



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 3, 2022

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

OR2022-06392

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# 933927 (File Nos. 2021-205-DA.CO and 2021-207-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received two requests from different requestors for (1) a specified list and (2) six categories of information pertaining to a specified type of persons during a defined period of time. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you state release of the submitted information may implicate the interests of the Texas Department of Public Safety ("DPS"), the Office of the Texas Attorney General (the "OAG"), and the Office of the Texas Secretary of State (the "secretary's office"). Accordingly, you state, and provide documentation showing, you notified these interested parties of the request for information and of the right to submit arguments to this office as to why the submitted information should not be released.¹ *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from DPS and the secretary's office. We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹ As of the date of this letter, we have not received comments from the OAG explaining why the submitted information should not be released.

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

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 31.006 of the Election Code. Section 31.006 of the Election Code provides the following:

(a) If, after receiving or discovering information indicating that criminal conduct in connection with an election has occurred, the [secretary’s office] determines that there is reasonable cause to suspect that criminal conduct occurred, the secretary shall promptly refer the information to the [OAG]. The secretary shall deliver to the [OAG] all pertinent documents and information in the secretary’s possession.

(b) The documents and information submitted under Subsection (a) are not considered public information until:

(1) the [secretary’s office] makes a determination that the information received does not warrant an investigation; or

(2) if referred to the [OAG], the [OAG] has completed the investigation or has made a determination that the information referred does not warrant an investigation.

Elec. Code § 31.006. The secretary’s office indicates the information at issue consists of information pertaining to allegations of criminal conduct in connection with an election. The secretary’s office states it was still evaluating the information at issue and had not, at the time of the requests, made a determination whether the information at issue warranted an investigation. Based upon these representations and our review, we agree the information at issue is not considered public information under section 31.006(b). Accordingly, the county must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 31.006(b) of the Election Code.³

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

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.

³ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.

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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

Ref: ID# 933927

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

3 Interested Parties
(w/o enclosures)