



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 5, 2014

Ms. Debra L. Goetz
Counsel for Hidalgo County
Atlas, Hall & Rodriguez, LLP
P.O. Box 3725
McAllen, Texas 78502-3725

OR2014-13581

Dear Ms. Goetz:

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# 531618.

Hidalgo County (the "county"), which you represent, received a request for information pertaining to the county's primary and municipal elections, including specified video surveillance, communications between election administrators and candidates, and sign-in sheets for the county elections department. You claim the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered the exceptions you claim.

Initially, we must address the county's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). In this instance, you state the county received the request for information on

May 16, 2014. Accordingly, the county's fifteen-day-business deadline was June 9, 2014. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the claimed exceptions apply, or a copy or representative sample of the information requested. Consequently, we find the county failed to comply with the requirements of section 552.301 of the Government Code.

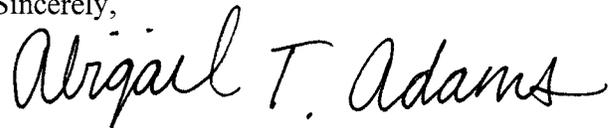
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.101 of the Government Code for confidential information, as well as sections 552.107 and 552.108 of the Government Code. Sections 552.107 and 552.108 are discretionary exceptions that protect a governmental body's interests and may be waived. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the requested information may be withheld under section 552.107 or section 552.108. Although you also raise section 552.101, which can provide a compelling reason to overcome the presumption of openness, because you have not submitted the requested information to this office for our review, we have no basis for finding it confidential under section 552.101 of the Government Code. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 that reads "Abigail T. Adams". The signature is written in a cursive style with a large initial 'A'.

Abigail T. Adams
Assistant Attorney General
Open Records Division

ATA/ac

Ref: ID# 531618

c: Requestor