



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Ms. Beverly West  
Legal Department  
County of Galveston  
722 Moody Street, 5th Floor  
Galveston, Texas 77550

OR2016-16905

Dear Ms. West:

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# 620181.

The Galveston County Clerk's Office (the "county") received a request for seven categories of information pertaining to the City of Friendswood's (the "city") May 7, 2016 special election.<sup>1</sup> You state the county will release some information. We understand the county does not have information responsive to a portion of the request.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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<sup>1</sup>We note the county received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

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. This section encompasses information protected by other statutes, such as section 86.014 of the Election Code, which states 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 the election day of the latest occurring election for which the application is submitted.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You explain voters may apply to vote by mail for an entire year by using an annual Application for Ballot by Mail (“ABM”) or may apply to vote by mail for a specific election. In instances where a voter has applied to vote by mail for an entire year, you state the latest occurring election for which the applications at issue were submitted will be in November 2016. Thus, we conclude the county must withhold the annual ABM applications you have indicated under section 552.101 of the Government Code in conjunction with section 86.014(a) until the first business day after the election day of the latest occurring election for which each application was submitted.<sup>4</sup>

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.

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(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 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 an early voting roster which reflects those voters who requested absentee ballots and the date the request was made. We understand you to contend the submitted voting roster is confidential pursuant to section 87.121(f) because you believe the election at issue is the November 2016 general election. However, your brief states you provided the roster to the city for its use in its special election on May 7, 2016. Thus, we note the election to which the submitted roster pertains is now concluded. Accordingly, 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 county must release the submitted roster to the requestor. *See id.* § 87.121(f).

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>5</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. Accordingly, the county must withhold public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the county must withhold the annual ABM applications under section 552.101 in conjunction with section 86.014(a) until the first business day after the election day of the

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<sup>5</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

latest occurring election for which each application was submitted. The county must withhold public citizens' dates of birth in the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy. 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](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,



Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/bhf

Ref: ID# 620181

Enc. Submitted documents

c: Requestor  
(w/o enclosures)