



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 1, 2020

Mr. Robert Schell  
Assistant County & District Attorney  
Ellis County  
109 South Jackson  
Waxahachie, Texas 75165

OR2020-29765

Dear Mr. Schell:

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# 856274.

The Ellis County Elections Administrator's Office (the "administrator's office") received a request for five categories of information pertaining to mail-in ballots cast in two specified primary elections and the name, telephone number, and e-mail address of individuals who serviced on the Early Voting Ballot Board and Signature Verification Committee. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.1175, and 552.137 of the Government Code and rule 12 of the Texas Rules of Judicial Administration. We have considered your arguments and reviewed the submitted information.

Initially, we note you have not submitted any information pertaining to the five categories of information pertaining to mail-in ballots cast in two specified primary elections. Thus, to the extent any information responsive to this portion of the request existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of

which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the names, addresses, and telephone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (1990) (disclosure of person's name, address, or telephone number not an invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers not protected under privacy).

Upon review, we find the administrator's office has failed to demonstrate any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the administrator's office may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use).

Thus, to the extent the telephone numbers you marked pertain to individuals who are subject to section 552.1175(a), the individuals elect to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the administrator's office must withhold the information you marked under section 552.1175 of the Government Code. However, if the individuals are not subject to section 552.1175(a), do not elect to restrict access to their information in accordance with section 552.1175(b), or the cellular telephone service is paid for by a governmental body, the information at issue may not be withheld under section 552.1175 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the administrator's office must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

The administrator's office also argues the remaining information is exempt from disclosure under rule 12.5(f) of the Rules of Judicial Administration. Rule 12 applies to the judiciary

only and governs the public disclosure of judicial records, which are not subject to the Act. TEX. R. JUD. ADMIN. 12; Gov't Code §§ 552.003(a)(B), .0035(a). In this instance, the remaining information consists of information held by the administrator's office. Because this information is maintained by the administrator's office, rule 12 does not apply. Therefore, the remaining information is subject to the Act, and it may only be withheld if it is excepted from disclosure under an exception in the Act.

In summary, to the extent the telephone numbers you marked pertain to individuals who are subject to section 552.1175(a), the individuals elect to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the administrator's office must withhold the information you marked under section 552.1175 of the Government Code. The administrator's office must withhold the e-mail address you marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. The administrator's office must release the remaining 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,

Jennifer Copeland  
Assistant Attorney General  
Open Records Division

JC/jm

Ref: ID# 856274

Enc. Submitted documents

c: Requestor  
(w/o enclosures)