



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 4, 2019

Ms. Jennifer Smith  
Assistant District Attorney  
Hidalgo County  
100 East Cano Street  
Edinburg, Texas 78539

OR2019-24642

Dear Ms. Smith:

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# 783782 (Reference No. 2019-0090-DA.CO).

The Hidalgo County Elections Office (the "elections office") received a request from the City of Edinburg for the official voter list for a specified election, including the voters' complete dates of birth. You state the elections office has released some information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The elections office raises 552.101 in conjunction with sections 277.002 and 277.004 of the Election Code. Section 277.002 provides the requirements for the validity of petition signatures and section 277.004 addresses the applicability of any requirements prescribed by a city charter or ordinance for the validity of petition signatures. *See* Elec. Code §§ 277.002, .004; *see also id.* § 277.001 (addressing the applicability of chapter 277 of the

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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 those records contain substantially different types of information than that submitted to this office.

Election Code to a petition authorized or required to be filed under a law outside the Election Code in connection with an election). We note, however, these sections are not confidentiality provisions. *See* Open Records Decision No. 478 (1987) (as a general rule, statutory confidentiality requires express language making information confidential). Therefore, we conclude the elections office may not withhold the submitted dates of birth under section 552.101 of the Government Code in conjunction with section 277.002 or section 277.004 of the Election Code.

Pursuant to subchapter A of chapter 18 of the Election Code, the registrar in each county must prepare for each precinct a certified list of registered voters in the precinct. *See* Elec. Code §§ 18.001-.004 (discussing original, supplemental, registration correction, and revised original lists of registered voters). Each original and supplemental list of registered voters must contain the voter's name, date of birth, and registration number, the voter's residence address, except as provided by subsections (b) and (c) or section 18.0051, and the notation required by section 15.111 of the Election Code. *See id.* § 18.005(a)(1)-(2), (4); *see also id.* §§ 18.0051 (discussing substitute addresses in list of registered voters), 15.111(a) (explaining registrar shall enter certain notation on registered voter's list beside voter's name on suspense list). Section 18.008 of the Election Code provides, in part, as follows:

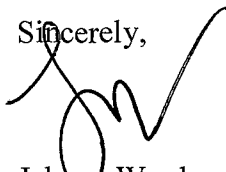
- (a) The registrar shall furnish a copy of any list prepared under . . . subchapter [A of chapter 18] to any person requesting it. The copy shall be furnished without the names of voters whose names appear on a list with the notation "S", or a similar notation, if requested in that form.

*Id.* § 18.008(a). We note the elections office is the voter registrar for the county pursuant to section 12.001 of the Election Code. *See id.* § 12.001 (providing county tax assessor collector is voter registrar for county unless position of county elections administrator is created or county clerk is designated as voter registrar). Therefore, we find section 18.008 of the Election Code is applicable to the instant request for information. You raise section 552.101 in conjunction with common-law privacy for the submitted dates of birth. As a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Further, information that is specifically made public by statute may not be withheld under section 552.101 of the Government Code on the basis of common-law privacy. *See Collins v. Tex Mall, L.P.*, 297 S. W.3d 409, 415 (Tex. App.—Fort Worth 2009, no pet.) (statutory provision controls and preempts common law only when statute directly conflicts with common-law principle); *Center Point Energy Houston Elec. LLC v. Harris County Toll Rd. Auth.*, 436 F.3d 541, 544 (5th Cir. 2006) (common law controls only where there is no conflicting or controlling statutory law). Therefore, the elections office may not withhold the dates of birth at issue under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to section 18.008 of the Election Code. Accordingly, the elections office must release 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Jahna Ward  
Assistant Attorney General  
Open Records Division

JW/be

Ref: ID# 783782

Enc. Submitted documents

c: 2 Requesters  
(w/o enclosures)