



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 12, 2022

Mr. Sterling T. Burluson
Mitchell County Attorney
349 Oak Street, Room 206
Colorado City, Texas 79512

OR2022-38462

Dear Mr. Burluson:

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# 986287.

Mitchell County (the “county”) received a request for ballot envelopes for a specified election. We understand you to claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered your argument and reviewed the submitted representative sample of information.²

Initially, we note the county has redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov’t Code § 552.301(a), (e)(1)(D). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted

¹ Although you do not cite to section 552.101 of the Government Code in your brief, we understand you to raise this exception to disclosure based on your arguments.

² 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.

information be released. *See id.* § 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”). Thus, in the future, the county should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Next, we note the submitted application for ballot by mail is not responsive to the instant request. The county need not release non-responsive information in response to this request, and this ruling will not address that information.

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 information protected by other statutes, such as section 66.058 of the Election Code, which 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 submitted information 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 any of the information at issue under section 66.058 of the Election Code. However, pursuant to section 1.012(c) of the Election Code, all election records are public “except as provided by . . . the [Act]”; therefore, we will consider whether any of the information at issue is subject to an exception under the Act. Elec. Code § 1.012(c).

Section 552.130 of the Government Code excepts from public disclosure information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.³ *See* Gov’t Code § 552.130. Accordingly, the county must withhold the type of motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We are unable to determine if the submitted e-mail address falls within the scope of section 552.137(c). Accordingly, we must rule conditionally. To the extent the e-mail address we have marked is not excluded by section 552.137(c), the county must withhold it under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. *See id.* § 552.137(b). However, to the extent the e-mail address is excluded by section 552.137(c), the e-mail address may not be withheld under section 552.137 of the Government Code.

Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act.⁴ *Id.* § 552.147(a). Accordingly, the county may withhold the submitted social security number under section 552.147 of the Government Code.

In summary, the county must withhold the type of motor vehicle record information we have marked under section 552.130 of the Government Code. To the extent the e-mail address we have marked is not excluded by section 552.137(c), the county must withhold it under section 552.137 of the Government Code, unless the individual to whom the e-mail address belongs affirmatively consents to its release. The county may withhold the submitted social security number under section 552.147 of the Government Code. The county must release the remaining responsive information.

³ The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁴ We note 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 under the Act. Gov’t Code § 552.147(b).

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/pt

Ref: ID# 986287

Enc. Submitted documents

c: Requestor
(w/o enclosures)