

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

The PUBLIC INTEREST LEGAL
FOUNDATION,

Plaintiff,

V.

Civil Action No. _____

ANN HARRIS BENNETT, in her official
capacity as Voter Registrar for Harris County,
Texas,

Defendant.

Serve: Ann Harris Bennett

1001 Preston St.

Houston, Texas 77002

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff Public Interest Legal Foundation (“the Foundation”), by and through undersigned counsel, brings this action for violations of Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. 20507.

1. Section 20507(i) of the National Voter Registration Act mandates the public disclosure of voter registration activities. This section requires election administration officials to make available for public inspection “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i)(1). Despite this requirement, and despite repeated requests for public inspection, the Defendant voter registrar for Harris County, Texas, has refused to comply and make her records available to the Foundation.

2. Plaintiff seeks declaratory and injunctive relief. The Foundation seeks a declaration that all of Defendant's records related to list maintenance, including but not limited to those

explicitly requested by the Foundation, are subject to public inspection without encumbrance by any state public disclosure laws and must be preserved for such inspection purposes. The Foundation seeks an injunction to compel Defendant Bennett to comply with Subsection 20507(i) through an order commanding her to permit inspection and duplication of all records concerning the maintenance of registration lists.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, because the action arises under the laws of the United States. This Court also has jurisdiction under 52 U.S.C. § 20510(b), as the action seeks injunctive and declaratory relief under the NVRA.

4. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1), because Defendant resides in this district, and under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

5. The Public Interest Legal Foundation, Inc., (the “Foundation”) is a non-partisan, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation seeks to promote the integrity of elections nationwide. The Foundation has dedicated significant time and resources to ensure that registration lists in the State of Texas, and in other jurisdictions across the United States, are free from ineligible registrants, noncitizens, individuals who are no longer residents, individuals who are registered in more than one location, and other inaccuracies.

6. Defendant Ann Harris Bennett is the Voter Registrar of Harris County, Texas. As such, she is charged with the administration of federal and state election laws, including registration of voters, the maintenance of the official lists of eligible voters of Harris County, together with the preservation of all records related to the activities involved in maintenance of

those lists. *E.g.*, Tex. Elec. Code Ann. § 12.001, Tex. Elec. Code Ann. § 15.022(a)-(b), and Tex. Elec. Code Ann. § 31.043; 52 U.S.C. § 20507(a)-(d).

7. Federal law requires Defendant Bennett to remove eligible registrants from the rolls. “A voting registrar *shall* correct an official list of eligible voters in elections for Federal office in accordance with change of residence information” 52 U.S.C. § 20507(d)(3). Federal law also requires “local election officials [to] perform list maintenance with respect to the computerized [state] list on a regular basis.” 52 U.S.C. § 21083(a)(2)(A).

8. Under 52 U.S.C. § 20507(i), Defendant Bennett is required to preserve all records related to her list maintenance activities for a period of two years, at a minimum, and must permit public inspection of all of these records.

BACKGROUND

The National Voter Registration Act

8. The NVRA provides that “[e]ach State shall maintain for at least 2 years and shall make available for public inspection . . . **all records** concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters” 52 U.S.C. § 20507(i)(1) (emphasis added). *Project Vote v. Long*, 682 F.3d 331, 337 (4th Cir. 2012) (“First, the statute clearly states that ‘*all records*’ falling under Section 8(i)(1) must be publicly disclosed, not just those explicitly listed in Section 8(i)(2).”) (emphasis by the court).

9. The only records exempted from the NVRA’s public disclosure requirement are “records relate[d] to a declination to register to vote or the identity of a voter registration agency through which any particular voter is registered.” 52 U.S.C. § 20507(i)(1).

Registration Lists and Registration List Maintenance in Texas

10. In addition to her federal statutory obligations, numerous Texas statutes vest the primary power to place eligible registrants' names on the Harris County registration list and to remove ineligible registrations from that list upon Defendant Bennett. These state statutory obligations include:

(a) Tex. Elec. Code Ann. § 13.071 requires the local registrar to review applications for registration to determine whether the applicant is eligible to register under the law.

(b) Tex. Elec. Code Ann. § 15.022(a) mandates "[t]he registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list."

(c) Tex. Elec. Code Ann. § 15.081 and § 16.032 direct that the local registrar maintains the suspense list for his or her county, and in appropriate circumstances the local registrar is empowered to cancel the registration of certain persons on the voter suspense list.

(d) Tex. Elec. Code Ann. § 16.0332 states that "the registrar shall cancel the voter's registration" . . . "if a voter fails to submit to the registrar proof of citizenship" within 30 days of being mailed a notice requesting such proof after the registrant is "excused or disqualified from jury service because of citizenship status"

(e) Tex. Elec. Code Ann. § 16.035 directs that when the local registrar cancels a registration, that cancellation is effective immediately.

(f) Tex. Elec. Code Ann. § 16.061 states that once the local registrar cancels a registration, the registrant has a right to challenge that cancellation at a hearing before the local registrar. After the hearing, the registrar is to issue a decision in writing concerning the challenge. Tex. Elec. Code Ann. § 16.066.

(g) Tex. Elec. Code Ann. § 18.001 requires the Defendant to prepare the certified list of registered voters eligible to vote in upcoming elections. This list is the government record which is used to determine eligibility to cast a ballot in a Texas election.

(h) Tex. Elec. Code § 16.034 requires that, when cancelling a registration for any reason, Defendant Bennett must enter the date of and reason for the cancellation on the registration application and duplicate registration certificate and make any other appropriate corrections in the registration records.

(i) Tex. Elec. Code § 16.0331 requires Defendant Bennett to maintain all requests for cancellation of registrations received.

(j) Tex. Elec. Code § 16.0332 requires Defendant Bennett to maintain all records related to cancellation of registrations because of citizenship status.

11. Under Texas law, Defendant Bennett is required to maintain the list of eligible voters for Harris County using the computerized voter registration list. Tex. Elec. Code Ann. § 18.061(c).

12. The inspection provision of the NVRA, 52 U.S.C. § 20507(i) requires Defendant Bennett to maintain all records related to all list maintenance activities, including those in Paragraph 10, whether or not they are included in the computerized voter registration system.

13. The inspection provision of the NVRA requires the Defendant to provide public inspection of all the records related to all list maintenance activities, including those listed in Paragraph 10, whether or not they are included in the computerized voter registration system. 52 U.S.C. § 20507(i). *Project Vote*, 682 F.3d at 334 (finding that the plaintiff had standing to sue the county administrator for failure to permit inspection); *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1366 (S.D. Fla. 2016) (“§ 20507(i) requires . . . that Defendant [county Supervisor of Elections]

‘make available for public inspection . . . *all records* concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters’”) (quoting 52 U.S.C. § 20507(i) (emphasis in original opinion)); *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, ___ F. Supp. 3d ___, 2017 U.S. Dist. LEXIS 23565 at *12, n.5 (E.D. NC 2017) (“[T]o the extent it maintains records concerning implementation of its list maintenance activities . . . [the Board of Elections] is required to make such records available for public inspection.”).

14. In addition, Tex. Elec. Code § 18.066 provides that, “(a) The secretary of state shall furnish information in the statewide computerized voter registration list to any person on request not later than the 15th day after the date the request is received. (b) Information furnished under this section may not include: (1) a voter’s social security number; or (2) the residence address of a voter who is a federal judge or state judge, as defined by Section 13.0021 , or the spouse of a federal judge or state judge, if the voter included an affidavit with the voter’s registration application under Section 13.0021 or the applicable registrar has received an affidavit submitted under Section 15.0215.”

Noncitizen Registration and Voting Is a Crime

15. A person must be a citizen of the United States in order to vote in Texas. Tex. Const. Art. 6, Sec. 2(a); Tex. Elec. Code Ann. § 11.002(a)(2).

16. Registration and voting by a noncitizen is criminalized under multiple federal felony statutes:

- a. 18 U.S.C. § 611 (criminalizes voting by illegal aliens in federal elections);
- b. 18 U.S.C. § 911 (criminalizes representing oneself to be a United States citizen);

c. 18 U.S.C. § 1015(f) (criminalizes false statements in order to register to vote in any federal, state, or local election);

d. 52 U.S.C. § 20511(2) (criminalizes the fraudulent submission of voter registration applications and the fraudulent casting of ballots).

17. Registration and voting by noncitizens is a matter serious enough for the Congress to implement a criminal deterrent where at least four separate federal felonies are implicated by the behavior.

The Foundation's Mission and Research

18. As part of its exempt purpose mission to advance election integrity and further public education on election issues, the Foundation submitted a request pursuant to the NVRA for list maintenance records maintained by the Harris County Voter Registrar on December 1, 2017.

19. Texas held a primary election on March 6, 2018, which included elections for federal office. 120 days before that election was November 6, 2017.

20. Research conducted by the Foundation in other states, including Virginia, Pennsylvania, and New Jersey shows that noncitizens can and do register to vote and participate in elections.

21. In large measure, the illegal registration of noncitizens was discovered by self-reporting by aliens who wish to cancel their registrations. There were no active processes in place to detect and remove noncitizen registrations in the studies conducted by the Foundation. Only self-reporting aliens, who often were concerned with jeopardizing their immigration status, led to their detection and removal from the rolls in Pennsylvania and in other states.

22. In Philadelphia, of the 86 noncitizens whose registrations were cancelled, 40 had cast a ballot in at least one election prior to cancellation. Public Interest Legal Foundation, *Aliens*

and Felons: Thousands on the Voter Rolls in Philadelphia at 2, October 4, 2016, available at <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>.

Noncitizen Registration and Voting in Harris County, Texas

23. Investigations by the Foundation and others have revealed that noncitizens are registering and voting in Harris County, Texas.

24. In 2006, then-Harris County Tax Assessor-Collector Paul Bettencourt testified before the U.S. Committee on House Administration that “illegal voting and registration by foreign nationals is difficult for my office to prevent without federal assistance.” “You Don’t Need Papers to Vote?” Non-Citizens Voting and ID Requirements in U.S. Elections: Hearing before the U.S. Committee on House Administration, June 22, 2006, Transcript at 67, 109th Cong., 2nd Sess.¹ His written and oral testimony described how his office is left largely in a reactionary posture when preventing against noncitizen participation, noting three distinct levels of detection (as referenced in the Foundation’s initial request for documents): the checkbox “honor system” for declaring eligibility; alerts from the U.S. Customs and Immigration Service that a registered voter is attempting to naturalize; and data shared from the Harris County Clerk of Court regarding individuals’ claims of noncitizenship to avoid jury duty.

25. Registrar Bettencourt asserted to Congress, “The extent of illegal voting by foreign citizens in my home county is impossible to determine, but we know that it has and will continue to occur.” *Id.* The testimony added that at the time, “nearly 1 in 4” Harris County residents were born outside of the United States and 500,000 were noncitizens. *Id.* Bettencourt noted “as it now stands, we have no real way to stop foreign citizens from voting.” *Id.* at 68. The Registrar also

¹ Available at <https://www.scribd.com/document/333272572/HOUSE-HEARING-109TH-CONGRESS-HEARING-ON-YOU-DON-T-NEED-PAPERS-TO-VOTE-NON-CITIZEN-VOTING-AND-ID-REQUIREMENTS-IN-U-S-ELECTIONS>.

shared examples of foreign nationals from Norway and Brazil managing to register multiple times and cast ballots in federal elections—only to be discovered after the fact. *Id.* To Bettencourt’s knowledge, his office was aware of several dozen more cases at the time of his federal testimony. *Id.*

26. In 2015, the Foundation submitted research on behalf of a client to the U.S. Supreme Court detailing a very small sample of 13 cases where individuals admitted to noncitizenship or refused to declare a status at all when applying for voting, yet were registered anyway. Brief of the American Civil Rights Union as Amicus Curiae, *Kobach v. U.S. Election Assistance Commission*, No. 14-114, available at <http://publicinterestlegal.org/files/Kobach-Amicus-Final.pdf>.

27. Separately in 2015, then Harris County Tax Assessor-Collector Mike Sullivan offered testimony before the Texas House Elections Committee hearing and fielded specific questions regarding noncitizen voter participation in Harris County. House Bill 76, A Bill to Establish Online Voter Registration: Hearing before the Texas House Elections Committee, May 2, 2015, video beginning at 3:54:59, available at http://tlchouse.granicus.com/MediaPlayer.php?view_id=37&clip_id=10962. When asked if his office “ever discovered that someone registered is not an American citizen?” Sullivan replied, “Yes sir ... We turn that over to the Harris County District Attorney’s Office on a regular basis. The last letter I signed had over 300 cases on it.” *Id.* He explained that such an effort occurred on a “monthly” basis typically containing cases in the “low hundreds” and confirmed in the affirmative that a sum of cases would amount in the “low thousands annually.” *Id.*

The Foundation Sought and Was Denied Access to Records Concerning Noncitizen Registrations

28. The Foundation's exempt purpose mission includes research and public education regarding list maintenance across the country and its effects on election integrity and the efficient conduct of elections. The Foundation pursues this mission by conducting research into the state of registration lists and list maintenance procedures, while also encouraging remedial action by working with election administrators nationwide and educating the public. The Foundation's exempt activities include pursuing remedial litigation as a "private attorney general" if necessary. *See Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 364 (5th Cir. 1999) (finding that the inclusion of a private right of action in the NVRA shows Congress's intent to "encourage enforcement by so-called 'private attorneys general'" (quoting *Bennett v. Spear*, 520 U.S. 154, 157 (1997))).

29. The Foundation's mission and activities are being directly burdened and hampered by Defendant Bennett's refusal to provide public inspection of the requested list maintenance records.

30. On December 1, 2017, the Foundation submitted a written request to Defendant Bennett in accordance with 52 U.S.C. § 20507(i) for inspection of list maintenance records. Exhibit A ("December 1 Request"). The request explicitly stated that the request for disclosure of records was being made pursuant to the NVRA.

31. Pursuant to the public records inspection provision of the NVRA, 52 U.S.C. § 20507(i), the Foundation's December 1 Request sought the opportunity to inspect or receive electronic copies of records concerning noncitizen registrations, including records related to their removal from the registration lists and referrals to law enforcement. Exhibit A.

32. The December 1 Request specifically identified four categories of documents:

(a) Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security, Texas Department of Public Safety, and from the Texas Secretary of State since January 1, 2006. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. This request extends to electronic records capable of compilation. Exhibit A at 1.

(b) All documents and records of communication received by your office from registered voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility. Please include any official records indicating maintenance actions undertaken thereafter. Exhibit A at 1.

(c) All documents and records of communication received by your office from jury selection officials—state and federal--since January 1, 2006 referencing individuals who claimed to be non-U.S. citizens when attempting to avoid serving a duty call. This request seeks copies of the official referrals and documents indicating where your office matched a claim of noncitizenship to an existing registered voter and extends to the communications and maintenance actions taken as a result that were memorialized in any written form. Exhibit A at 1-2.

(d) All communications regarding your list maintenance activities relating to #1 through 3 above to the District Attorney, Texas Attorney General, Texas State Troopers/DPS, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation. Exhibit A at 2.

33. The December 1 Request also requested inspection of any related records. Exhibit A at 2-3.

34. The December 1 Request offered to make arrangements for inspection or production of the requested records and provided contact information. Exhibit A at 3.

35. The December 1 Request informed Defendant Bennett, "[I]f you fail to make these records available for public inspection, you will be in violation of the NVRA and subject to an action to enforce the public records provisions of the NVRA." Exhibit A at 3.

36. The Foundation received a response from the office of the Harris County Attorney dated December 14, 2017. Exhibit B ("Dec. 14 Clarification Request"). This response asked for clarifications regarding the Foundation's Dec. 1 Request. The Dec. 14 Clarification Request did not mention the NVRA at all. Exhibit B. Instead, it stated that the Foundation's request was being treated under the Texas Public Information Act ("TPIA"). Tex. Gov't Code § 552.001 *et. seq.* The Dec. 14 Clarification Request asked for clarifications regarding whether only records related to noncitizen removals were being requested, whether the request was being made under the Texas Public Information Act, and whether the Foundation was seeking inspection or copies of the records. Exhibit B. All of these questions were clear from the Foundation's Dec. 1 Request.

37. The Foundation responded to the Defendant's Dec. 14 Clarification Request with a letter dated December 18, 2017. Exhibit C ("Dec. 18 Clarification Response"). In this letter, the Foundation explained how all of the clarifications requested by the Defendant were in fact in the

original request and proceeded to answer the clarifications. The Dec. 18 Clarification Response reiterated that the inspection request was being made under 52 U.S.C. § 20507(i) of the NVRA and not under the Texas Public Information Act. Exhibit C at 1. The Dec. 18 Clarification Response informed the Defendant that the NVRA inspection provision is not subject to the restrictions of the TPIA and that the Foundation is seeking inspection or photocopying only where electronic reproduction is not possible. Exhibit C at 2.

38. Defendant Bennett did not produce any of the requested records and the Foundation received no further direct communications from the Defendant after sending the Dec. 18 Clarification Response.

39. The next communication the Foundation received was a copy of a letter and memorandum from the Harris County Attorney to the Attorney General of Texas, dated January 4, 2018. Exhibit D (“Jan. 4 AG Submission”). In this letter to the Attorney General, the Defendant again does not mention the NVRA at all, despite the explicit and clear reiteration in the Foundation’s Dec. 18 Clarification Response. Instead, the Defendant ignored and rejected the Foundation’s NVRA inspection request, and submitted the matter to the Attorney General treating it as a request under the Texas Public Information Act. The Jan. 4 AG Submission seeks an exception to the TPIA regarding the records referred to in the Foundation’s request.

40. Therefore, on January 4, 2018, the Defendant rejected the Foundation’s NVRA inspection request and proceeded to process the request under the TPIA instead.

41. On January 11, 2018, the Harris County Attorney, on Defendant’s behalf, proceeded to submit a memorandum to the Texas Attorney General explaining the exception they were seeking under the TPIA. Exhibit E (“Jan. 11 Memo”). The Foundation was copied. This memo, yet again, makes no mention of the NVRA whatsoever. In the Jan. 11 Memo, the Defendant

explains, in relevant part, her belief that the TPIA “clearly prohibits the Harris County Voter Registrar from producing” all of the records requests by the Foundation. Exhibit E at 3. The Jan. 11 Memo also describes the Defendant’s intention to withhold and redact important and relevant information from certain records. Exhibit E at 7 (“[W]e seek to withhold the identity of the complainant on the basis on the basis of the informer’s privilege.”).

42. In a letter dated January 18, 2018, the Foundation informed the Defendant that she was in violation of the NVRA for rejecting the Foundation’s inspection request. Exhibit F (“NVRA Violation Letter”). In the letter, the Foundation clarified for the third time, “Our request is not a request pursuant to the Texas Public Information Act.” Exhibit F at 1. Accordingly, as explained in the NVRA Violation Letter, the provisions of the TPIA are irrelevant to the Foundation’s request.

43. The Foundation has received no response from Defendant regarding the NVRA Violation Letter.

44. The Foundation was copied on a letter from the Texas Attorney General to the Defendant dated March 15, 2018. Exhibit G (“AG Response”). The letter responds to the Defendant’s Jan. 11 Memo. The AG Response makes no mention of the NVRA. The AG Response states that, under the TPIA, certain records are not subject to disclosure at all and others must be redacted.

45. True and correct copies of all the communications described in Paragraphs 30 through 44 are attached as Exhibits to this Verified Complaint.

46. Since the Dec. 1 Request, the Defendant has not permitted the inspection of any of the records requested by the Foundation.

47. Defendant's violation of the NVRA by rejecting the Foundation's inspection request and instead processing it as a TPIA request occurred on at least January 4, 2018, which was within 120 days of the March 1, 2018 Texas primary election. 52 U.S.C. § 20510(b)(2).

48. The Defendant has not made any records available for public inspection, but has rejected the Foundation's requests under the NVRA.

Defendant Has Violated the NVRA by Refusing to Fulfill the Foundation's NVRA Inspection Request

49. The records requested from Defendant on December 1, 2017, are records "concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the official lists of eligible voters. . . ." 52 U.S.C. § 20507(i)(1).

50. Under the NVRA, the Defendant is obligated to make the requested records available for public inspection and photocopying. Defendant has not done so and is therefore in violation of law.

51. The inspection provision of the NVRA preempts state law and is not subject to limitations or restrictions through state public information or privacy laws.

Defendant's Violations of Law Have Harmed the Foundation and the Public

52. As an integral part of its public interest mission, the Foundation gathers and disseminates information about compliance by state and local officials with federal election statutes, including election integrity statutes.

53. Using records and data compiled through use of the NVRA's public inspection provision, the Foundation has produced written reports concerning the registration and voting activity of noncitizens in order to advance its public education mission. These reports have been published on the Internet. *See* Public Interest Legal Foundation, *Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia*, May 29, 2017,

available at <https://publicinterestlegal.org/blog/alien-invasion-ii-sequel-discovery-cover-non-citizen-registration-voting-virginia/>; Public Interest Legal Foundation, *Garden State Gotcha*, Sept. 11, 2017, available at https://publicinterestlegal.org/files/Garden-State-Gotcha_PILF.pdf; Public Interest Legal Foundation, *Aliens & Felons: Thousands on the Voter Rolls in Philadelphia*, October 4, 2016, available at <https://publicinterestlegal.org/files/Philadelphia-Litigation-Report.pdf>.

54. The Foundation has disseminated this to federal, state, and local election officials and to the public through media and press sources. Representatives of the Foundation have appeared on national television programs discussing the inadequacies of state election systems in preventing aliens from registering and voting. The Foundation believes that transparency is an important tool to keep registration lists free of illegal registrants.

55. The Foundation plans to use the requested records to educate the public regarding noncitizen registration and voting in Harris County and participate in the ongoing debate regarding foreign participation in elections.

56. By denying the Foundation access to the requested records Defendants have impaired and will impair the Foundation from carrying out its mission.

57. A central activity of the Foundation is to promote election integrity and compliance with federal and state statutes that promote the integrity of elections by state and local election administrators. In doing so, the Foundation encourages remedial efforts on the part of election administrators so that they can come into compliance with the NVRA's requirements.

58. The Foundation plans to use the requested records to effect change at the administrative and legislative levels prior to the November election. These plans include meeting with election officials, crafting and proposing remedial solutions, and using the NVRA's private

right of action provision to enforce the NVRA's obligation to maintain registration rolls free of ineligible registrants.

59. The Defendant's violations of NVRA have impaired and will impair the Foundation from carrying out this component of its mission because the Foundation is prevented from determining the extent of any list maintenance issues in Harris County. This is the very purpose of the enforcement provision of the NVRA. *See Ass'n of Cmty. Orgs. for Reform Now v. Fowler*, 178 F.3d 350, 364 (5th Cir. 1999).

60. The failure of the Defendant to comply with her obligations under the NVRA has also undermined the confidence of Texas's properly registered voters in the integrity of the registration rolls, and, accordingly, has undermined the integrity of elections held across the State of Texas.

61. Defendant's violation has not been corrected within 20 days after receipt of the Foundation's January 18, 2018, notice of the violation for failure to provide inspection of records. 52 U.S.C. § 20510(b)(2).

62. The Foundation has spent considerable time and financial resources in an effort to obtain the requested records and to improve the accuracy of registration lists in Texas.

63. The Defendant's failure to permit inspection and duplication of the requested records pursuant to the NVRA has frustrated, impeded, and harmed the efforts of the Foundation.

64. A general federal election will take place on November 6, 2018. Remedial list maintenance activity must conclude 90 days before that election. Thus, there is a very limited time available to review list maintenance records and pursue remedial action.

COUNT I

65. Plaintiff realleges paragraphs 1 through 64 as if fully stated herein.

66. Defendant has failed to permit inspection and duplication of records concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters, in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i). *See Project Vote v. Long*, 682 F.3d 331, 334-335 (4th Cir. 2012) (The NVRA requires local election officials to provide such data to the public).

67. Defendant's violation has not been corrected within 20 days of the Foundation's notice of the violation on January 18, 2018, and the violation occurred within 120 days of an election for federal office. 52 U.S.C. § 20510(b)(2).

68. Plaintiff has suffered an irreparable informational injury as a direct result of Defendant's violations of Section 8 of the NVRA because the Plaintiff does not have the data and records requested. The NVRA confers upon Plaintiff a right to information, and by denying that information to the Plaintiff, the Defendants have caused a concrete injury to the Plaintiff. This violation also prevents the Plaintiff from engaging in its research, educational, and remedial activities.

69. Plaintiff will continue to be injured by the Defendant's violations of Section 8 of the NVRA unless and until the Defendant is enjoined from continuing to violate the law. This injury is all the more urgent because of the impending list maintenance deadline of 90 days before the November 6, 2018 federal election.

70. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of Section 8 of the NVRA;
2. Declaring that the inspection provisions of the NVRA, 52 U.S.C. § 20507(i), preempt state laws and are not subject to limitations or restrictions by state laws.
3. Ordering the Defendant to provide to the Plaintiff the records concerning their implementation of programs and activities to ensure the accuracy and currency of voter registration lists;
4. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 52 U.S.C. § 20510(c); and
5. Granting Plaintiff further relief that this Court deems just and proper.

Respectfully submitted,

For the Plaintiff Public Interest Legal
Foundation:

Dated: March 29, 2018

/s/ Andy Taylor

Andy Taylor SBN: 19727600
Southern District Bar No.: 10002
Andy Taylor & Associates, P.C.
2628 Hwy 36 South #288
Brenham, Texas 77833
Tel: 713-222-1817
Fax: 713-222-1855
andy@andytaylorlaw.com

J. Christian Adams*
Public Interest Legal Foundation
300 N. Washington Street, Ste. 405
Alexandria, VA 22314
(317) 203-5599
adams@publicinterestlegal.org

Joseph A. Vanderhulst*
Noel H. Johnson*
Public Interest Legal Foundation
32 E. Washington Street
Suite 1675
Indianapolis, IN 46204
(317) 203-5599
jvanderhulst@publicinterestlegal.org

**Pro Hac Vice applications to be filed*

VERIFICATION

I swear (or affirm) under the penalties for perjury under the laws of the United States that the foregoing statements concerning the Public Interest Legal Foundation found in this Complaint are true and correct to the best of my knowledge and understanding.

Dated: this 29 day of March, 2018



Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
32 E. Washington St., Ste. 1675
Indianapolis, IN 46204

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

December 1, 2017

Harris County Voter Registrar
P.O. Box 3527
Houston, TX 77253-3527
Email: voters@hctx.net

RE: NVRA public disclosure request

Dear Disclosure Officer(s):

I am writing to request inspection or copies of records related to your office's voter list maintenance obligations under the National Voter Registration Act of 1993 (NVRA).

The National Voter Registration Act of 1993, 52 U.S.C. § 20501 *et seq.*, requires your office to make available for public inspection "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters." 52 U.S.C. § 20507(i).

Pursuant to Section 20507(i) of NVRA, I request that your office reproduce or provide the opportunity to inspect the following:

1. Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security, Texas Department of Public Safety, and from the Texas Secretary of State since January 1, 2006. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. This request extends to electronic records capable of compilation.
2. All documents and records of communication received by your office from registered voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility. Please include any official records indicating maintenance actions undertaken thereafter.
3. All documents and records of communication received by your office from jury selection officials—state and federal—since January 1, 2006 referencing individuals who claimed to be non-U.S. citizens when attempting to avoid serving a duty call. This request seeks copies of the official referrals and documents indicating where your office matched a

claim of noncitizenship to an existing registered voter and extends to the communications and maintenance actions taken as a result that were memorialized in any written form.

4. All communications regarding your list maintenance activities relating to #1 through 3 above to the District Attorney, Texas Attorney General, Texas State Troopers/DPS, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation.

Understanding that federal file retention laws may impact some disclosures, an optimal grouping of documents presented per registered voter disclosed would contain the following:

- The completed voter application form (redacted where necessary to prevent disclosures of claimed Social Security number and signature);
- Referral documents/transmissions for new or updated voter registration applications provided by state agencies charged with National Voter Registration Act (Motor Voter) duties;
- Records indicating the "voter profile" or "voter view" or similar feature provided within your statewide voter registration system database program which details all information kept per voter, to include but is not limited to:
 - Full name on file (including previous names)
 - Date of birth
 - Voter ID number
 - Voter registration date (including previous dates of registration)
 - Date of last maintenance/update action
 - Reason code(s) for previous maintenance action(s)
 - County of registration
 - Detailed address information history (residential and mailing)
 - Political party designation history (if claimed/recorded)
 - Registration method history (e.g. self, NVRA agency transaction, third-party, etc.)
 - Assigned voting districts history
 - Election participation history in full
 - All internal memoranda stored within each "profile"
- All letters, postcards, and other mailings sent from your office to the voter in question with notations for types of postage or method of delivery indicated where possible;
- All letters, emails, logged phone calls, documents, and other communications from the voter in question to your office—including those communications from legal counsel or claimed relatives on their behalf—that is either affirmatively sent by the voter or in response to a mailing received by your office or other official entity;
- All documents your office may receive from federal entities to include but are not limited to the U.S. Department of Homeland Security/USCIS detailing inquiries regarding

registered voters in your county and your responses given;

- All documents your office may generate upon request to the voter or federal agency concerned with immigration matters for the purpose of detailing a registration status history and voting history;
- All documents and communications between your office and the registered voter in question with respect to pending immigration matters; and
- Any documents sent by your office to the voter to require that an affirmation of citizenship or noncitizenship be given in writing with responses included, where applicable.

I will contact your office in a few days to arrange a convenient time to conduct the inspection. If I do not hear from you, representatives of the Foundation will come to your office by December 18 to conduct the inspection of these requested list maintenance records.

If you wish to dispense with a public inspection and provide copies of these records instead, please send them to following address:

32 E. Washington Street
Suite 1675
Indianapolis, IN 46204

This is your first notice that if you fail to make these records available for public inspection, you will be in violation of the NVRA and subject to an action to enforce the public records provisions of the NVRA. The statute provides for an award of attorney's fees.

Should you need to contact me regarding this request, please contact me via letter at the above address, or via email at lchurchwell@publicinterestlegal.org.

Thank you for your service on this matter.

Sincerely,



Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org



The Office of Vince Ryan
County Attorney

December 14, 2017

Mr. Logan Churchwell
32 E. Washington Street, Suite 1675
Indianapolis, Indiana 46204
lchurchwell@publicinterestlegal.org

*Sent via e-mail and
Certified Mail/ Return Receipt Requested*

RE: Public information request to the Harris County Voter Registrar. *C. A. File No. 17PIA0762*

Dear Mr. Churchwell:

On behalf of the Harris County Voter Registrar's office, this letter acknowledges receipt of your December 1, 2017 request for documents submitted pursuant to the Texas Public Information Act, Tex. Gov't Code §552.001 *et. seq.*, (the "Act"). This correspondence also serves as notification of the need for clarification in order to fulfill your request.

Your request seeks the "inspection or copies of" information, dating back to January of 2006, related to 1) "registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source," 2) requests for registration cancellations by voters or their agents for "any reason related to non-U.S. citizenship/ineligibility," 3) individuals who claimed to be a non-U.S. citizens when attempting to avoid jury duty, seeking copies of the official referrals and other related documents, and 4) certain communications to various law enforcement agencies.

Initially, we note that it is unclear as to whether you are choosing to inspect or copy, or to both inspect and copy, the requested information. Please clarify your request so that your desired method of receiving or reviewing the requested information is clear. We also note that the apparent basis for your request, National Voter Registration Act, 52 U.S.C. § 20507(i), applies to the States and limits the time period that certain records must be maintained to two years. Please be aware that for this reason, many of the records you seek may not be available. However, the Texas Secretary of State's office may have a portion of the information you are seeking in a more suitable format with a significantly lower costs associated with the production. Please advise as to whether you would like to withdraw your request and seek the information from the Texas Secretary of State's office or would like to narrow the time frame of the request.

As stated, this broad request entails the use of significant personnel resources to retrieve responsive information that may or may not yield the desired information. In an attempt to find potentially responsive information to your request, the Harris County Voter Registrar's Office will have to expend labor sorting through years of records, some of which will likely contain confidential information, may be only potentially responsive, or may not be responsive at all. Please clarify and confirm whether you intend to pursue such a labor intensive search for documents or if you would like to narrow your request, as noted below.

Item 1: "Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration..."

Please clarify whether you are requesting the information obtained under section 62.113(b)(1) of the Texas Government Code and whether you are requesting the Harris County Voter Registrar's office to use this information in order to create and produce the requested information, i.e., names of registered voters, associated voter history, notices, responses, actions taken, etc. Note that the County Clerk's office is the custodian of voter history, not the Voter Registrar.

Item 2: "All documents and records of communication received by your office from voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility..."

Specifically, when you include "ineligibility" as a reason for the request for cancellation, do you mean to encompass each and every eligibility requirement under Tex. Elec. Code §13.001? Or did you intend to limit the reason for cancellation to ineligibility based solely on non-U.S. citizenship? Narrowing the scope of your request will assist the Voter Registrar's office in their efforts to produce responsive documents. For example, it is a relatively common practice for voters to request cancellation when they have moved to another county (i.e., ineligible under §13.001(a)(5)); such requests for cancellation would be responsive under your broad request.

Please understand that voters request cancellations using a form in which they are not required to state any reason for which they are seeking cancellation. Any indication that a voter has requested cancellation for a particular "reason" would therefore be derived from incidental documentation through a labor and time intensive review.

Item 3: "All documents and records of communication received by your office from jury selection officials—state and federal—since January 1, 20026 referencing individuals who claimed to be non-U.S. citizens..."

Please clarify whether you are requesting the information obtained under section 62.113(b)(1) of the Texas Government Code and whether you are requesting the Harris County Voter Registrar's office to use this information in order to create and produce the requested information, i.e., matched registered voters, associated communications, etc.

Item 4: "All communications regarding your list maintenance activities relating to #1 through 3 above to [various law enforcement agencies]..."


Please provide a time period for the information that you are seeking. Further, section 552.108 of the Texas Government Code provides an exception to the release of certain information that would interfere with the detection, investigation, or prosecution of crime, or relates to an investigation that did not result in conviction or deferred adjudication. Please clarify whether your request for information includes or excludes such information.

Please note that pursuant to Tex. Gov't Code Ann. § 552.222, if the Office of the Harris County Attorney does not receive a written response from you by the 61st day after the date of this request for clarification, the underlying request for public information will be considered to have been withdrawn.

Lastly, any potentially responsive documents may contain certain information that has been deemed to be confidential under common law privacy or by statute, including dates of birth, driver's license numbers, personal identification numbers, full or partial social security numbers, indication of interest in working as an election judge, certain residence addresses of judges or law enforcement personnel, telephone numbers, and email addresses. As a general rule, the Harris County Voter Registrar's office will be required to request a ruling from the Attorney General's office in order to withhold certain confidential information. Such a request may delay the production of any responsive documents. However, if you agree to the redaction of such confidential information there will be no need to seek a ruling from the Attorney General's office related to that portion of the information. Please notify me in writing if you will agree to the redaction of the above referenced confidential information.

Yours very truly,

VINCE RYAN
County Attorney

By 
Kristen Lee
Assistant County Attorney

cc: Harris County Voter Registrar

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

Office of Vince Ryan
County Attorney
1019 Congress
Floor 15
Houston, TX 77002

RE: NVRA Public Disclosure Request to Harris County

Dear Ms. Lee:

We have received your letter dated December 14, 2017. Your letter acknowledges our December 1, 2017 request to inspect documents and requests clarification in order to fulfill our request. Your requests are addressed below.

1. The Foundation's request is made pursuant to the National Voter Registration Act, not the Texas Public Information Act.

Your letter states that our December 1 request is made “pursuant to the Texas Public Information Act, Tex. Gov’t Code.” That is incorrect. As stated in our letter, our request is made pursuant to the National Voter Registration Act of 1993 (NVRA), specifically, Section 20507(i), which requires your office to make available for inspection and photocopying “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.”

2. The Foundation's request seeks records in your possession dating back to January 1, 2006.

Your letter states that the NVRA “limits the time period that certain records must be maintained to two years” and “for this reason, many of the records . . . may not be available” and that the “Texas Secretary of State’s office may have a portion of the information” we seek.

While the NVRA imposes a minimum retention period of two years, it does not place a temporal limit on the public inspection provision of Section 20507(i). Rather, the NVRA requires that “all records” in your possession be made available for public inspection.

To the extent that list maintenance records older than two years are in your possession, our request seeks their inspection, and where requested, their reproduction.

Furthermore, your office has an independent statutory obligation to retain and preserve “all records” related to the “application” and “registration” of registrants for federal elections, for a period of twenty-two months from the date of any federal election. 52 U.S.C. § 20701.

3. State-law exemptions for withholding responsive records are not applicable to requests made pursuant to the NVRA.

Your letter suggests that your office will withhold responsive information that is deemed confidential under “common law privacy or by statute.” It is therefore worth noting that the NVRA does not permit your office to withhold such information. The NVRA requires disclosure of “all records” related to your list maintenance activities, with only two exceptions: “records relate[d] to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.” Exemptions grounded in the Texas Public Information Act or other state laws are thus inapplicable to our request.

However, to the extent responsive records contain social security numbers, we will agree to the redaction of such information. We do not agree to the redaction of any other information.

4. The NVRA permits your office to charge only for photocopying at a reasonable cost.

Your letter eludes to the “personnel resources” that might be needed to retrieve responsive information. It is therefore worth noting that the NVRA does not permit your office to charge requesters for personnel time. The NVRA permits your office to charge only for “photocopying at a reasonable cost.” 52 U.S.C. § 20507(i)(1).

5. The Foundation’s request seeks inspection or photocopying only where electronic reproduction is not possible.

Your letter seeks clarification “as to whether [we] are choosing to inspect or copy, or to both inspect and copy, the requested information.” Our preference is for your office to provide the requested records in electronic format (preferably PDF) via electronic transmission, such as email or other electronic file transfer protocol.

To the extent electronic transmission is not possible, we request that any photocopying **not** be conducted until we can either view the responsive records in person or better obtain from you the size and scope of the responsive records, so that a determination of photocopying costs can more accurately estimated.

6. Item 1.

Our request includes, **but is not limited to**, information obtained by your office under Section 62.113(b)(1)— “the list of persons excused or disqualified because of citizenship” received from the clerk of court.

To the extent information derived from these lists is helpful in providing the other requested information, we asked that it be so used.

You further state that the “County Clerk’s office is the custodian of voter history, not the Voter Registrar.” However, the Texas Election Administration Management System (TEAMS) (and/or ElectionNet) permits your office to search for, view, and produce voter history. Our request includes voter history in your possession and/or control.

7. Item 2.

Request number two is limited to records that relate to ineligibility for citizenship reasons.

8. Item 3.

See response number 6, above.

9. Item 4.

The timeframe for request number four is January 1, 2006 to the present. To the extent your office is asserting any exemptions under state law, including the Texas Public Information Act, please see responses number one and three, above, for the reason why such exemptions are inapplicable to requests made pursuant to the NVRA.

Thank you for your time and attention to this matter. Please feel free to utilize the contact information below to arrange a data transfer or inspection.

Sincerely,

A handwritten signature in black ink, appearing to read 'Logan Churchwell', with a stylized, flowing script.

Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org



The Office of Vince Ryan
County Attorney

January 4, 2018

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

via Certified Mail/ Return Receipt Requested

Attention: Open Records Committee

Re: Public Information Request by Logan Churchwell with the Public Interest Legal Foundation to the **Harris County Voter Registrar** for certain information dating back to January of 2006 related to individuals who were identified by official sources as potentially not satisfying the citizenship requirements related to registered voters, etc. *C. A. File No. 17PIA0762*


Dear Attorney General Paxton:

On December 18, 2017, the **Harris County Voter Registrar** received written clarification in response to a December 15, 2017 request for clarification related to a December 1, 2017 request for the above-referenced information pursuant to the Texas Public Information Act, Tex. Gov't Code §§ 552.001-552.353 (the "Act"). The requested information appears to be excepted from disclosure under Sections 552.101-552.154, as well as any other applicable statute or case identified by the Act, including section 62.113 of the Texas Government Code.

A memorandum brief and the documents for which we are seeking an exception will be submitted within the appropriate time frame permitted by the Act. We note that December 25, 2017, December 26, 2017, and January 1, 2018 were Harris County holidays and should not be counted as part of the ten working days within which to respond.

Yours very truly,

VINCE RYAN
County Attorney

By 
J. R. Harris
Assistant County Attorney

cc: Mr. Logan Churchwell
32 E. Washington Street, Suite 1675
Indianapolis, Indiana 46204

lchurchwell@publicinterestlegal.org



The Office of Vince Ryan
County Attorney

January 11, 2018

Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

via Certified Mail/ Return Receipt Requested

Attention: Open Records Committee

Re: Public Information Request by Logan Churchwell with the Public Interest Legal Foundation to the **Harris County Voter Registrar** for certain information dating back to January of 2006 related to individuals who were identified by official sources as potentially not satisfying the citizenship requirements related to registered voters, etc. *C. A. File No. 17PIA0762*

Dear Attorney General Paxton:

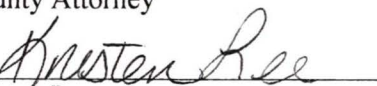
On December 18, 2017, the **Harris County Voter Registrar** received written clarification in response to a December 15, 2017 request for clarification related to a December 1, 2017 request for the above-referenced information pursuant to the Texas Public Information Act, Tex. Gov't Code §§ 552.001-552.353 (the "Act"). We note that December 25, 2017, December 26, 2017, and January 1, 2018 were Harris County holidays and should not be counted as part of the fifteen working days within which to respond.

We believe the requested information is not subject to disclosure under Section 552.101 of the Act in conjunction with Section 62.113 of the Texas Government Code, common-law privacy, and informer's privilege, and Section 552.108 of the Act, and any other applicable statutes or cases identified under the Act or other Texas law. A memorandum brief and the information for which exceptions to disclosure are sought are enclosed. Please provide us with your opinion regarding this matter.

The requestor is being copied with this letter and is being notified that if he should have any questions regarding the Act, he may contact the Office of the Attorney General's Hotline at (877) 673-6839.

Yours very truly,

VINCE RYAN
County Attorney

By 
Kristen Lee
Assistant County Attorney

cc: Mr. Logan Churchwell
32 E. Washington Street, Suite 1675
Indianapolis, Indiana 46204

lchurchwell@publicinterestlegal.org

1019 Congress, 15th Floor • Houston, Texas 77002 • Phone: 713-274-5101 • Fax: 713-755-8924

EXHIBIT E

MEMORANDUM BRIEF

On December 18, 2017, the Harris County Voter Registrar received written clarification in response to a December 15, 2017 request for clarification related to a December 1, 2017 request for information from Logan Churchwell, Communications & Research Director with the Public Interest Legal Foundation, for:

Item 1. Documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any official information source, including information obtained from the various agencies within the U.S. Department of Homeland Security, Texas Department of Public Safety, and from the Texas Secretary of State since January 1, 2006. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. This request extends to electronic records capable of compilation. [Clarification: includes, but is not limited to, information obtained by your office under Section 62.113(b)(1)—“the list of persons excused or disqualified because of citizenship” received from the clerk of court. To the extent information derived from these lists is helpful in providing the other requested information, we ask that it be so used.]

Item 2. All documents and records of communication received by your office from registered voters, legal counsel, claimed relatives, or other agents since January 1, 2006 requesting a removal or cancellation from the voter roll for any reason related to non-U.S. citizenship/ineligibility. Please include any official records indicating maintenance actions undertaken thereafter. [Clarification: limited to records that relate to ineligibility for citizenship reasons];

Item 3. All documents and records of communication received by your office from jury selection officials—state and federal—since January 1, 2006 referencing individuals who claimed to be non-U.S. citizens when attempting to avoid serving a duty call. This request seeks copies of the official referrals and documents indicating where your office matched a claim of noncitizenship to an existing registered voter and extends to the communications and maintenance actions taken as a result that were memorialized in any written form. [Clarification: includes, but is not limited to, information obtained by your office under Section 62.113(b)(1)—“the list of persons excused or disqualified because of citizenship” received from the clerk of court. To the extent information derived from these lists is helpful in providing the other requested information, we ask that it be so used.]; and

Item 4. All communications regarding your list maintenance activities relating to #1 through 3 above to the District Attorney, Texas Attorney General, Texas State Troopers/DPS, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation. [Clarification: The timeframe for the requested information is January 1, 2006 to the present].

The original request, request for clarification, and clarification response are attached as **Exhibits A-1, A-2, and A-3**, respectively.

On behalf of the Harris County Voter Registrar's Office and pursuant to the Texas Public Information Act (the Act), Tex. Gov't Code §§ 552.001-.353, the Harris County Attorney's Office is submitting this Memorandum Brief and the responsive records for which an exception to disclosure is sought. Representative samples of the responsive records for which an exception is sought is attached as **Exhibits B-1 through B-4**. We note that December 25, 2017, December 26, 2017, and January 1, 2018 were Harris County holidays and should not be counted as part of the timeframe within which to respond.

The Act defines public information as information that is collected, assembled, or maintained under a law or ordinance, or in connection with the transaction of official business: (1) by a governmental body; (2) for a governmental body under certain circumstances; or (3) by an official or employee in an official capacity. Tex. Gov't Code § 552.002. Public information must be disclosed unless the information falls within one of the Act's specific exceptions to disclosure. Tex. Gov't Code § 552.001; Tex. Att'y Gen. Op. Nos. JM-511 (1988), JM-363 (1983).

We believe Section 62.113 of the Texas Government Code, in Conjunction with Section 552.101 of the Act, clearly prohibits the Harris County Voter Registrar from producing and/or creating the requested information to respond to Items 1 and 3, above. The common-law right to privacy and the informer's privilege in the context of Section 552.101 of the Act also protects the identifying information requested in Item 2, above. Section 552.108 of the Act prohibits the release of the responsive information to Item 4, above, due to an ongoing investigation.

Discussion

The information requested includes documents that fall under Section 552.101 of the Government Code provides as follows:

Information is excepted from [required public disclosure] if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.

Tex. Gov't Code § 552.101.

Section 552.101 also encompasses section 62.113 of the Texas Government Code, which strictly limits the use of the information requested by Items 1 and 3 to only two purposes by governmental entities. Section 62.113 of the Texas Government Code provides as follows:

(a) The clerk of the court shall maintain a list of the name and address of each person who is excused or disqualified under this subchapter from jury service because the person is not a citizen of the United States.

(b) On the third business day of each month, the clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to:

- (1) the voter registrar of the county;
- (2) the secretary of state; and
- (3) the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.

(c) A list compiled under this section may not be used for a purpose other than a purpose described by Subsection (b) or Section 16.0332 or 18.068, Election Code.

(d) A person commits an offense if the person violates Subsection (c). An offense under this section is a Class C misdemeanor.

(e) The information required to be filed with the secretary of state under this section must be filed electronically. The secretary of state may waive this requirement on application for a waiver submitted by the clerk.

Tex. Gov't Code § 62.113 (emphasis added).

The Voter Registrar is prohibited from using the lists obtained under Section 62.113 for any purpose other than to deliver to each registered voter whose name appears on the list a written notice requiring the voter to submit to the registrar proof of United States citizenship. Any other use of the information is a criminal offense. *Id.* §62.113(d). Items 1 and 3 of the request seek these same lists compiled under Section 62.113 by the Clerk and received by the Harris County Voter Registrar. The Voter Registrar's Office would be required to use these lists to create the requested voter registration information, including the names of the individuals, the voting histories of the registrants, and notices sent to or from the registrant in relation to the Voter Registrar's notices that were generated as a result of having received the lists. Such information does not currently exist in the form requested by the requestor and there is no authority for the Voter Registrar to produce and/or create the lists or information directly derived from the list in the performance of their duties under Section 62.113.

Using the information received by the Clerk and Secretary of State's offices under Section 62.113 in order to produce and/or create the information requested under Items 1 and 3 would not constitute a use of the information permitted by Section 62.113(c). Therefore, we contend that the Harris County Voter Registrar is precluded from producing and/or creating the requested information in Items 1 and 3.

Section 552.101 of the Act also encompasses the doctrine of common-law privacy, and protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 the test must be satisfied. *See id.* at 681-82. Under the doctrine of common-law privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682.

In this instance, the information at issue in **Exhibits B-1** and **B-3** is highly intimate and embarrassing, in that it is information derived from the official juror questionnaire mandated and made confidential by Section 62.0132 of the Texas Government Code. Each individual completing the juror questionnaire had a reasonable expectation of privacy as to the information contained in their responses. In fact, that's exactly what it says on the form: "THE FOLLOWING JUROR QUESTIONNAIRE IS MANDATED BY GOVERNMENT CODE 62.0132. Your answers are CONFIDENTIAL and may be disclosed only to the judge, court personnel, the litigant, and the litigant's attorney." See **Exhibit B-3**. Section 62.0132 of the Texas Government Code states as follows:

- (a) The Office of Court Administration of the Texas Judicial System shall develop and maintain a questionnaire to accompany a written jury summons.
- (b) A written jury summons must include:
 - (1) a copy of the questionnaire developed under this section; or
 - (2) the electronic address of the court's Internet website from which the questionnaire developed under this section may be easily printed.
- (c) The questionnaire must require a person to provide biographical and demographic information that is relevant to service as a jury member, including the person's:
 - (1) name, sex, race, and age;
 - (2) residence address and mailing address;
 - (3) education level, occupation, and place of employment;
 - (4) marital status and the name, occupation, and place of employment of the person's spouse; and
 - (5) citizenship status and county of residence.
- (d) Except as provided by this subsection, a person who has received a written jury summons shall complete and submit a jury summons questionnaire when the person reports for jury duty. If the district and criminal district judges of a county adopt a plan for an electronic jury selection method under Section 62.011, the county may allow a person to complete and submit a jury summons questionnaire on the court's Internet website as authorized under Section 62.011(b)(5).
- (e) In developing and maintaining the questionnaire required by this section, the Office of Court Administration of the Texas Judicial System shall solicit and consider the opinions of the members of the judiciary, district clerks, and attorneys.
- (f) Except as provided by Subsection (g), information contained in a completed questionnaire is confidential and is not subject to Chapter 552.**
- (g) The information contained in a completed questionnaire may be disclosed to:
 - (1) a judge assigned to hear a cause of action in which the respondent to the questionnaire is a potential juror;
 - (2) court personnel;
 - (3) a litigant and a litigant's attorney in a cause of action in which the respondent to the questionnaire is a potential juror; and
 - (4) other than information provided that is related to Section 62.102(8) or
 - (9), the voter registrar of a county in connection with any matter of voter registration or the administration of elections.
- (h) The questionnaire must notify a person that if the person states that the person

is not a citizen, the person will no longer be eligible to vote if the person fails to provide proof of citizenship.

Tex. Gov't Code § 62.0132 (emphasis added).

The responses, or information derived from the responses on the juror questionnaires, are not only intimate details about the individual, they may include embarrassing errors or misstatements that were never intended to be released to the public. Further, the fact that the juror questionnaire is a confidential form speaks to the fact that the responses contained therein are not of legitimate concern to the public. For the above stated reasons and authority, as well as other applicable law, the records and information represented in **Exhibits B-1 and B-3** should be excepted from disclosure in their entirety or at least in part.

The doctrine of common-law privacy also protects the responsive information to Item 2, found in the representative sample, **Exhibit B-2**. Item 2 seeks the names, addresses, and voter registration information associated with individuals who have requested the removal or cancellation of a voter from the voter roll due to ineligibility due to non-citizenship. Like the information contained in **Exhibit B-1 and B-1**, this information is both highly intimate and embarrassing to the individuals at issue and is not of legitimate concern to the public. The publication of detailed name, address, and other identifying information about potential non-citizens (beyond government/law enforcement use) would be highly objectionable to a reasonable person. The likelihood is high that such protected personal information would be disseminated (beyond government/law enforcement use) without regard to the privacy and safety of the individuals at issue. Less invasive alternatives exist, such as providing data points that are devoid personal information, in order to balance the privacy and retaliation concerns with the legitimate concerns to the public for information related to voter registration. For the above stated reasons and authority, as well as other applicable law, the records and information represented in **Exhibit B-2** should be excepted from disclosure in their entirety or at least in part.

Also with respect to **Exhibit B-2**, the informer's privilege, incorporated into the Act by section 552.101, which has long been recognized by Texas courts, applies to instances where someone, other than the voter, has communicated with the Harris County Voter Registrar alleging ineligibility due to non-citizenship. *See, e.g., Tex. Att'y Gen. ORD-01253 (2006); Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). Informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informers identity. *See, e.g., Tex. Att'y Gen. ORD-01253 (2006); Tex. Att'y Gen. ORD-515 at 3 (1998), 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." *See, e.g., Tex. Att'y Gen. ORD-03079 (2015); Tex. Att'y Gen. ORD-279 at 2 (1981) citing Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961). The report must be of a violation of a criminal or civil statute. *See, e.g., Tex. Att'y Gen. ORD-6029 (2001); Tex. Att'y Gen. ORD-582 at 2 (1990), 515 at 4-5 (1988)*. The informer's privilege protects the content of the communication only to the extent that it

identifies the informant. *See, e.g., Tex. Att’y Gen. ORD- 01253 (2006); See, e.g., Tex. Att’y Gen. ORD- 03079 (2015); Roviato v. United States*, 353 U.S. 53, 60 (1957).

To the extent that the informer’s privilege applies to the representative sample of responsive information contained in **Exhibit B-2**, we seek to withhold the identity of the complainant on the basis of the informer’s privilege. Therefore, Section 552.101 of the Act in conjunction with the common-law informer’s privilege is applicable.

Exhibit B-4, contains a representative sample of information responsive to Item 4 and includes documents that fall under section 552.108, the “law enforcement exception.” That exception provides in pertinent part as follows:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Tex. Gov’t Code § 552.108.

The requested documents and information in **Exhibit B-4** relate directly to an open and ongoing criminal investigation and prosecution. The Texas Attorney General’s Office has advised that release of the requested information would interfere with the pending investigation and with the detection, investigation, and prosecution of crime, as indicated in the attached affidavit, enclosed as **Exhibit C**. The affiant, Sgt. Johnny Hatcher, asserts the criminal investigation is considered open and ongoing at this time and opposes the disclosure of the requested documents. The Attorney General has consistently ruled that this exception to the Act is designed to protect law enforcement interests during the investigation and prosecution of criminal acts. Thus, section 552.108 (a)(1) is applicable, and the documents contained in **Exhibit B-4** should be withheld.

The information responsive to Item 4 also contains information that was derived from information received by the Voter Registrar’s office under Section 62.113 of the Texas Government Code. We respectfully rely on the previously referenced application of Section 552.101 with 62.113, which statutorily prohibits the Voter Registrar from producing or creating information to respond to the request. To the extent that information contained in Exhibit B-4 was derived from the list obtained under Section 62.113, we believe the Voter Registrar is prohibited from creating or releasing the information contained in **Exhibit B-4**.

For the above stated reasons and authority, as well as other applicable law, the records and information in **Exhibit B-4** should be excepted from disclosure in their entirety or at least in part.

Finally, 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. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether an individual’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. *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 the public, and thus, public individual's dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061 at 3. Thus the Voter Registrar's office should be allowed to withhold all dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, your office has issued a prior ruling regarding substantially similar information. See OR2013-00351, **Exhibit D**. In that ruling, your office concluded that the information at issue is made confidential by section 62.113 of the Texas Government Code and must be withheld under section 552.101 of the Act.

For the above stated reasons and authority, as well as other applicable law, the information in Exhibits B-1 through B-4 should be excepted from disclosure in its entirety or at least in part.

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

January 18, 2018

Office of Vince Ryan
County Attorney
1019 Congress
Floor 15
Houston, TX 77002

RE: NVRA Violation Notice

Dear Ms. Lee:

We have received a copy of your January 11, 2018 letter and memorandum to the Attorney General of Texas denying our December 1, 2017 request for inspection of voter list-maintenance records maintained by Harris County election officials.

In our initial request for inspection, and again in our letter of clarification dated December 18, 2017, we explained that our request is made pursuant to the National Voter Registration Act of 1993 (NVRA). Section 20507(i) of the NVRA requires your office to make available for inspection and photocopying “all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.”

Despite that unequivocal clarification regarding the basis for our request, your letter continues to treat our request as if it were made pursuant to the Texas Public Information Act, rather than the NVRA.

Our request is not a request pursuant to the Texas Public Information Act.

In fact, your letter omits entirely any reference to the NVRA. Instead, your letter states that “the requested information is not subject to disclosure” under the Texas Public Information Act (the “Act”), and seeks permission to deny us access to the requested records on the basis of exemptions found in the Act and various Texas laws.

The state-law exemptions cited in your letter are not applicable to our request. The NVRA “identifies the information which Congress specifically wished to keep confidential.” *Project Vote/Voting for Am., Inc. v. Long*, 752 F. Supp. 2d 697, 710 (E.D. Va. 2010), *affirmed Project Vote / Voting for Am., Inc. v. Long*, 682 F.3d 331 (4th Cir. 2012) (holding that copies of voter registration applications must be made available for inspection under NVRA). Such confidential information is limited to “records relate[d] to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.” 52 U.S.C.S. § 20507(i)(1). The NVRA contains no other exemptions. *Project Vote / Voting for Am., Inc.*, 682

PUBLIC INTEREST

— LEGAL FOUNDATION —

F.3d at 336 (The NVRA’s “use of the word ‘all’ [as a modifier] suggests an expansive meaning because ‘all’ is a term of great breadth.”) (citations omitted).

Harris County election officials “ha[ve] certain obligations under the NVRA as the designated voter registrar and state official.” *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 793 (W.D. Tex. 2015). If a county election official “has failed to meet her obligations,” an aggrieved party “can bring a civil suit against her.” *Id.*

Accordingly, this letter serves as statutory notice to Harris County, required by 52 U.S.C. § 20510(b) prior to the commencement of any lawsuit in order to enforce provisions of Section 8 of the NVRA, 52 U.S.C. § 20507(i), for failure to grant inspection of the requested records.

The Harris County Voter Registrar is hereby notified that it now faces federal litigation should it continue to deny access to requested records in its possession.

It is our hope that the County will work quickly to provide for inspection the all of the records previously requested. If not, according to federal law, a lawsuit under the NVRA may be filed within 90 days after the failure to permit inspection or failure to provide the documents. 52 U.S.C. § 20510(b). For any lawsuits initiated by a private party, an award of attorney’s fees, expenses, and costs incurred are available under 52 U.S.C. § 20510(c).

Sincerely,



Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org

CC: Honorable Ken Paxton
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548
Fax: 512-475-2994

Elections Division
The Hon. Rolando Pablos
Texas Secretary of State
PO Box 12060
Austin, TX 78711-2060
Email: elections@sos.texas.gov



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 15, 2018

Ms. Kristen Lee
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002

OR2018-06015

Dear Ms. Lee:

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# 699618 (C.A. File No. 17PIA0762).

The Harris County Voter Registrar (the "voter registrar's office") received a request for (1) all information pertaining to registrants who were identified as potentially not satisfying the citizenship requirements from any official information source since January 1, 2006, (2) all information pertaining to requests for registration cancellations for any reason related to non-citizenship or ineligibility since January 1, 2006, (3) all information pertaining to individuals claiming to be non-citizens when attempting to avoid jury duty since January 1, 2006, and (4) all communications regarding list maintenance activities relating to the aforementioned categories of information to various state and federal law enforcement agencies.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the

¹We note the voter registrar's office sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if information requested is unclear to governmental body or if 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); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Ms. Kristen Lee - Page 2

submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). You state, and have provided an affidavit showing, the Office of the Attorney General’s Special Investigations Unit, Criminal Investigations Division (“CID”), objects to release of the information submitted as Exhibit B-4 because it relates to an ongoing criminal investigation, and release of that information would interfere with the investigation and prosecution of the case. Based upon these representations, we conclude the release of Exhibit B-4 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) is applicable to the information you indicated, and the voter registrar’s office may withhold Exhibit B-4 under section 552.108(a)(1) of the Government Code on behalf of CID.³

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. You raise section 552.101 in conjunction with 62.113 of the Government Code and argue this statute prohibits the voter registrar’s office from producing the requested information to respond to categories 1 and 3 of the present request for information. Section 62.113 provides as follows:

(a) The [county clerk] shall maintain a list of the name and address of each person who is excused or disqualified under [subchapter B of chapter 62 of

²We 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.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Ms. Kristen Lee - Page 3

the Government Code] from jury service because the person is not a citizen of the United States.

(b) On the third business day of each month, the clerk shall send a copy of the list of persons excused or disqualified because of citizenship in the previous month to:

(1) the voter registrar of the county;

(2) the secretary of state; and

(3) the county or district attorney, as applicable, for an investigation of whether the person committed an offense under Section 13.007, Election Code, or other law.^[4]

(c) A list compiled under this section may not be used for a purpose other than a purpose described by Subsection (b) or Section 16.0332 or 18.068, Election Code.^[5]

(d) A person commits an offense if the person violates Subsection (c). An offense under this section is a Class C misdemeanor.

Gov't Code § 62.113. Thus, information maintained by a county clerk pursuant to section 62.113(a) and obtained by the voter registrar's office pursuant to section 62.113(b)(1) may only be used as provided by section 62.113(c). *Id.* § 62.113(a)-(c). Any other use of such information is a criminal offense. *Id.* § 62.113(d).

Upon review, we agree the submitted information includes lists obtained by the voter registrar's office pursuant to section 62.113. Release of the lists in this instance would be "for a purpose other than a purpose described by Subsection (b) or Section 16.0332 or 18.068, Election Code." *See id.* § 62.113(c). Accordingly, we conclude the lists we have marked are confidential pursuant to section 62.113(c) of the Government Code and must be withheld under section 552.101 of the Government Code. However, we find none of the remaining information is confidential under section 62.113, and none of the remaining information may be withheld on this basis.

⁴Section 13.007 provides in part that "[a] person commits an offense if the person knowingly makes a false statement or requests, commands, or attempts to induce another person to make a false statement on a registration application." Elec. Code § 13.007(a).

⁵Sections 16.0332 and 18.068 of the Election Code pertain to the use of the list created under section 62.113 by a voter registrar and the secretary of state's office, respectively. *See* Elec. Code §§ 16.0332, 18.068.

Section 552.101 of the Government Code also encompasses information made confidential by section 62.0132 of the Government Code. This provision authorizes the Office of Court Administration of the Texas Judicial System to create a standardized juror questionnaire form to be used in courts throughout the state. *See id.* § 62.0132(a). Section 62.0132(f) states information contained in a completed questionnaire is confidential and not subject to the Act. We note the remaining information contains completed juror questionnaires. Accordingly, the voter registrar's office must withhold the completed juror questionnaires, which we have marked, under section 552.101 of the Government Code in conjunction with section 62.0132(f) of the Government Code. However, we find none of the remaining information at issue is confidential under section 62.0132(f), and it may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 13.004 of the Election Code, which pertains to voter qualifications and registration. Section 13.004 of the Election Code provides, in relevant part, the following:

(a) The registrar may not transcribe, copy, or otherwise record a telephone number furnished on a registration application.

...

(c) The following information furnished on a registration application is confidential and does not constitute public information for purposes of [the Act]:

- (1) a social security number;
- (2) a Texas driver's license number;
- (3) a number of a personal identification card issued by the Department of Public Safety ["DPS"];
- (4) an indication that an applicant is interested in working as an election judge;
- (5) the residence address of the applicant, if the applicant is a federal judge or state judge, as defined by Section 13.0021, the spouse of a federal judge or state judge, or an individual to whom Section 552.1175, Government Code, applies and the applicant:
 - (A) included an affidavit with the registration application describing the applicant's status under this subdivision, including an affidavit under Section 13.0021 if the applicant

is a federal judge or state judge or the spouse of a federal judge or state judge;

(B) provided the registrar with an affidavit describing the applicant's status under this subdivision, including an affidavit under Section 15.0215 if the applicant is a federal judge or state judge or the spouse of a federal judge or state judge; or

(C) provided the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status under this subdivision.

(6) the residence address of the applicant, if the applicant, the applicant's child, or another person in the applicant's household is a victim of family violence as defined by Section 71.004, Family Code, who provided the registrar with:

(A) a copy of a protective order issued under Chapter 85, Family Code, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the applicant, the applicant's child, or another person in the applicant's household is a victim of family violence;

(7) the residence address of the applicant, if the applicant, the applicant's child, or another person in the applicant's household is a victim of sexual assault or abuse, stalking, or trafficking of persons who provided the registrar with:

(A) a copy of a protective order issued under Chapter 7A or Article 6.09, Code of Criminal Procedure, or a magistrate's order for emergency protection issued under Article 17.292, Code of Criminal Procedure; or

(B) other independent documentary evidence necessary to show that the applicant, the applicant's child, or another person in the applicant's household is a victim of sexual assault or abuse, stalking, or trafficking of persons; or

(8) the residence address of the applicant, if the applicant:

(A) is a participant in the address confidentiality program administered by the attorney general under Subchapter C, Chapter 56, Code of Criminal Procedure; and

(B) provided the registrar with proof of certification under Article 56.84, Code of Criminal Procedure.

Elec. Code § 13.004(a), (c). Upon review, we find the remaining information includes voter registration applications. Accordingly, the voter registrar's office must withhold all voter social security numbers, Texas driver's license numbers, numbers of personal identification card issued by DPS, and any indications that an applicant is interested in working as an election judge that are furnished on the submitted voter registration applications under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. Additionally, to the extent the addresses furnished on the submitted voter registration applications fall within the categories enumerated in subsections 13.004(c)(5) through 13.004(c)(8), the voter registrar's office also must withhold those addresses under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. The Third Court of Appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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.). Upon review, we find portions of the submitted information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the voter registrar's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the common-law informer's privilege, which Texas courts have long recognized. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978).*

The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton Rev. Ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). However, witnesses who provide information in the course of an investigation but do not make a report of the violation are not informants for the purposes of claiming the informer's privilege. The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990). You argue portions of the remaining information in Exhibit B-2 identify a witness who reported possible violations of law to the voter registrar's office. Upon review, we find you have failed to demonstrate any of the information at issue identifies an individual who made a report of a violation of any criminal or civil law for the purposes of the informer's privilege. Accordingly, the voter registrar's office may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country.⁶ See Gov't Code § 552.130. Upon review, we find portions of the remaining information are subject to section 552.130. Accordingly, the voter registrar's office must withhold all driver's license information and the information we have indicated under section 552.130 of the Government Code.

In summary, the voter registrar's office may withhold Exhibit B-4 under section 552.108(a)(1) of the Government Code on behalf of CID. The voter registrar's office must withhold the lists we have marked under section 552.101 of the Government Code in conjunction with section 62.113(c) of the Government Code. The voter registrar's office must withhold the completed juror questionnaires, which we have marked, under section 552.101 of the Government Code in conjunction with section 62.0132(f) of the Government Code. The voter registrar's office must withhold all voter social security numbers, Texas driver's license numbers, numbers of personal identification card issued by DPS, and any indications that an applicant is interested in working as an election judge that are furnished on the submitted voter registration applications under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. Additionally, to the extent the addresses furnished on the submitted voter registration applications fall within the categories enumerated in subsections 13.004(c)(5) through 13.004(c)(8) of the

⁶The 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).

Election Code, the voter registrar's office also must withhold those addresses under section 552.101 of the Government Code in conjunction with section 13.004 of the Election Code. The voter registrar's office must withhold all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The voter registrar's office must withhold all driver's license information and the information we indicated under section 552.130 of the Government Code. The voter registrar's office must release the remaining information.⁷

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,



James M. Graham
Attorney
Open Records Division

JMG/eb

Ref: ID# 699618

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁷The information being released may contain social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. See Gov't Code § 552.147(b).