



February 13, 2015

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

OR2015-02936

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# 553791.

The Nueces County Clerk's Office (the "county") received a request for nine categories of information pertaining to provisional ballots cast in the 2014 general election. You state the county has no information responsive to three of the categories of requested information.¹ You further state the county released information responsive to five of the categories of information. You claim some of the submitted information is exempted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you indicate some of the submitted information is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the county is not required to release such information in response to this request.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You seek to withhold information within the submitted documents 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 the names and addresses of provisional voters. You contend by obtaining the responsive information along with other information not at issue in this ruling, a requestor could ascertain how the voters cast their ballots. However, upon review of your arguments and the submitted information, we find release of the responsive information 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 Elec. Code § 65.060* (making confidential a social security number, Texas driver’s license number, or number of a personal identification card issued by Department of Public Safety furnished on a provisional ballot affidavit); *see also 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 responsive information pursuant to section 552.101 of the Government Code in conjunction with article VI, section 4 of the Texas Constitution. As you raise no further arguments against disclosure, the county must release the responsive information.

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,

A handwritten signature in black ink that reads "Claire Morris Sloan". The signature is written in a cursive style with a long, sweeping tail on the "S".

Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 553791

Enc. Submitted documents

c: Requestor
(w/o enclosures)