and subject to the confidentiality agreement.

(c) This section does not affect:

(1) the right of an individual member, agency, or committee of the legislature to obtain information from a governmental body under other law, including under the rules of either house of the legislature;

(2) the procedures under which the information is obtained under other law; or

(3) the use that may be made of the information obtained under other law.

Id. § 552.008(a)-(b), (c). Representative Cain states his request is made for legislative purposes pursuant to the section 552.008 of the Texas Government Code. The voter registrar's office acknowledges section 552.008 provides a special right of access to individual members, agencies, or committees of the legislature if the information is going to be used for legislative purposes. However, the voter registrar's office asserts legislative access to the submitted information is limited by section 62.113 of the Government Code, which provides as follows:

(a) The clerk of the court shall maintain a list of the name and address of each person who is excused or disqualified under [subchapter B of chapter 62 of the Government Code] from jury service because the person is not a citizen of the United States.

(b) On the third business day of each month, the clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to:

(1) the voter registrar of the county;

(2) the secretary of state; and

(3) the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.^[1]

(c) A list compiled under this section may not be used for a purpose other than a purpose described by Subsection (b) or Section 16.0332 or 18.068, Election Code.^[2]

(d) A person commits an offense if the person violates Subsection (c). An offense under this section is a Class C misdemeanor.

Id. § 62.113. Thus, information maintained by the county clerk pursuant to section 62.113(a) and obtained by the voter registrar's office pursuant to section 62.113(b)(1) may only be used as provided by section 62.113(c). *Id.* § 62.113(a)-(c). Any other use of such information is a criminal offense. *Id.* § 62.113(d). Upon review, we agree the submitted information includes lists obtained by the voter registrar's office pursuant to section 62.113 of the Government Code. Although Representative Cain states his request is made for legislative purposes, and therefore generally asserts a right to access the information for legislative purposes pursuant to section 552.008, the legislature specified the purposes the information at issue could be used for in section 62.113. Release of the information at issue in this instance for legislative purposes would be "for a purpose other than a purpose described by subsection (b) or section 16.0332 or 18.068 of the Education Code." This would yield the absurd result of ordering the voter registrar's office to violate the criminal provisions of section 62.113(d). *See id.*; *see also Hernandez v. Ebrom*, 289 S.W.3d 316, 318 (Tex. 2009) (unambiguous statutory language is interpreted according to its plain language unless such an interpretation would lead to absurd results); Attorney General Opinion GA-0876 (2011). Therefore, we conclude Representative Cain cannot obtain the information at issue, which we have indicated, under section 552.008 of the Government Code, and the voter registrar's office is not required to release it in this instance.

However, we find section 552.008 is applicable to the remaining information. The voter registrar's office argues the release of the information at issue to Representative Cain would violate the separation of powers doctrine and "would have a chilling effect on the related judicial functions of the Courts. . . and would unnecessarily interfere with related executive functions of the [voter registrar's office]." However, upon review, we find the voter registrar's office has failed to sufficiently demonstrate that such interference is present in the instant case. Further, although some of the information at issue would be confidential with regard to the general public under the provisions of law cited by the voter registrar's office,

¹Section 13.007 provides in part that "[a] person commits an offense if the person knowingly makes a false statement or requests, commands, or attempts to induce another person to make a false statement on a registration application." Elec. Code § 13.007(a).

²Sections 16.0332 and 18.068 of the Election Code pertain to the use of the list created under section 62.113 by a voter registrar and the secretary of state's office, respectively. *See* Elec. Code §§ 16.0332, 18.068.

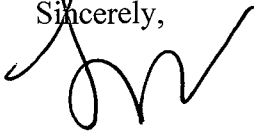
we determine the transfer of information pursuant to section 552.008 does not amount to public disclosure of the information at issue. *Cf.* Open Records Decision No. 666 (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public); Attorney General Opinion JM-119 (1983) (statutory predecessor) (for purposes of the Act, official of a governmental body who, in an official capacity, requests information held by the governmental body, does not act as a member of the public in doing so). We further note, and you acknowledge, section 552.008 permits a governmental body to require a member of the legislature to sign a confidentiality agreement for the protection of information obtained pursuant to this section. *See* Gov't Code § 552.008(b). In addition, the release of the information at issue under section 552.008 in this situation does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the voter registrar's office's right to assert exceptions to required public disclosure of this information in the future. *See id.*; *see also id.* § 552.352. Therefore, we conclude the voter registrar's office must provide the remaining information to the requestor in accordance with section 552.008 of the Government Code. *See id.* § 552.008(b).

In summary, the requestor cannot obtain the information we indicated under section 552.008 of the Government Code and the voter registrar's office is not required to release it. The voter registrar's office must provide the remaining information to the requestor in accordance with section 552.008 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/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,



Jahanna Ward
Assistant Attorney General
Open Records Division

JW/eb

Ref: ID# 770317

Enc. Submitted documents

c: Requestor
(w/o enclosures)