



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2020

Ms. Alexandra Golden
Assistant District Attorney
Brazoria County
111 East Locust, Suite 408A
Angleton, Texas 77515

OR2020-18878

Dear Ms. Golden:

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# 838372 (ORR No. 20-0635).

Brazoria County (the "county") received a request for voting and mail-in ballot information pertaining to the general elections of 2014, 2016, and 2018.¹ 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.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 section 86.014 of the Election Code, which states in relevant part:

¹ You state the county sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

² 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 that those records contain substantially different types of information than that submitted to this office.

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the earliest occurring election for which the application is submitted.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. We note submitted information consists of Applications for Ballot by Mail (“ABBM”) and the ABBMs at issue were submitted for the November 2018 general election. Upon review, we find the submitted ABBMs are now available for public inspection pursuant to section 86.014(a). *See id.* § 86.014(a). You raise section 552.101 of the Government Code in conjunction with common-law privacy for portions of the submitted information. However, we note 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). Accordingly, the county may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy pursuant to section 86.014 of the Election Code. The county 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,

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/jxd

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Enc. Submitted documents

c: Requestor
(w/o enclosures)