



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2022

Ms. Jessica N. Morrison
Assistant County Attorney
Williamson County
405 Martin Luther King Street, Box 7
Georgetown, Texas 78626

OR2022-21246

Dear Ms. Morrison:

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# 961079 (Reference Nos. 2022-243-PIA and 2022-373-PIA).

Williamson County (the "county") received two requests from the same requestor for specified lists of information pertaining to the 2020 General Election.¹ The county states it does not have information responsive to portions of the requests.² The county also states it has released some responsive information. The county claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

¹ The county states, and provides documentation demonstrating, the county sought and received clarifications. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing 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 The Act does not require a governmental body to create or release information that did not exist when a request for information was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3 (1986).

Initially, we note the information at issue is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

(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 [the Election Code] or [the Act], all election records are public information.

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

...

(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)(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. *See id.* § 1.012(a), (c). Accordingly, we will address the county's claimed exception to disclosure of the information at issue.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Accordingly, the county must generally withhold the public citizens' dates of birth under section 552.101 in conjunction with common-law privacy.

However, we note the requestor seeks, in part, voter registration data for all eligible voters in the specified election. Pursuant to subchapter A of chapter 18 of the Election Code, the registrar in each county must prepare for each precinct a certified list of registered voters in the precinct. *See* Elec. Code §§ 18.001-.004 (discussing original, supplemental,

³ We note this office issued Open Records Letter No. 2016-28413 (2016), a previous determination authorizing the county to withhold certain dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

registration correction, and revised original lists of registered voters). Each original and supplemental list of registered voters must contain the voter's name, date of birth, and registration number, the voter's residence address, except as provided by subsections (b) and (c) or section 18.0051, and the notation required by section 15.111 of the Election Code. *See id.* § 18.005(a)(1)-(2), (4); *see also id.* §§ 18.0051 (discussing substitute addresses in list of registered voters), 15.111(a) (explaining registrar shall enter certain notation on registered voter's list beside voter's name on suspense list). Section 18.008 of the Election Code provides, in part, the following:

- (a) The registrar shall furnish a copy of any list prepared under . . . subchapter [A of chapter 18] to any person requesting it. The copy shall be furnished without the names of voters whose names appear on a list with the notation "S", or a similar notation, if requested in that form.

Id. § 18.008(a). 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); *see also 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, to the extent the submitted information consists of voter registration lists subject to section 18.008, the county may not withhold the dates of birth in the voter registration lists under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information protected by other statutes, such as section 66.058 of the Election Code, which provides, in relevant part:

- (a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for at least 22 months after election day.

- (b) For a period of at least 60 days after the date of the election, the voted ballots shall be preserved securely in a locked room in the locked ballot box in which they are delivered to the general custodian of election records.

...

- (b-1) Except as permitted by this code, a ballot box or other secure container containing voted ballots may not be opened during the preservation period.

...

- (g) Electronic records created under Chapter 129 shall be preserved in a secure container.

Elec. Code § 66.058(a)-(b-1), (g). “Precinct election records” means the precinct election returns, voted ballots, and other records of an election that are assembled and distributed under chapter 66 of the Election Code. *See id.* § 66.02; *see also id.* §§ 121.001 (noting other provisions of this code apply to an election in which a voting system is used), 127.132 (explaining voted ballots, election returns, and other election records of an electronic voting system shall be delivered to the authorities who receive corresponding records from precinct polling places using regular paper ballots), 129.001 (stating chapter 129 applies to voting system that uses direct recording electronic voting machines and, to the extent possible, procedures applicable to electronic voting system under chapter 127 are applicable to voting system under chapter 129). The county asserts the requested cast vote records constitutes precinct election records made confidential by section 66.058. Based upon the county’s representation, we agree the information at issue is subject to section 66.058.

The Election Code authorizes access to election records during the preservation period for several purposes, including, for example, recounts, election contests, criminal investigations, and counts conducted pursuant to chapter 127 of the Election Code. *See* Open Records Decision No. 505 at 2 n.2 (1988). The county states, and we agree, there is no indication the Election Code authorizes access to the information at issue in this case. Thus, pursuant to section 66.058(a) of the Election Code, the information at issue is confidential for at least 22 months after election day. *See* Elec. Code § 66.058(a). Accordingly, the county must withhold requested cast vote records under section 552.101 of the Government Code on that basis for the duration of the preservation period. After this period, the information at issue is subject to public disclosure. *See* ORD 505 at 4 (request made during preservation period to inspect voted ballots must be treated as request to inspect ballots when retention period expires).

In summary, the county must withhold the submitted public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy; however, pursuant to section 18.008 of the Elections Code, the county may not withhold the dates of birth to the extent the information consists of voter registration lists subject to section 18.008 of the Election Code. The county must withhold requested cast vote records under section 552.101 of the Government Code in conjunction with section 66.058(a) of the Election Code for the duration of the preservation period. 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/mo

Ref: ID# 961079

Enc. Submitted documents

c: Requestor
(w/o enclosures)