



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 22, 2022

Ms. Janna Lindig
County Attorney
Bandera County
P.O. Box 656
Bandera, Texas 78003

OR2022-17805

Dear Ms. Lindig:

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# 952626.

Bandera County (the “county”) received a request for certain information pertaining to a specified election and communications involving particular individuals during a stated time period. You state the county will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.103, 552.108, 552.117, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 is generally not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *see also* Open Records Decision No. 350 at 3-4 (1982). However, you state the information you have marked relates to a pending criminal investigation. Based on this representation, we conclude release of this information will interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 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 the information you have marked under section 552.108(a)(1) of the Government Code.¹

Some of the remaining information is subject to section 1.012 of the Election Code, which provides, in part, as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). Thus, under section 1.012(a), the information at issue constitutes "election records" and the county must make it available to the public, except as provided by the Act. Accordingly, we will address your arguments against disclosure of the remaining information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."² Gov't Code § 552.101. Section 552.101 encompasses section 32.076 of the Election Code, which provides as follows:

(a) Except as provided by Subsection (b), an e-mail address or personal phone number of an election judge or clerk collected or maintained by the authority conducting the election is confidential and does not constitute public information for purposes of [the Act].

(b) An e-mail address or phone number described by Subsection (a) shall be made available on request to:

¹ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

² The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (1) any entity eligible to submit lists of election judges or clerks for that election; or
- (2) the state executive committee of a political party with a county chair eligible to submit lists of election judges or clerks for that election.

Elec. Code § 32.076. Upon review, we find the remaining information contains the personal phone numbers of election judges or clerks collected or maintained by the authority conducting the election. Further, we find none of the exceptions in section 32.076(b) apply in this instance. Therefore, the county must withhold the personal phone numbers, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code.³

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1); Open Records Decision No. 622 (1994). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. *See* Open Record Decision Nos. 532 (1989) (purpose of predecessor to section 552.117 is to protect certain information during and after employment relationship), 530 (1989) (discussing interplay between sections 552.024 and 552.117), 455 (1987). The information at issue constitutes election records the county maintains in accordance with the Election Code, and not in an employment capacity. Thus, the county may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

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. Gov't Code § 552.1175. Section 552.1175 applies, in part, to "current or honorably retired peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *See id.* § 552.1175(a)(1); *see also id.* § 552.003(1-b) (defining "honorably retired" for purposes of the Act). Thus, to the extent the information we have marked relates to an individual who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the county must withhold the information we have marked under section 552.1175 of the Government Code. Conversely, if the individual whose information is at issue does not elect to restrict access to their information in accordance with 552.1175(b), the county may not withhold the information at issue under section 552.1175.

³ As our ruling is dispositive, we need not address your argument against disclosure of this information.

Section 552.147(a) of the Government Code excepts the social security number of a living individual from public disclosure. *Id.* § 552.147(a). Accordingly, the county may withhold the social security numbers you have marked under section 552.147 of the Government Code.

In summary, the county may withhold the information you have marked under section 552.108(a)(1) of the Government Code. The county must withhold the personal phone numbers, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code. To the extent the information we have marked relates to an individual who elects to restrict access to their information in accordance with section 552.1175(b) of the Government Code, the county must withhold the information we have marked under section 552.1175 of the Government Code. The county may withhold the social security numbers you have marked under section 552.147 of the Government Code. The county 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,

Alexandra C. Burks
Assistant Attorney General
Open Records Division

ACB/jxd

Ref: ID# 952626

Enc. Submitted documents

c: Requestor
(w/o enclosures)