



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 18, 2022

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

OR2022-24779

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# 966555 (File No. 2022-098-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received a request for a specified list during a defined period of time.¹ 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.² 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

¹ The county states it sought and received clarification of the information requested. See Gov't Code § 552.222 (providing 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, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² As of the date of this letter, we have not received comments from the OAG explaining why the submitted information should not be released.

considered the submitted arguments and reviewed the submitted representative sample of information.³

Initially, the county, DPS, and the secretary's office state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2022-06392 (2022) and 2022-12267 (2022). The secretary's office states the law, facts, or circumstances on which the prior rulings were based have not changed. Thus, to the extent the requested information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter Nos. 2022-06392 and 2022-12267 as previous determinations and withhold the information at issue in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 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 request, made a determination whether the information at issue warranted

³ 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.

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.⁴

In summary, to the extent the requested information is identical to the information previously requested and ruled upon, the county must continue to rely on Open Records Letter Nos. 2022-06392 and 2022-12267 as previous determinations and withhold the information at issue in accordance with those rulings. 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.

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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jm

Ref: ID# 966555

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴ As our ruling is dispositive, we need not address the remaining arguments against disclosure of the submitted information.