



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 5, 2014

Ms. Laura Garza Jimenez
County Attorney
Nueces County
901 Leopard, Room 207
Corpus Christi, Texas 78401-3680

OR2014-03727

Dear Ms. Jimenez:

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# 514320.

The Nueces County Clerk's Office (the "county") received a request for information pertaining to provisional voters who voted in the 2013 Nueces County election and information related to provisional ballots. You state you are releasing some of the requested information to the requestor. You claim that the submitted 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

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by other statutes, such as section 65.060 of the Election Code, which provides:

¹We assume that 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.

A social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety furnished on a provisional ballot affidavit is confidential and does not constitute public information for purposes of Chapter 552, Government Code. The general custodian of election records shall ensure that a social security number, Texas driver's license number, or number of a personal identification card issued by the Department of Public Safety is excluded from disclosure.

Elec. Code § 65.060. The submitted affidavits of provisional voters contain the social security numbers and Texas driver's license numbers, or numbers of a personal identification card issued by the Department of Public Safety, of provisional voters. Therefore, this information, which we have marked, is confidential under section 65.060 of the Election Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. You seek to withhold information within the submitted documents revealing whether the provisional ballot was accepted or rejected under provisions of the Texas Constitution. Article VI of the Texas Constitution is entitled "Suffrage." Section 4 of article VI states:

In all elections by the people, the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box; and the Legislature shall provide by law for the registration of all voters.

Tex. Const. art. VI, § 4. Texas courts have construed article VI, section 4 as providing a right to a secret ballot. *See Wood v. State ex rel. Lee*, 126 S.W.2d 4 (Tex. 1939); *Oliphint v. Christy*, 299 S.W.2d 933, 939 (Tex. 1957); *In re Talco-Bogata Consol. Indep. Sch. Dist. Bond Election*, 994 S.W.2d 343 (Tex. App.—Texarkana 1999, no pet.). You assert that, although the submitted materials do not, on their face, reveal the voters' ballots, the materials identify whether provisional ballots were accepted or rejected. By obtaining this information, which you have highlighted, along with other information not at issue in this ruling, you contend a requestor could ascertain how the voters cast their ballots. However, upon review of your arguments and the submitted information, we find that release of the information you have highlighted indicating whether provisional ballots were accepted or rejected does not effectively reveal the voter's ballot. Further, we find that, had the legislature intended to make such information confidential, it could easily have included that information within its listing of items made confidential in section 65.060 of the Election Code. *See Johnson v. Second Injury Fund*, 688 S.W.2d 107, 109 (Tex. 1985) (stating that "it is a settled rule [of statutory construction] that the express mention or enumeration of one person, thing, consequence, or class is equivalent to an express exclusion of all others"

(quoting *State v. Mauritz-Wells Co.*, 175 S.W.2d 238, 241 (Tex. 1943)); *see also* Attorney General Opinion JM-590 at 5 (1986). Accordingly, the county may not withhold the information you have marked pursuant to section 552.101 of the Government Code in conjunction with article VI, section 4 of the Texas Constitution.

In summary, the county must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with section 65.060 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 514320

Enc. Submitted documents

c: Requestor
(w/o enclosures)