



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Ms. Sheri Dye
Assistant Criminal District Attorney
Civil Section, Bexar County
300 Dolorosa, 4th Floor
San Antonio, Texas 78205

OR2010-08082

Dear Ms. Reed:

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# 381496.

The Bexar County Elections Administrator (the "county") received a request to inspect the mailing envelopes and all attachments that are part of the individual envelope file regarding early mail-in voting for the Precinct Four County Commissioner's race in the 2010 Democratic Party primary. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

You assert the requested information is made confidential by section 86.014 of the Election Code. Section 86.014 provides in relevant part:

(a) A copy of an application for a ballot to be voted by mail may be obtained from the early voting clerk:

- (1) 72 hours after the time a ballot is mailed to the voter; or
- (2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

¹We 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.

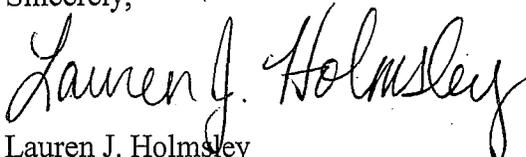
(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You state the requested information relates to a runoff election, which resulted from the first primary election. You assert that the requested information is confidential under section 86.014 of the Election Code. However, section 86.014 of the Election Code does not make information confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Rather, the statute provides for the public availability of a copy of an application for a ballot to vote by mail following the applicable time period, or of originals of applications and carrier envelopes after the election. Elec. Code § 86.014(a), (b). You state the runoff election occurred on April 13, 2010. Accordingly, pursuant to section 86.014(b) of the Election Code, the requested information is publicly available and must be released. *Cf.* Open Records Decision No. 505 at 4 (request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Lauren J. Holmsley
Assistant Attorney General
Open Records Division

LJH/jb

Ref: ID# 381496

Enc. Submitted documents

c: Requestor
(w/o enclosures)



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2010

Mr. Ben Stool
Assistant Criminal District Attorney
Civil Division, Administration Building
411 Elm Street, 5th Floor
Dallas, Texas 75202-3384

OR2010-08083

Dear Mr. Stool:

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#381473.

The Dallas County Elections Administrator (the "county") received a request for "every record of an alleged voter making an application for a mail ballot" including the original voter registration cards, current demographic applications for ballots, and ballot carrier envelopes for a specified election.¹ You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested 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

¹You state that the county received clarification of the original request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *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 over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note that you have submitted blank voter registration application forms as representative samples of responsive information for our review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the county in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

Code § 552.101. This section encompasses information protected by other statutes. Chapter 13 of the Election Code pertains to voter qualifications and registration. You raise section 552.101 in conjunction with section 13.004 of the Election Code, which provides in pertinent part:

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

...

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of Chapter 552, Government Code:

(1) a social security number;

(2) a Texas driver's license number;

(3) a number of a personal identification card issued by the Department of Public Safety;

(4) an indication that an applicant is interested in working as an election judge; or

(5) the residence address of the applicant, if the applicant is a federal judge or state judge, as defined by Section 13.0021, or the spouse of a federal judge or state judge, and included an affidavit with the registration application under Section 13.0021 or the registrar has received an affidavit submitted under Section 15.0215.

...

(d) The voter registrar or other county official who has access to the information furnished on a registration application may not post the following information on a website:

(1) a telephone number;

(2) a social security number;

(3) a driver's license number or a number of a personal identification card;

(4) a date of birth; or

(5) the residence address of a voter who is a federal judge or state judge, as defined by Section 13.0021, or the spouse of a federal judge or state judge, if the voter included an affidavit with the application under Section 13.0021 or the registrar has received an affidavit submitted under Section 15.0215.

Elec. Code § 13.004(a), (c), (d). The county must, therefore, withhold the social security, Texas driver's license, and personal identification numbers, an indication that applicants are interested in working as an election judge, and the residence address of any applicants who are federal or state judges or spouses of federal or state judges, from the requested registration applications under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. You also argue the voters' telephone numbers and dates of birth are excepted from disclosure, and highlight language in sections 13.004(a) and 13.004(d) of the Election Code. However, for information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Section 13.004(a) prohibits the county from transcribing, copying, or recording a voter's telephone number. *See* Elec. Code § 13.004(a). Section 13.004(d) prohibits the posting of certain specified information on a website. *See id.* § 13.004(d). Because neither section 13.004(a) or section 13.004(d) explicitly provides that information is confidential, we find that the county may not withhold the telephone numbers and birth dates of voters from the requestor under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code.

You state that many voters include their personal e-mail addresses on their voter registration applications. 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* Gov't Code § 552.137(a)-(c). The county must, therefore, withhold the e-mail addresses of members of the public under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release.³ *See id.* § 552.137(b).

Finally, you contend that the requested information may contain the election records of a voter or voters participating in the Address Confidentiality Program (the "Program"), which you assert are excepted from disclosure. *See* Crim. Proc. Code arts. 56.82(a) (attorney general shall establish Program to assist victims of certain offenses in maintaining a

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten 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.

confidential address), 56.88 (information held by attorney general relating to participant is confidential and may not be disclosed under the Act). Section 13.002(a) of the Election Code states “[a] person desiring to register to vote must submit an application to the registrar of the county in which the person resides.” Elec. Code § 13.002(a); *see also id.* § 13.002(e) (secretary of state may adopt rules regarding applications submitted by individuals in Program). Section 84.0021 of the Election Code pertains to voting ballot applications of participants in the Program and provides in pertinent part:

(b) The information contained in an application under this section relating to the address at which the applicant is registered to vote is confidential, except that the information must be disclosed if:

(1) requested by a law enforcement agency; or

(2) required by court order.

Id. § 84.0021(b); *see also* 1 T.A.C. § 81.38(b)(4)(B) (application for ballot to vote by mail belonging to individual in Program is not a public record). As the applications are submitted to the registrar of the county in which the individuals reside, we find the applications constitute information relating to the addresses at which the applicants are registered to vote. In this instance, the information is not being requested by a law enforcement agency or required by court order. Accordingly, to the extent the requested information contains the voting ballot applications of individuals participating in the Program, the county must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 84.0021 of the Election Code.

In summary: 1) the county must withhold the social security, Texas driver’s license, and personal identification numbers, an indication that applicants are interested in working as an election judge, and the residence address of any applicants who are federal or state judges or spouses of federal or state judges, from the requested registration applications under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code; 2) the county must withhold the personal e-mail addresses of members of the public to the extent the owners of the e-mail addresses have not affirmatively consented to their release; 3) to the extent the requested information contains the voting ballot applications of individuals participating in the Program, the county must withhold this information pursuant to section 552.101 of the Government Code in conjunction with section 84.0021 of the Election Code. The remaining information must be released.

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 http://www.oag.state.tx.us/open/index_orl.php.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'VB', is written over a horizontal line.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#381473

Enc. Submitted documents

c: Requestor
(w/o enclosures)