



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 5, 2022

Mr. Jose J. Salayandia  
Assistant County Attorney  
El Paso County  
500 East San Antonio, Room 503  
El Paso, Texas 79901

OR2022-37610

Dear Mr. Slayandia:

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# 983675 (Ref. No. 643-PIA).

El Paso County (the "county") received a request for the county's current election equipment manuals, including any related documents. You state the county is making some information available to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> Additionally, you state release of the information at issue may implicate the proprietary interests of Election Systems & Software, LLC ("ES&S"). Accordingly, you state, and provide documentation demonstrating, the county notified ES&S of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from ES&S. We have considered the submitted arguments and reviewed the submitted information, a portion of which consists of a representative sample.<sup>2</sup>

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<sup>1</sup> We note the county did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision with respect to the majority of the submitted information. *See Gov't Code* § 552.301(e). Nonetheless, because third party interests and section 552.101 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider whether the information at issue is excepted from disclosure under the Act. *See id.* §§ 552.007, .302, .352; Open Records Decision No. 150 at 2 (1977).

<sup>2</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

We note the submitted information consists of manuals and documents relating to the use of electronic voting equipment provided to the county by ES&S. The requestor asserts she has a right of access to this information pursuant to section 123.008 of the Election Code, which provides, in relevant part:

(a) Each person who sells, leases, or otherwise provides an electronic voting system or equipment to a political subdivision shall also provide any user or operator manuals or other instructions or documents relating to the use of the system or equipment. The general custodian of election records for the political subdivision shall make those materials available for public inspection in the custodian's office on the request of any person.

Elec. Code § 123.008(a); *see id.* §§ 1.005(13) (defining “political subdivision”), 121.003(1)-(2), (4) (defining “voting system,” “electronic voting system,” and “voting system equipment”). Upon review, we find the requestor has a right of access to the submitted information pursuant to section 123.008 of the Election Code. Although ES&S raises sections 552.110, 552.1101, and 552.139 of the Government Code for portions of the submitted information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). Therefore, the county may not withhold any portion of the submitted information under section 552.110, section 552.1101, or section 552.139 of the Government Code. However, you and ES&S also assert portions of the submitted information are confidential under section 418.181 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevails); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 418.181 of the Government Code generally makes confidential information in the possession of a governmental entity revealing vulnerabilities of critical infrastructure, section 123.008(a) of the Election Code specifically allows a person access to user or operator manuals or other instructions or documents relating to the use of an electronic voting system or equipment provided to a political subdivision. Thus, we find the right of access provided by section 123.008 of the Election Code is more specific than, and prevails over, the confidentiality provided by section 418.181 of the Government Code. Therefore, the county may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.

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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.

ES&S states the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with copyright law and the risk of a copyright infringement suit. Accordingly, the county must release the submitted information; however, any information subject to copyright may only be released in accordance with copyright law.

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/pt

Ref: ID# 983675

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

c: Third Party  
(w/o enclosures)