



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 11, 2020

Ms. Leigh Ann Tognetti
Assistant District Attorney
Hidalgo County District Attorney's Office
100 East Cano Street
Edinburg, Texas 78539

OR2020-15897

Dear Ms. Tognetti:

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# 832371 ((File# 2020-057-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received two requests from the same requestor for information pertaining to a specified election. You state the county will release some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.115 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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, 710 (Tex. 1977). The county states Exhibit C relates to a pending criminal investigation. Based upon this representation, 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

¹ 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.

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, we find the county may withhold Exhibit C under section 552.108(a)(1) of the Government Code.²

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 information protected by other statutes, such as section 66.058 of the Election Code, which provides, in relevant part:

(a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for at least 22 months after election day.

(b) For a period of at least 60 days after the date of the election, the voted ballots shall be preserved securely in a locked room in the locked ballot box in which they are delivered to the general custodian of election records.

...

(b-1) Except as permitted by this code, a ballot box or other secure container containing voted ballots may not be opened during the preservation period.

...

(g) Electronic records created under Chapter 129 shall be preserved in a secure container.

Elec. Code § 66.058(a)-(b-1), (g). “Precinct election records” means the precinct election returns, voted ballots, and other records that are assembled and distributed under chapter 66 of the Election Code. *See id.* § 66.002; *see also id.* §§ 121.001 (noting other provisions of this code apply to an election in which a voting system is used), 127.132 (explaining voted ballots, election returns, and other election records of an electronic voting system shall be delivered to the authorities who receive corresponding records from precinct polling places using regular paper ballots), 129.001 (stating chapter 129 applies to voting system that uses direct recording electronic voting machines and, to extent possible, procedures applicable to electronic voting system under chapter 127 are applicable to voting system under chapter 129). You assert the information at issue constitutes precinct election records made confidential by section 66.058. Based upon your representations, we agree the information at issue is subject to section 66.058.

The Election Code authorizes access to election records during the preservation period for several purposes, including, for example, recounts, election contests, criminal investigations, and counts conducted pursuant to chapter 127 of the Election Code. *See*

² As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

Open Records Decision No. 505 at 2 n.2 (1988). We have no indication the Election Code authorizes access to the information at issue in this case. Therefore, pursuant to section 66.058(a) of the Election Code, the information at issue is confidential for at least 22 months after election day. *See* Elec. Code § 66.058(a). Accordingly, the county must withhold Exhibit B under section 552.101 of the Government Code on that basis for the duration of the preservation period. After this period, the information at issue is subject to public disclosure. *See* ORD 505 at 4 (request made during preservation period to inspect voted ballots must be treated as request to inspect ballots when retention period expires).

Section 552.115(a)(2) of the Government Code provides,

(a) A . . . death record maintained by the vital statistics unit of the [Texas Department of State Health Services] or a local registration official is excepted from [required public disclosure], except that:

. . .

(2) a death record is public information and available to the public on and after the 25th anniversary of the date of death as shown on the record filed with the vital statistics unit or local registration official[.]

Gov't Code § 552.115(a)(2). Section 552.115 is applicable only to information maintained by the vital statistics unit or a local registration official. *See* Open Records Decision No. 338 (1982). The county states the remaining information consists of an abstract of death certificate prepared by the county registration official and submitted to the county Elections Office pursuant to section 16.001 of the Elections Code. *See* Elec. Code § 16.001(a) (stating the local registrar of deaths shall prepare an abstract of death certificates issued in the month and file each abstract with the voter registrar of the decedent's county of residence). The county asserts, and we agree, the abstract of death certificate constitutes "death records" for purposes of section 552.115(a)(2). The remaining information reflects the death record is not older than twenty-five years and the decedent is identified. Based on these representations, we find the county must withhold the remaining information under section 552.115 of the Government Code.

In summary, the county may withhold Exhibit C under section 552.108(a)(1) of the Government Code. The county must withhold Exhibit B under section 552.101 of the Government Code on that basis for the duration of the preservation period. The county must withhold the remaining information under section 552.115 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 <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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jlbm

Ref: ID# 832371

Enc. Submitted documents

c: Requestor
(w/o enclosures)