



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 10, 2003

The Honorable Gwyn Shea  
Secretary of State  
State of Texas  
Post Office Box 12887  
Austin, Texas 78711

Open Records Decision No. 678

Re: Whether the confidentiality afforded to certain identifying information by section 552.1175 of the Government Code endures when a county voter registrar transfers the information to the Secretary of State and other authorized recipients (ORQ-62).

Dear Secretary Shea:

You ask several questions concerning the permissible disclosure of voter registration information about a peace officer. You explain that a peace officer notified a county voter registrar that the officer chooses to restrict public access to certain personal information. The officer notified the registrar pursuant to a provision in the Public Information Act (the "Act"), section 552.1175 of the Government Code.

Section 552.1175 reads as follows:

(a) This section applies only to:

- (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
- (2) county jailers as defined by Section 1701.001, Occupations Code;
- (3) employees of the Texas Department of Criminal Justice;  
and
- (4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

(c) A choice made under Subsection (b) remains valid until rescinded in writing by the individual.

(d) This section does not apply to information in the tax appraisal records of an appraisal district to which Section 25.025, Tax Code, applies.

TEX. GOV'T CODE ANN. § 552.1175 (Vernon Supp. 2003). Thus, covered individuals can instruct a governmental body to safeguard from public disclosure four specific categories of personal information: home address; home telephone number; social security number; and information that reveals whether the individual has family members. Importantly, the individual's choice is whether to restrict *public* access to the information.

You ask about the effect of section 552.1175 in light of an Election Code provision that generally makes voter registration lists public. Under Texas law, the original and supplemental lists of registered voters must contain the voter's name, residence address, date of birth, and registration number. *See* TEX. ELEC. CODE ANN. § 18.005(a)(1) (Vernon Supp. 2003). As you note, a county's voter registration information is used in several ways: (i) local election officials use the list to confirm a voter's residence address; (ii) the Secretary of State uses county voter information to assemble and maintain a statewide database of registered voters; and (iii) counties use voter registration information provided by the Secretary of State to create its jury source file. You ask whether the confidentiality afforded to certain personal information by section 552.1175 of the Government Code, in this case involving a county voter registrar's list of registered voters, extends to ancillary uses of the information, and also whether a covered person's request to local officials to safeguard this information extends to records maintained at the state level. As a threshold matter, we presume for purposes of this decision that the peace officer satisfies the criteria of section 552.1175 of the Government Code.

The county voter registrar conducts voter registration activities, including approval of voter registration applications and preparation of lists that identify registered voters for

use during elections.<sup>1</sup> *See id.* §§ 13.072, 18.001-.004 (Vernon 1986 & Supp. 2003). The registrar is required to prepare a certified list of registered voters for each county election precinct. *See id.* § 18.001(a) (Vernon Supp. 2003). The registrar is also required to prepare a supplemental list of registered voters, a registration correction list, and as an alternative to furnishing a supplemental list and a correction list, a certified revised original list of registered voters. *See id.* §§ 18.002-.004 (Vernon 1986 & Supp. 2003).

Section 18.008(a) of the Election Code states:

*The registrar shall furnish a copy of any list prepared under this subchapter to any person requesting it. The copy shall be furnished without the names of voters whose names appear on a list with the notation “S”, or a similar notation, if requested in that form.*<sup>2</sup>

*Id.* § 18.008(a) (Vernon Supp. 2003) (emphasis added). On the one hand, the Election Code requires a county registrar to provide a voter registration list, which includes a voter’s residence address, to “any person requesting it,” *see id.*, while on the other hand, the Government Code prohibits a county registrar from publicly releasing certain information about an individual, including the individual’s residence address, when the individual has triggered section 552.1175. *See* TEX. GOV’T CODE ANN. § 552.1175(b) (Vernon Supp. 2003). Assuming the peace officer has registered to vote in the county, the statutory provisions conflict. If two statutes are in irreconcilable conflict, we apply the rule of statutory construction that “the statute latest in date of enactment prevails.” *Id.* § 311.025(a) (Vernon 1998); *see also City of Dallas v. Mitchell*, 870 S.W.2d 21, 22-23 (Tex. 1994), *Olson v. Central Power and Light Co.*, 803 S.W.2d 808, 811 (Tex. App.–Corpus Christi 1991, writ denied). The Seventy-seventh Legislature enacted Senate Bill 247, which added section 552.1175 of the Government Code, on May 2, 2001. *See* Act of May 2, 2001, 77<sup>th</sup> Leg., R.S., ch.119, § 3, 2001 Tex. Gen. Laws 236, 237-38. Section 18.008(a) of the Election Code was enacted in 1985. *See* Act of May 13, 1985, 69<sup>th</sup> Leg., R.S., ch. 211, § 1, 1985 Tex. Gen. Laws 802, 833. Because section 552.1175 is the later enacted statute, it prevails. Consequently, if a county registrar receives a request for a voter registration list, the list released to a member of the public under section 18.008 must not include the residence address of a peace officer who has submitted a proper notification under section 552.1175.

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<sup>1</sup>The county tax assessor-collector is the voter registrar for the county unless the position of county elections administrator is created or the county clerk is designated as the voter registrar by the commissioners court. *See* TEX. ELEC. CODE ANN. §§ 12.001, 12.031, 31.032, 31.043 (Vernon 1986 and Vernon Supp. 2003).

<sup>2</sup>Section 15.111 of the Election Code requires a registrar to “enter the notation “S”, or a similar notation approved by the [S]ecretary of [S]tate, on the list of registered voters beside each voter’s name that also appears on the suspense list.” *Id.* § 15.111 (Vernon Supp. 2003). The suspense list is maintained by the registrar and contains the name of each voter who fails to submit to the registrar a confirmation of the voter’s current address or whose renewal certificate is returned to the registrar. *See id.* §§ 15.053(a), 15.081(a).

You also ask about access to lists of registered voters by election officials during an election. Texas law states that on request of the authority responsible for procuring election supplies for an election, the registrar must furnish to the authority a list of registered voters as soon as practicable. TEX. ELEC. CODE ANN. §§ 18.001(b), 18.006 (Vernon Supp. 2003). Various election officials must obtain a list of registered voters to determine whether a voter can be accepted. *See id.* §§ 32.031 (Vernon 1986) (election clerk), 32.071 (Vernon Supp. 2003) (presiding judge), 83.031-.034 (deputy early voting clerk), 85.031 (early voting clerk); *see also id.* §§ 18.001(d), 83.001(b)-(c). The county registrar's delivery of the list of registered voters in these circumstances is not, however, a release "to the public" prohibited by section 552.1175. *See also* Tex. Att'y Gen. ORD Nos. 667 (2000), 661 (1999), 650 (1996).

You also note that the Secretary of State maintains a master file containing registration information for each registered voter in the state. TEX. ELEC. CODE ANN. § 18.062(a) (Vernon Supp. 2003). By law, this statewide database must include each voter's name, county of residence, county election precinct number, residence address or, if the residence has no address, the address at which the voter receives mail, date of birth, and registration number. *Id.* § 18.062(c). Each county registrar delivers voter registration information to the Secretary of State. *See id.* § 18.063. Here, too, there is no conflict with section 552.1175 of the Government Code insofar as the registrar's submission of this information is not a public release.

The registrar of each county also furnishes to the Secretary of State a current list of registered voters in the county for use in reconstituting the jury wheel. *See* TEX. GOV'T CODE ANN. § 62.001 (Vernon Supp. 2003). This list must include, among other things, each voter's mailing address, and if available, each voter's social security number. *See id.* § 62.001(c). The Secretary of State combines the registrars' lists with another list from the Department of Public Safety, eliminates duplicate names, and sends the combined list to each county for use as the jury wheel. *See id.* § 62.001(g).<sup>3</sup> Again, this purely interagency transfer does not violate the prohibition in section 552.1175.

A recurring question in each of these interagency transfers is whether the peace officer's information that is confidential under section 552.1175 in the possession of the voter registrar remains confidential once transferred. We read section 552.1175 as applying only to the specific governmental body that receives the peace officer's notification. The statute states that the covered information is confidential "if the individual to whom the information relates . . . notifies the governmental body of the individual's choice." TEX. GOV'T CODE ANN. § 552.1175 (Vernon Supp. 2003). Thus, the notification imparts confidentiality to information only in the possession of the notified governmental body. A

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<sup>3</sup>A county may reconstitute the jury wheel in other ways. *See* TEX. GOV'T CODE ANN. § 62.001(h) (Vernon Supp. 2003) (voter registrar may combine lists), (i) (commissioners court may contract with governmental unit or private person to combine lists).

governmental body that has not received notification is not required to protect information under section 552.1175. Thus, in the situation you describe, the peace officer's request for confidentiality to the registrar does not extend to other governmental entities and authorized officials to whom the registrar transfers the information. Consequently, until such time as the Secretary of State, an election official, and the county receive from the peace officer a proper notification in which the officer directs that particular entity to restrict public access to the officer's information, section 552.1175 does not make the information confidential.

In the event that the Secretary receives a proper section 552.1175 notification, we must also consider section 18.066(a) of the Election Code. This statute makes the master file available to the public:

(a) The secretary of state shall furnish information in the state master file to any person on request not later than the 15<sup>th</sup> day after the date the request is received.

TEX. ELEC. CODE ANN. § 18.066(a) (Vernon 1986).<sup>4</sup> Thus, section 18.066(a) requires the Secretary of State to provide information in the state master file to "any person" requesting it, while section 552.1175 of the Government Code prohibits the Secretary of State from releasing to the public certain information about an individual including the individual's residence address when the individual has invoked section 552.1175. As with the registrar's public access statute, the confidentiality afforded by section 552.1175 is not defeated by section 18.066(a) since section 552.1175 was enacted later. *See* TEX. GOV'T CODE ANN. § 311.025(a) (Vernon 1998) (articulating the "later enacted statute" rule); *compare* Act of May 2, 2001, 77<sup>th</sup> Leg., R.S., ch. 119, § 3, 2001 Tex. Gen. Laws 236, 237-38, *with* Act of May 13, 1985, 69<sup>th</sup> Leg., R.S., ch. 211, § 1, sec. 18.066, 1985 Tex. Gen. Laws 802, 835. Consequently, if the Secretary of State receives a request for a voter registration list, the list released to a member of the public under section 18.066(a) must not include the address of a peace officer who has submitted to the Secretary a proper notification under section 552.1175.

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<sup>4</sup>Section 18.066(b)-(d) reads as follows:

(b) Information furnished under this section may not include a voter's social security number.

(c) The secretary shall furnish the information in the form and order in which it is stored or if practicable in any other form or order requested.

(d) To receive information under this section, a person must submit an affidavit to the secretary stating that the person will not use the information obtained in connection with advertising or promoting commercial products or services.

SUMMARY

A county voter registrar must not publicly release a voter registration list that includes information made confidential by section 552.1175 of the Government Code. A registrar may transfer information that is confidential under section 552.1175 to other governmental entities and authorized recipients. Information in the possession of a registrar that is confidential under section 552.1175 is not confidential when in the possession of governmental entities and authorized recipients to whom the information is transferred, such as election officials, the Secretary of State, and the county, until those entities and authorized recipients receive a proper section 552.1175 notification. The Secretary of State must not publicly release a voter registration list that includes information made confidential by section 552.1175 of the Government Code.

Yours very truly,

  
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