



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 2, 2022

Ms. Tiffany Bangs
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2022-37323

Dear Ms. Bangs:

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# 984544 (C.A. File Nos. 22PIA0937, 22PIA0938, 22PIA0939, 22PIA0940, 22PIA0958, 22PIA0960, 22PIA0965, 22PIA0988, 22PIA0989, 22PIA0990, 22PIA0991, 22PIA0992, 22PIA0993, 22PIA0994, 22PIA0995, 22PIA0996, 22PIA0997, 22PIA0998, 22PIA0999, 22PIA01000, and 22PIA01001).

The Harris County Elections Administration (the "county") received multiple requests from different requestors for information pertaining to specified elections. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we address the address the county's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides:

A governmental body that submits written comments to the attorney general under [s]ubsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If

¹ 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.

the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). Upon review, we find the county failed to comply with the procedural requirements of section 552.301(e-1) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Tex. Att'y Gen. ORD-630 at 2 (1994). Because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider the applicability of this exception to the requested information. However, we find you have failed to establish a compelling reason to address your remaining claimed exceptions.

You assert the requested information cannot be released in response to the present requests 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 pertaining to the 2020 elections at issue may not be released until the expiration of the 22-month preservation period set out in section 66.058(a), we note, as of the date of this letter, the 22-month period has since passed with respect to the 2020 elections at issue. Accordingly, we need not determine whether this information cannot be released in response to a request under the Act pursuant to section 66.058.

Although you assert the remaining information, which pertains to 2022 elections, may not be released until the expiration of the 22-month preservation period set out in section 66.058(a), we note section 1.012 of the Election Code establishes this information as public information and requires the election records custodian to make the information available to the public. *See* Attorney General Opinion KP-411 at 3, 6 (2022); *see also* Elec. Code § 1.012(c), (d) (defining “election record”). In Attorney General Opinion KP-411, this office concluded, “By expressly requiring the custodian to provide public access to such records, the Legislature authorized entry into the locked ballot box for such purpose during the 22-month period.” Attorney General Opinion KP-411 at 6; *see also* Elec. Code §§ 1.012(c), (d), 66.058(b-1). Thus, members of the public may inspect or obtain copies of the information during the 22-month preservation period, and the county may not withhold the remaining information under section 66.058. As you raise no further exceptions to disclosure, the county must release the information at issue.

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/pt

Ref: ID# 983729

Enc. Submitted documents

c: Requestors
(w/o enclosures)