



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 6, 2022

Mr. Andrew Wipke
Assistant County Attorney
Fort Bend County
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2022-27097

Dear Mr. Wipke:

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# 966894 (County Attorney ID# 0689).

Fort Bend County (the "county") received a request for twelve categories of records pertaining to a specified election.¹ You state the county does not have information responsive to portions of the present request.² You also state the county will redact certain information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code, certain information pursuant to section 552.1175(f) of the Government Code, motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and e-mail addresses subject to section 552.137 of the Government

¹ You state, and provide documentation demonstrating, the county sought and received clarification of the information requested. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Code pursuant to Open Records Decision No. 684 (2009).³ Additionally, you state the county will release some information to the requestor, some of which the county will release upon payment of a cost estimate.⁴ You claim some of the requested information is not public information subject to the Act. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.⁵

Initially, we note the requestor seeks access to certain tangible property, such as ballot boxes, ballot seals, and ballot box seals. You assert such information is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code. Section 552.002(a) provides:

In this chapter, “public information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

³ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117 of the Government Code without the necessity of requesting a decision under the Act if the individual to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2). Section 552.1175(f) of the Government Code authorizes a governmental body to redact information under section 552.1175(b) of the Government Code, without the necessity of requesting a decision from this office, including the home addresses and telephone numbers, emergency contact information, social security number, date of birth, and family member information of certain individuals who properly elect to keep this information confidential. *See id.* § 552.1175(b), (f); *see also* Open Records Decision No. 678 (2003) (ruling that confidentiality of information subject to section 552.1175 is dependent on governmental body’s receipt of an election of confidentiality from the individual whose information is at issue). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

⁴ A governmental body’s officer for public information may comply with the requirement to promptly produce public information “by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public if the requested information is identifiable and readily available on that website.” *See* Gov’t Code § 552.221(b-1).

⁵ 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 those records contain substantially different types of information than that submitted to this office.

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). This office has ruled tangible physical items are not "information," as that term is contemplated under the Act. *See* Open Records Decision No. 581 (1990). Thus, the ballot boxes and seals at issue are not public information for purposes of section 552.002 of the Government Code, and the Act does not require the county to make these items available to the requestor. *See* Gov't Code § 552.021.

Next, you state some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-16472 (2022). In that ruling, we determined, in relevant part, some of the requested information does not constitute public information under section 552.002 of the Government Code and need not be released. With respect to the information that was at issue, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, with respect to such information, the county must continue to rely on Open Records Letter No. 2022-16472 as a previous determination and, in accordance with that ruling, need not release information that is not subject to the Act. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we address your assertion the information at issue cannot be released in response to a request under the Act pursuant to section 66.058 of the Election Code. Section 66.058 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). The term “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). Although you assert the information at issue may not be released until the expiration of the 22-month preservation period set out in section 66.058(a), we note the election at issue in the present request occurred on November 3, 2020. Thus, as of the date of this letter, the 22-month period has since passed. Accordingly, we need not determine whether the information at issue cannot be released in response to a request under the Act pursuant to section 66.058.

Section 552.101 of the Government Code exempts 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 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) 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 information at issue contains the personal e-mail addresses and telephone 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 e-mail addresses and telephone numbers of election judges or clerks in the information at issue under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code.

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 county must withhold the dates of birth of public citizens within the information at issue under section 552.101 in conjunction with common-law privacy.

In summary, the ballot boxes and seals at issue are not public information for purposes of section 552.002 of the Government Code and the county is not required to make these items available to the requestor. The county must continue to rely on Open Records Letter No. 2022-16472 as a previous determination and, in accordance with that ruling, need not release information that is not subject to the Act. The county must withhold the personal e-mail addresses and telephone numbers of election judges or clerks in the information at issue under section 552.101 of the Government Code in conjunction with section 32.076 of the Election Code. The county must withhold the dates of birth of public citizens within the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy. 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,

Blake Brennan
Assistant Attorney General
Open Records Division

BBX/eb

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Enc. Submitted documents

c: Requestor
(w/o enclosures)