



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 27, 2016

Mr. Arnold G. Polanco  
City Attorney  
City of Friendswood  
910 South Friendswood Drive  
Friendswood, Texas 77546

OR2016-16930

Dear Mr. Polanco:

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# 620380 (City Ref. No. W005939-050916).

The City of Friendswood (the "city") received two requests for certain information pertaining to mail-in ballots and the city's May 7, 2016 special election.<sup>1</sup> You state you have released some information. You claim the submitted information is 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.<sup>2</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

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.* §

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<sup>1</sup>You state the city received clarification of the first request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</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.

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 on November 8, 2016. Thus, we conclude the city must withhold the annual ABMs, which we have marked, under section 552.101 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. However, upon review, we find the remaining information does not consist of ABMs. Accordingly, section 86.014 does not apply, and the city may not withhold the remaining information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 87.121 of the Election Code, 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.

(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.

*Id.* § 87.121(a), (b), (f). You have submitted early voting rosters which reflect those voters who requested absentee ballots, the date the request was made, the date the ballot was mailed, and the date the ballot was returned to the voting clerk, if in fact the ballot was returned. We understand you to contend the submitted voting rosters are confidential pursuant to section 87.121(f). However, we note the election to which the submitted rosters pertain is now concluded. Thus, we find the information contained on the rosters for these voters is now available for public inspection pursuant to section 87.121(f). Accordingly, the city must release the submitted rosters to the requestor. *See id.* § 87.121(f).

In summary, the city must withhold the annual ABMs, which we have marked, under section 552.101 of the Government Code in conjunction with section 86.014(a) of the Election Code until the first business day after the election day of the latest occurring election for which each application was submitted. The city 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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 620380

Enc. Submitted documents

c: Requestor  
(w/o enclosures)