



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 2, 2013

Mr. Robert Russo  
Counsel for the Lytle Independent School District  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2013-13369

Dear Mr. Russo:

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# 495210.

The Lytle Independent School District (the "district"), which you represent, received a request for a list identifying the sole voter in a specified district election. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments from the voter. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, we note you have redacted the voter's name and VUID number from the submitted information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See Gov't Code § 552.301(a)*; Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code § 552.302*.

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 the doctrine of constitutional privacy. 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. School Dist. Bond Election*, 994 S.W.2d 343 (Tex. App.—Texarkana 1999, no pet.). We note the materials do not, on their face, reveal the voter’s ballot. However, you inform our office, from the start of the early voting period to election day, only one voter voted in the election in question. Thus, we agree that release of the submitted information would effectively reveal the voter’s ballot.

Texas courts have further held the suffrage provisions of article VI apply only to governmental elections, such as general elections, which concern the general public. *Koy v. Schneider*, 221 S.W. 880 (Tex. 1920) (governmental elections, to which suffrage clause of the Texas Constitution is applicable, are elections, such as “general elections,” which directly and finally affect all the people of the included territory and which determine who shall hold public office or whether a particular government policy shall or shall not prevail). According to the court in *Koy*, governmental elections include elections which affect all the people of the included territory, and which determine who shall hold public office or whether a particular governmental policy shall or shall not prevail. *Id.* We note that in Texas, the holding of public elections to elect public officers is considered to be an attribute of a political subdivision of the state. *Bolen v. Bd. of Firemen, Policemen and Fire Alarm Operators’ Trustees of San Antonio, Texas*, 308 S.W.2d 904 (Tex. Civ. App.—San Antonio 1957, writ ref’d). The election in this case was for a public office within the district. Thus, we find the election to be a governmental election.

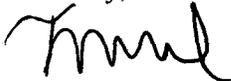
Finally, we note voters in Texas have long held a personal privilege to refuse to disclose for whom they voted, absent a showing that their vote was illegal. *Oliphint*, 299 S.W.2d at 939. In his comments to this office, the voter states he objects to the release of the submitted information on the grounds that it would reveal for whom he voted. Thus, we find the

district must withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with article VI, section 4 of the Texas Constitution.<sup>1</sup>

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,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/dls

Ref: ID# 495210

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>Because our ruling is dispositive, we do not address your remaining argument against disclosure.