



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2010

Ms. Michelle M. Fraga
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002

OR2010-19407

Dear Mr. Daugherty:

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# 404313 (C. A. File No. 10GEN2304).

The Harris County Clerk's Office (the "county clerk") received a request for "[c]opies of all requests for mail in ballots for the 2010 General Election, excluding requests from active military and citizens living overseas" and information about citizens who mailed in ballots for the same election. You claim the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also received and considered comments submitted by the Public Information Coordinator of the Office of the Attorney General (the "OAG"). *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

¹We assume 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 those records contain substantially different types of information than that submitted to this office.

Initially, we note the information in Exhibit B-1 is not responsive to the request for information because it was received by the county clerk after the county clerk received the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the county clerk is not required to release Exhibit B-1 in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. App.—San Antonio 1978, writ dismissed).

You assert the information in Exhibit B-2 is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 86.014 of the Election Code provides the following:

(a) A copy of an application for a ballot to be voted by mail may be obtained from the early voting clerk:

- (1) 72 hours after the time a ballot is mailed to the voter; or
- (2) 48 hours after the time a ballot is mailed to the voter if the mailing occurs on the fourth day before election day.

(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.

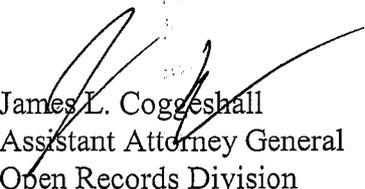
Elec. Code § 86.014. The submitted information consists of applications for ballots by mail. You assert the documents in Exhibit B-2 are confidential under section 86.014(a) because they “fall within 72 hours of when the requestor made her request.” However, section 86.014 does not make information confidential. *Cf.* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public); *see also* Open Records Decision No. 525 at 4 (1989) (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information). Rather, the statute provides for the availability of a copy of the application for a ballot to vote by mail following the applicable time period. Elec. Code § 86.014(a). We note the election to which these applications pertain has concluded. *Cf.* Open Records Decision No. 505 at (1988) (“a request made during the retention period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires”). Therefore, the applications are subject to public disclosure pursuant to section 86.014(a). *See* Elec. Code § 86.014(a); *see also* Attorney General Opinion No. DM-168 at 3 (1992). The exceptions found in the Act do not apply to information that is made public by other statutes. *See* Open Records

Decision No. 525 at 3 (1989). Thus, the county clerk may not withhold the applications under section 552.108 of the Government Code. Accordingly, the county clerk must release the requested information to the requestor. *See* Elec. Code § 86.014(a).

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vb

Ref: ID# 404313

Enc. Submitted documents

c: Requestor
(w/o enclosures)