



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2013

Ms. Ashley D. Fourt  
Assistant District Attorney  
Office of the Criminal District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2013-13506

Dear Ms. Fourt:

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# 495265 (13-05-0646, 13-05-0672, 13-05-0673).

The Tarrant County Elections Department (the "department") received three requests for 1) information regarding mail-in ballots not returned to the elections administrator for specified elections; 2) a list of voters for specified elections, including a list of voters who requested mail-in ballots, and 3) mail-in ballot applications and mail-in ballot envelopes for a specified 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 representative sample of information.<sup>1</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. Section 552.101 encompasses information protected by other statutes, including section 86.014 of the Election Code, which provides 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 election day.

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

Elec. Code § 86.014(a). We understand you to contend the submitted Applications for Ballot by Mail (“ABM”) are confidential under section 86.014(a). You have submitted an ABM that reflects that the voter only requested a ballot for the general election and not the runoff election, as well as an ABM in which the voter requested ballots for both the general and any runoff elections. You inform us the ABMs all pertain to the May 11, 2013 general election, and that many seats also resulted in runoff elections, which occurred on June 15, 2013. We note that both the general election as well as any runoff elections to which these ABMs pertain have now concluded. Thus, we find the submitted ABMs and their accompanying envelopes are now available for public inspection pursuant to section 86.014(a).<sup>2</sup> *See id.* § 86.014(a); *see also* Attorney General Opinion No. DM-168 at 3 (1992). Accordingly, the department must release the submitted ABMs and their accompanying envelopes to the requestors. *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 a request to inspect the ballots when the retention period expires).

You also raise section 87.121 of the Election Code with regard to the submitted roster. Section 552.101 of the Government Code also encompasses section 87.121, which provides in relevant part:

(a) The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent.

(b) For each person listed, the applicable roster must include:

(1) the person’s name, address, and voter registration number;

(2) an identification of the person’s county election precinct of registration; and

(3) the date of voting or the date the ballot was mailed to the person, as applicable.

...

(f) Information on the roster for a person to whom an early voting mail ballot has been sent is not available for public inspection, except to the voter

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<sup>2</sup>As we are able to make this determination, we need not address your assertion that, for those elections that resulted in a runoff election, the term “election day” in section 86.014(a) should be read to mean the date of the runoff election. However, we additionally note the 83<sup>rd</sup> legislature recently amended section 86.014(a) of the Election Code to provide that a “copy of an application for a ballot to be voted by mail is not available for public inspection . . . until the first business day after the election day of the latest occurring election for which the application is submitted.” *See* Act of May 27, 2013, 83<sup>rd</sup> Leg., R.S., S.B. 910, § 11 (to be codified as an amendment to Elec. Code § 86.014(a)). This amendment takes effect September 1, 2013.

seeking to verify that the information pertaining to the voter is accurate, until the first business day after election day.

Elec. Code § 87.121(a), (b), (f). You have submitted a roster titled "Absentee Ballot List" which reflects those voters who requested absentee ballots, the date the request was made, the date the ballot was printed, and the date the ballot was returned to the voting clerk, if in fact the ballot was returned. We understand you to contend the submitted voting rosters are confidential pursuant to section 87.121(f). However, as noted above, the elections to which the submitted roster pertains are now concluded. Thus, we find the information contained on the roster for these voters is now available for public inspection pursuant to section 87.121(f). Accordingly, the department must release the submitted roster to the requestors.<sup>3</sup> *See id.* § 87.121(f).

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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/bhf

Ref: ID# 495265

Enc. Submitted documents

c: 3 Requestors  
(w/o enclosures)

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<sup>3</sup>As we are able to make this determination, we need not address your assertion that, for those elections that resulted in a runoff election, the term "election day" in section 87.121(f) should be read to mean the date of the runoff election.