



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 22, 2016

Ms. Lindsey Wolf
General Counsel
Office of the Secretary of State
P.O. Box 12697
Austin, Texas 78711-2060

OR2016-06560

Dear Ms. Wolf:

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# 602412.

The Office of the Secretary of State (the "secretary's office") received a request for certain "contact information for the political candidates who filed to run in Texas' 2016 local, state, and/or federal primary elections." The secretary's office states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.¹

Initially, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-05459 (2016). In that ruling, we determined the secretary's office must withhold the information we have marked under section 552.1175 of the Government Code if it (1) consists of home addresses or telephone numbers; (2) pertains to individuals who are subject

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.

to section 552.1175(a) of the Government Code; and (3) the individuals elect to restrict access to this information in accordance with section 552.1175(b) of the Government Code. Further, we concluded the secretary's office must withhold the marked information under section 552.137 of the Government Code and must release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously submitted and ruled on by this office, we conclude the secretary's office must continue to rely on Open Records Letter No. 2016-05459 as a previous determination and withhold or release the information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). To the extent the submitted information is not subject to Open Records Letter No. 2016-05459, we will address the arguments against release of the submitted information.

Next, you inform us the submitted information is subject to section 1.012 of the Election Code, which provides, in relevant part, the following:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by [the Election Code] or [the Act], all election records are public information.

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). In addition, section 141.035 of the Election Code provides, "[a]n application for a place on [an election] ballot . . . is public information immediately on its filing." *Id.* § 141.035. Therefore, under section 1.012(a), the secretary's office must make the submitted information available to the public, except as provided by the Act. Accordingly, we will address the secretary's office's arguments against disclosure.

Section 552.1175 of the Government Code may be applicable to some of the submitted information.² Section 552.1175 protects the home address, home telephone number,

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. The remaining information contains addresses and telephone numbers of individuals who may be subject to section 552.1175. Thus, the secretary's office must withhold the submitted addresses and telephone numbers under section 552.1175 only if such information (1) consists of home addresses or home telephone numbers, (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals elect to restrict access to this information in accordance with section 552.1175(b). However, the secretary's office may not withhold this information under section 552.1175 if it does not consist of home addresses or telephone numbers, the individuals to whom the information relates are not subject to section 552.1175(a), or the individuals do not elect to restrict access to this information in accordance with section 552.1175(b).

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The secretary's office does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the secretary's office must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.³

In summary, to the extent the submitted information is identical to the information previously submitted and ruled on in Open Records Letter No. 2016-05459, the secretary's office must withhold or release the information in accordance with that ruling. The secretary's office must withhold the submitted addresses and telephone numbers under section 552.1175 of the Government Code only if such information (1) consists of home addresses or home telephone numbers, (2) pertains to individuals who are subject to section 552.1175(a); and (3) the individuals elect to restrict access to this information in accordance with section 552.1175(b).

³We note section 172.028(a) of the Election Code, which was amended in the eighty-fourth Regular Legislative Session, requires the secretary to post on its website certain information that pertains to certified candidates in general primary elections, including an e-mail address at which a candidate receives correspondence relating to the candidate's campaign. *See* Elec. Code § 172.208(a)(2). However, the secretary informs us it has not yet posted any of the requested e-mail addresses on its website. *See* Act of June 1, 2015, 84th Leg., R.S., ch. 1179, § 16, 2015 Tex. Gen. Laws 3963, 3966 ("As soon as practicable, but not later than December 31, 2016, the secretary of state shall complete the modifications to the secretary of state's website as necessary to enable compliance with the changes in law made by [section 172.028]."). Therefore, we do not address the applicability of section 172.028 to any of the submitted information.

The secretary's office must withhold the information you have marked under section 552.137 of the Government Code. The secretary's office must release the remaining information.

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/bw

Ref: ID# 602412

Enc. Submitted documents

c: Requestor
(w/o enclosures)