



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2016

Mr. Jonathan L. Almanza
Assistant District Attorney
County of Hidalgo
Hidalgo County Courthouse
100 East Cano Street
Edinburg, Texas 78539

OR2016-15298

Dear Mr. Almanza:

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# 617737 (File No. 2016-0049-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received a request for the names and contact information of election workers present at the 2016 Republican and Democratic primary elections. You claim the submitted information is not subject to the Act. Alternatively, you state release of the submitted information may implicate the proprietary interests of the Hidalgo County Republican Party (the "Republican Party") and the Hidalgo County Democratic Party (the "Democratic Party"). Accordingly, you state, and provide documentation showing, you notified the Republican Party and the Democratic Party of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information and considered the submitted arguments.

Initially, we address your argument that the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

(a) information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988).

The submitted information consists of the names and contact information of election workers for the 2016 Republican and Democratic primary elections held in Hidalgo County. You assert the submitted information is not subject to the Act because it is the property of the Republican and Democratic parties, and therefore, does not concern the official business of the county. You also argue the Republican and Democratic parties, rather than the county, are the proper custodians of the submitted information because the election workers at issue are employed and managed by the respective parties, not the county. However, in Attorney General Letter Opinion 95-0753, the Office of the Attorney General (the "OAG") addressed whether primary election workers are employees of the state or a political subdivision for the purposes of the work they perform on primary elections. The OAG determined party primary election workers "are treated like the election workers in other public elections employed by the governmental bodies holding the elections[.]" noting chapter 32 of the Election Code provides for the appointment, service, and compensation of primary election judges and clerks in the same provisions as apply to election judges and clerks of other public elections. Attorney General Letter Opinion No. 95-073 (1995). Accordingly, the OAG concluded "the conduct of primary elections is entirely regulated by state law . . . [and a] party in its role of

conducting the Texas primary elections functions as an agency of the state.” *Id.* We also note the contract between the county and the respective parties, which you provided to our office, requires the parties to “provide to the [county] the names and contact information of all election workers[.]” Accordingly, upon review, we find the submitted list consisting of the names and contact information of election workers pertains the official business of the county. We also find the county maintains the information in connection with the transaction of its official business. Thus, the submitted information is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. *See* Gov’t Code §§ 552.002, .021.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the Republican Party or the Democratic Party explaining why the submitted information should not be released. Therefore, we have no basis to conclude the Republican Party or the Democratic Party has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the county may not withhold the submitted information on the basis of any proprietary interest the Republican Party or the Democratic Party may have in the information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 32.076 of the Election Code, which provides as follows:

(a) Except as provided by Subsection (b), an e-mail address or personal phone number of an election judge or clerk collected or maintained by the authority conducting the election is confidential and does not constitute public information for purposes of [the Act].

(b) An e-mail address or phone number described by Subsection (a) shall be made available on request to:

(1) any entity eligible to submit lists of election judges or clerks for that election; or

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) the state executive committee of a political party with a county chair eligible to submit lists of election judges or clerks for that election.

Elec. Code § 32.076. Upon review, we find portions of the submitted information consist of the personal phone numbers of election judges or clerks collected or maintained by the authority conducting the election. Further, we find none of the exceptions in section 32.076(b) apply in this instance. Therefore, the personal phone numbers we marked are confidential under section 32.076 of the Election Code and must be withheld under section 552.101 of the Government Code. As no further exceptions to disclosure have been raised, the county 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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 617737

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)