



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 12, 2022

Ms. Hannah Bell  
Assistant Criminal District Attorney  
Tarrant County  
401 West Belknap Street, 9<sup>th</sup> Floor  
Fort Worth, Texas 76196

OR2022-24048

Dear Ms. Bell:

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# 965859.

The Tarrant County Criminal District Attorney's Office (the "district attorney's office") received a request for twelve categories of information pertaining to election records. You state the district attorney's office will release some information. You claim some of 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 representative sample of information.<sup>1</sup> We have received comments from the requestor. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you state you will seek clarification of portions of the request for information. *See id.* § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request

---

<sup>1</sup> 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 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.

is clarified or narrowed). We understand you have not received a response to the request for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this instance, you have submitted information you believe is responsive to the remaining portions of the request and made arguments against disclosure of this information. Thus, we assume you have made a good-faith effort to relate the request to information the district attorney's office holds, and we will address the applicability of the submitted arguments to the information. However, the district attorney's office has no obligation at this time to release any additional responsive information for which you have not received clarification. If the requestor responds to the request for clarification, the district attorney's office must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

Next, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-17146A (2022). In that ruling, we concluded the following (1) the requested election records are confidential pursuant to section 66.058 of the Election Code and the requested test materials are confidential pursuant to section 124.029(c) of the Election Code for as long as the election records and test materials are required to be preserved; thus, the election records and test materials at issue must be withheld under section 552.101 of the Government Code for the duration of the retention period and (2) the district attorney's office must release the remaining submitted information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2022-17146A was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the district attorney's office must continue to rely on Open Records Letter No. 2022-17146A as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

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 district attorney’s office must make it available to the public, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address the district attorney’s office’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.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 66.058 of the Election Code, which provides:

(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. On the 61st day after election day, the general custodian of election records may:

(1) require a person who has possession of a key that operates the lock on a ballot box containing voted ballots to return the key to the custodian; and

(2) unlock the ballot box and transfer the voted ballots to another secure container for the remainder of the preservation period.

(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.

(c) If during the preservation period an authorized entry is made into a ballot box or other secure container containing voted ballots, when the purpose for the entry is fulfilled, the box or container shall be relocked or resecured, and the box and key or secure container returned to the custodian.

(d) A custodian of a ballot box or secure container containing voted ballots commits an offense if, during the preservation period prescribed by Subsection (a), the custodian:

(1) makes an unauthorized entry into the box or container; or

(2) fails to prevent another person from handling the box or container in an unauthorized manner or from making an unauthorized entry into the box or container.

(e) An offense under Subsection (d) is a Class A misdemeanor.

(f) The records in ballot box no. 4 may be preserved in that box or by any other method chosen by the custodian. If the records are removed from the box, they may not be commingled with any other election records kept by the custodian.

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

(h) For the preservation of precinct election records in an election involving a federal office, the secretary of state shall instruct the affected authorities on the actions necessary to comply with federal law and otherwise implement this section.

Elec. Code § 66.058. “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.* § 66.002; *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 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 extent possible, procedures applicable to electronic voting system under chapter 127 are applicable to voting system under chapter 129). We understand the requested voted ballots are within this meaning of “precinct election records.”

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). You state the Election Code does not authorize access to the information at issue in this case. Therefore, 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 district attorney’s office must withhold the information at issue 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).

The district attorney’s office asserts the dates of birth are excepted from public disclosure

under section 552.101 of the Government Code also 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 Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *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 district attorney's office 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, 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 district attorney's office may not withhold the dates of birth in the voter registration lists under section 552.101 in conjunction with common-law privacy.

In summary, to the extent the requested information is identical to the information previously requested and ruled upon by this office, the district attorney's office must continue to rely on Open Records Letter No. 2022-17146A as a previous determination and withhold or release the identical information in accordance with that ruling. The requested election records are confidential pursuant to section 66.058 of the Election Code for as long as the election records are required to be preserved; thus, the election records must be withheld under section 552.101 of the Government Code for the duration of the retention period. The district attorney's office must generally 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 district attorney's office 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 district attorney'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# 965859

Enc. Submitted documents

c: Requestor  
(w/o enclosures)