



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2022

Mr. Matthew E. Minick
Assistant County Attorney
Hardin County
P.O. Box 516
Kountze, Texas 77625

OR2022-10957

Dear Mr. Minick:

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# 941996.

The Hardin County Clerk's Office (the "county") received a request for names and addresses from a specified list during a defined period of time. You claim 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 information.

Initially, we note the requestor seeks information created after the date of the request. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decisions Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of information the county maintained or had a right of access to as of the date it received the request.

Next, we note the requestor only seeks the names and addresses pertaining to the specified list. The county has submitted documents that contain information beyond the requested information. Thus, the portions of the submitted documents that contain information beyond the requested information are not responsive to the present request. This ruling

does not address the public availability of any information that is not responsive to the request, and the county is not required to release such information in response to this request.¹

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 66.057 of the Election Code, which provides, in relevant part, as follows:

(a) The election returns for a particular precinct that are delivered to the general custodian of election records do not become public information until the custodian completes the unofficial tabulation of the results for that precinct.

Elec. Code § 66.057(a). Upon review, we find you have failed to demonstrate the responsive information is subject to section 66.057(a) of the Election Code. Therefore, the county may not withhold the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 86.014 of the Election Code, which provides as follows:

(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.

Id. § 86.014. Upon review, we find you have failed to demonstrate the responsive information is subject to section 86.014 of the Election Code. Therefore, the county may not withhold the responsive information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 81.176 of title 1 of the Texas Administrative Code. Section 81.176 pertains to provisional ballots, and provides, in relevant part, as follows:

(c) Review of Provisional Ballot Affidavit Envelopes by Early Voting Ballot Board.

¹ As we are able to make this determination, we need not address your arguments against disclosure of this information.

(10) Once counted, the Provisional Ballot Affidavit Envelopes, along with any corresponding paperwork shall be re-sealed in the container and returned to the general custodian of election records.

(11) The List of Provisional Voters for each precinct, along with any copies of the List forms, shall be delivered to the general custodian of election records in the envelope or container for accepted Provisional Ballot Affidavit Envelopes.

(12) The provisional ballots and Provisional Ballot Affidavit Envelopes shall be retained for the appropriate preservation period for the election.

(13) All Provisional Ballot Affidavit Envelopes and the List of Provisional Voters are public records after the Early Voting Ballot Board has completed their review and the Provisional Ballot Affidavit Envelopes and the List of Provisional Voters have been returned to the General Custodian of Election Records.

(14) Rejected Provisional Affidavit Envelopes may not be opened except by court order.

1 T.A.C. § 81.176(c)(10)-(14). Upon review, we find you have failed to demonstrate the responsive information is subject to section 81.176 of title 1 of the Texas Administrative Code. Therefore, the county may not withhold the responsive information under section 552.101 of the Government Code on that basis. As no further exceptions to disclosure have been raised, the county must release the responsive 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,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

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Enc. Submitted documents

c: Requestor
(w/o enclosures)