



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2014

Mr. Jacob Wedemeyer
Assistant County Attorney
El Paso County
500 East San Antonio, Room 503
El Paso, Texas 79901

OR2014-07591

Dear Mr. Wedemeyer:

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# 521784 (El Paso File No. OP-13-581).

The El Paso County Elections Department (the "department") received a request for five categories of information pertaining to the department's "Volunteer Deputy Registrar" program.¹ You state you have released some of the requested information. You claim portions of the remaining requested information are 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.²

¹You inform us the department sent the requestor an estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* §552.263(a). You also inform us the department received the required deposit on February 18, 2014. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

²We 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.

Initially, you state you will withhold motor vehicle record information pursuant to section 552.130(c) of the Government Code, e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009), and social security numbers pursuant to section 552.147(b) of the Government Code.³ You also state you have redacted information under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code* § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, you have been granted a previous determination to withhold information subject to section 13.004 of the Election Code without seeking a ruling from this office. In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See id.* §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), .302. Thus, in the future, the department should refrain from redacting any information it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Chapter 13 of the Election Code pertains to voter qualifications and registration. You raise section 552.101 in conjunction with section 13.004 of the Election Code, which provides in pertinent part:

- (a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

³Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See Gov't Code* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

...

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of Chapter 552, Government Code:

...

(4) an indication that an applicant is interested in working as an election judge[.]

Elec. Code § 13.004(a), (c)(4). Upon review, we find the information we have marked is subject to section 13.004(c)(4) of the Election Code. Accordingly, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code.

You also indicate the voters' telephone numbers are excepted from disclosure under section 13.004(a) of the Election Code. However, for information to be confidential under section 552.101, the provision of law must explicitly require confidentiality. A confidentiality requirement will not be inferred from a provision's structure. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Section 13.004(a) prohibits the department from transcribing, copying, or recording a voter's telephone number. Because section 13.004(a) does not explicitly provide that information is confidential, we find that the department may not withhold the telephone numbers of voters from the requestor under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code.

In summary, the department must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 13.004(c)(4) of the Election Code. The remaining information must be released.

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, 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 'Cristian Rosas-Grillet', written in a cursive style.

Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 521784

Enc. Submitted documents

c: Requestor
(w/o enclosures)