



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

July 28, 2015

Mr. Randall Miller  
Assistant District Attorney  
Civil Division  
Dallas County  
411 Elm Street, 5th floor  
Dallas, Texas 75202

OR2015-15391

Dear Mr. Miller:

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# 573212.

The Dallas County Elections Department (the "department") received three requests for Mail Ballot applications, Early Vote rosters, Election Day rosters, and Mail Ballot jackets for a specified election for City of Dallas Council Districts 3, 4, 7, and 8. You state you will release some information. You state you do not have information responsive to some of the request.<sup>1</sup> You claim the submitted information is excepted from disclosure under

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

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. This section encompasses information protected by other statutes, such as section 86.014 of the Election Code, which states in relevant part:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the latest occurring election for which the application is submitted.

(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 explain voters may apply to vote by mail for an entire year by using an annual Application for Ballot by Mail (“ABM”) or may apply to vote by mail for a specific election. You also state a voter may send in a federal postcard application to vote by mail, which you explain is the functional equivalent of an annual ABM. In instances where a voter has applied to vote by mail for an entire year, you state the latest occurring election for which the applications at issue were submitted will be in November 2015. Thus, we conclude the department must withhold the annual ABM and annual federal postcard applications under section 552.101 in conjunction with section 86.014(a) until the first business day after the election day of the latest occurring election for which each application was submitted. We now address the applications to vote by mail for specific elections. You explain the election for District 4 was concluded at the time of the request. Therefore, you state the department will release the ABMs for District 4 where the voters applied to vote by mail for solely the May 9, 2015 election. You explain Districts 3, 7, and 8 resulted in a runoff election, which occurred June 13, 2015. We note the runoff election for Districts 3, 7, and 8 has now concluded. Thus, we find the ABMs at issue for Districts 3, 7, and 8 are now available for public inspection pursuant to section 86.014(a). *See* Elec. Code § 86.014(a); *cf.* Open Records Decision No. 505 at 4 (1988) (request made during the preservation period to inspect voted ballots must be treated as request to inspect the ballots when the retention period expires).

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<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov’t Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

We note some of the remaining information may be subject to the doctrine of common-law privacy. Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 satisfied. *Id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

Upon review, we find portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the department must withhold this information, a representative sample of which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the remaining information includes an e-mail address of a member of the public that is subject to section 552.137 of the Government Code.<sup>3</sup> Section 552.137 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). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the department must withhold the e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.

In summary, the department must withhold the annual ABM and annual federal postcard applications under section 552.101 of the Government Code in conjunction with section 86.014(a) of the Election Code until the first business day after the election day of the latest occurring election for which each application was submitted. The department must withhold the information for which we have marked a representative sample under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. The remaining information must be released.

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<sup>3</sup>The 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).

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](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 "Mili Gosar". The signature is fluid and cursive, with a long horizontal flourish at the end.

Mili Gosar  
Assistant Attorney General  
Open Records Division

MG/akg

Ref: ID# 573212

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)