



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2015

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2015-10558

Dear Ms. Sheely:

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# 565422.

The Travis County Clerk's Office (the "clerk's office") received a request for (1) lists of all provisional voters generated during a specified election, (2) records that identify persons who presented themselves at polling stations which relate to receipt of a provisional ballot, and (3) records that identify the names and contact information for election judges and poll workers who worked during a specified election.¹ You state you have released some information to the requestor. You claim the submitted information is not subject to the Act. Alternatively, you claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

You contend the telephone numbers, e-mail addresses, and home addresses of temporary election workers are not subject to the Act. The Act is applicable only to "public

¹As you have not submitted a copy of the request for information, we take our description from your brief.

information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). You state the clerk's office received the request for information on March 12, 2015. However, as of the date of this letter, the clerk's office has not submitted for our review a copy of the written request for information. Consequently, we find the clerk's office failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Section 552.101 of the Government Code can provide a compelling reason to withhold information. Additionally, we note the submitted documents include information subject to section 552.137, which also provides a compelling reason to overcome the presumption of openness.² Accordingly, we will consider the applicability of sections 552.101 and 552.137 of the Government Code to the submitted information.

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." Section 552.101 encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note addresses and phone numbers of members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision No. 455 at 7 (home addresses and telephone numbers not protected under privacy). Upon review, we find you have failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the clerk's

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find you have failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the clerk's office may not withhold any portion of the submitted information under section 552.101 of the Government Code on the basis of constitutional privacy.

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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). The clerk's office must withhold the e-mail addresses in the submitted information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, the clerk's office must withhold the e-mail addresses in the submitted information, a representative sample of which we have marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The clerk's office must release the remaining 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, appearing to read "Cristian Rosas-Grillet", with a stylized flourish extending to the right.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 565422

Enc. Submitted documents

c: Requestor
(w/o enclosures)