

The State of Texas

Elections Division
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.texas.gov
www.votetexas.gov



Phone: 512-463-5650
Fax: 512-475-2811
Dial 7-1-1 For Relay Services
(800) 252-VOTE (8683)

Jane Nelson
Secretary of State

ELECTION ADVISORY **NO. 2024-05**

To: All Election Officials

From: Christina Worrell Adkins, Director of Elections *CWA*

Date: January 24, 2024

RE: Public Inspection of Ballot Images and Cast Vote Records and Ballot Security (HB 5180)

Introduction

This advisory is intended to advise counties of changes in the law passed during the 88th Regular Session (2023) in regards to public inspection of ballot images and cast vote records. Additionally, this advisory will provide explanations and guidance on the new law and ballot security issues.

All statutory references in this advisory are to the Texas Election Code ("the Code"), unless otherwise indicated.

Public Inspection of Ballot Images and Cast Vote Records

House Bill 5180 (88th Leg., R.S., 2023) amended Section 1.012 of the Code, effective September 1, 2023, to provide that, beginning on the first day after the date of the final canvass for an election, the general custodian of election records shall make available for public inspection any election records that are images of voted ballots (if maintained) or cast vote records. The bill further clarifies that original voted ballots shall be made available for public inspection beginning on the 61st day after election day. The general custodian of election records must adopt procedures to ensure that any personally identifiable information of a voter that is contained on a ballot is redacted before making the voted ballot available for public inspection.

Under HB 5180, Section 1.012 of the Code now provides a deadline for making ballot images and cast vote records available for public inspection that is different from the deadline for making other election records available for public inspection. Additionally, the general custodian of election records must adopt procedures to ensure that personally identifiable information that may be

contained on those ballot images and cast vote records has been redacted before such records are made publicly available for inspection.

Since ballot images and cast vote records are available for public inspection beginning on the first day after the final canvass of the election, a general custodian of election records may begin the redaction process for those particular records as soon as practicable following the final canvass. We recommend that entities work closely with their legal counsel and public information divisions to ensure that records have been properly redacted before being made publicly available. Any questions or concerns about the time needed to respond to a request to inspect, or obtain copies of, public information should be directed to the Open Government Hotline at the Office of the Attorney General at (877) 673-6839.

Public Inspection of Voted Ballots After an Election

HB 5180 did not amend Section 66.058 of the Code, which requires voted ballots to be preserved securely in a locked room in the original locked ballot box for at least 60 days after the date of the election. An unauthorized entry into the ballot box containing voted ballots or the failure to prevent an unauthorized entry into the ballot box containing voted ballots constitutes a Class A misdemeanor. This means that original voted ballots may not be accessed during the 60-day period except in the event of a recount or another authorized entry into the ballot box. Therefore, any redaction of personally identifiable information of a voter on voted ballots should not begin until after the 60-day period has elapsed.

For public information requests related to voted ballots, the Secretary of State recommends that the general custodian of election records establish a written policy that specifies procedures for providing access to anonymous voted ballots through public inspection.

The general custodian's policy should, at a minimum, include the following provisions:

- A defined time period for public inspection consistent with the Public Information Act.
- A log of all individuals accessing the anonymous voted ballots during the defined time period.
- General regulations regarding access to the ballots, including the following protocols:
 - **At least one member of the general custodian's staff must be present at all times in the room containing the voted ballots while public inspection is taking place.**
 - Pens, pencils, and other marking devices are prohibited in the room containing the voted ballots.
 - Food and beverages are prohibited in the room containing the voted ballots.
 - Voted ballots must be kept in the same stacks, containers, or boxes, whichever is applicable, while public inspection is taking place.
 - Voted ballots may not be removed from the room in which public inspection is taking place.
 - Imaging devices may be used to take photos or make copies of the voted ballots.

If the general custodian has video surveillance available, the Secretary of State recommends that the custodian utilize the surveillance system to monitor all activities in the inspection room during

the time that the ballots are made available for public inspection. In the space where the general custodian is providing public access to the anonymous voted ballots, the general custodian should ensure that all other materials unrelated to the ballot request are removed from that location.

Management and Retention of Election Records

Voted paper ballots are the official ballot of record for recounts and election contests. If the general custodian does not already have anonymous voted ballots scanned or imaged, they may want to consider imaging them prior to public inspection to ensure that there is a record of the image prior to public inspection taking place. If the files are being provided in any electronic format, the Secretary of State strongly recommends that you calculate a hash value to validate the integrity of the files and to ensure they are not altered in any way. If you need guidance on calculating a hash, please contact the Elections Division's election security training team for assistance.

Under Section 66.058 of the Code, election records must be preserved for at least 22 months after election day. Section 1.012 of the Code defines the term election record to include ballot images, cast vote records and voted ballots. At the conclusion of the retention period, contents of locked ballot boxes or secure containers may only be destroyed if there is no election contest, criminal investigation, or pending public information request that has yet to be fulfilled. (Secs. 1.012, 66.058). Entities should also consult with their legal counsel and any records management officers before disposing of such materials after the 22-month retention period.

If you have any questions or situations that are not covered by this advisory, please do not hesitate to contact the Elections Division toll-free at 1-800-252-2216.

CA:HM:AM

ELECTIONS PUBLIC INFORMATION LAW

This outline is intended to summarize certain provisions of the Texas Election Code, Texas Government Code, and Texas Administrative Code related to public information requests for election records. Election officials should consult with their county or city attorney, other legal counsel, and/or public information coordinator for assistance with fulfilling a public information request. In addition, election officials may direct any questions about the procedures for responding to a public information request, including the timeframes for such responses, to the Office of the Attorney General (“OAG”) via its Open Government Hotline, at (512) 478-OPEN (6736) or toll-free at (877) 673-6839 (877-OPEN TEX).

I. Election Code and the Public Information (formerly Open Records) Act. All references are to sections in the Texas Election Code, unless otherwise indicated.

A. Election Records Public Unless Exception.

1. *Section 1.012* – An election record that is public information shall be made available to the public during regular business hours of the record’s custodian. **An election record shall be available not later than the 15th day after election day in an electronic format for a fee of not more than \$50.** However, for the purpose of safeguarding the election records or economizing the custodian’s time, the custodian may adopt reasonable rules limiting public access. Except as otherwise provided by the Election Code or Chapter 552, Texas Government Code, all election records are public information.

2. Chapter 552 of the Texas Government Code, commonly known as the Public Information Act, provides at Section 552.221:

i. (a) An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer. In this subsection, “promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.

ii. (b) An officer for public information complies with Subsection (a) by:

a) providing the public information for inspection or duplication in the offices of the governmental body; or

b) sending copies of the public information by first class United States mail if the person requesting the information requests that copies be provided and pays the postage and any other applicable charges that the requestor has accrued

under Subchapter F [of Chapter 552, Texas Government Code].

- iii. (b-1) In addition to the methods of production described by Subsection (b), an officer for public information for a governmental body complies with Subsection (a) by referring a requestor to an exact Internet location or uniform resource locator (URL) address on a website maintained by the governmental body and accessible to the public, if the requested information is identifiable and readily available on that website. If the person requesting the information prefers a manner other than access through the URL, the governmental body must supply the information in the manner required by Subsection (b).
- iv. (b-2) If an officer for public information for a governmental body provides by e-mail an Internet location or uniform resource locator (URL) address as permitted by Subsection (b-1), the e-mail must contain a statement in a conspicuous font clearly indicating that the requestor may nonetheless access the requested information by inspection or duplication or by receipt through United States mail, as provided by Subsection (b).
- v. (c) If the requested information is unavailable at the time of the request to examine because it is in active use or in storage, the officer for public information shall certify this fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.
- vi. (d) If an officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under Subsection (a), the officer shall certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.
- vii. (e) A request is considered to have been withdrawn if the requestor fails to inspect or duplicate the public information in the offices of the governmental body on or before the 60th day after the date the information is made available or fails to pay the postage and any other applicable charges accrued under Subchapter F on or before the 60th day after the date the requestor is informed of the charges.

Sections 552.261 - 552.275 of the Texas Government Code regulate the charges that may be assessed for providing copies of public records. For a discussion of guidelines regarding what is a "reasonable time," see Texas Attorney General's Open Records Decision No. 467 (1987).

NOTE: For a comprehensive discussion of the Public Information Act, see the Attorney General's *Public Information Act Handbook 2022*, available at https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfo_hb.pdf or by ordering a hardcopy from the Office of the Attorney General.

B. Voter Registration Provisions

1. Address Confidentiality

i. General Confidentiality Provisions

Section 13.004(c) – The following information furnished on a registration application is confidential and does not constitute public information for purposes of Chapter 552, Government Code:

- (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; or
- (4)-(8) other items identified below.

NOTE: Section 13.004(c-1) provides that the registrar shall ensure that the information listed in Subsection (c) is excluded from disclosure, except that the registrar shall forward to the county chair of each county executive committee the information necessary to contact applicants who indicate interest in working as an election judge.

ii. Address Confidentiality Program Administered by the Office of the Attorney General

Section 13.004(c)(7) – The early voting clerk may not disclose the name or any other information submitted on the application for a participant in the address confidentiality program and has provided the registrar with proof of certification under Article 58.059, Code of Criminal Procedure. A person who is certified for participation in the address confidentiality program administered by the attorney general under Subchapter B, Chapter 58, Code of Criminal Procedure, is not placed on the permanent registration list. Their temporary registration is not public information. The administrative rules related to this program are at 1 Tex. Admin. Code Sec. 81.38, Administration of Voter Registration Associated with Address Confidentiality Program.

NOTE: The voter's phone number is also confidential, Section 13.004(c)(8).

iii. **Judicial and Peace Officer Confidentiality**

Section 13.004(c)(4) – the residence address of the applicant, if the applicant is a federal judge, including a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, or a state judge, or the family member of a federal judge, including a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, or a state judge, the spouse of a peace officer as defined by Article 2.12, Code of Criminal Procedure, or an individual to whom Section 552.1175, Government Code, or Section 521.1211, Transportation Code, applies and the applicant: included an affidavit with their voter registration application or provided the registrar with an affidavit describing the applicant's status under this subdivision, or provided the registrar with a completed form approved by the Secretary of State. For purposes of this section, “family member” has the meaning assigned by Section 31.006, Finance Code.

NOTE: The voter’s phone number is also confidential, Section 13.004(c)(8).

iv. **Certain types of family violence victims**

Section 13.004(c)(5) – 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 copy of a protective order, a magistrate’s order for emergency protection, or other independent documentary evidence.

Section 13.004(c)(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 sexual assault or abuse, stalking, or trafficking of persons who provided the registrar with: a copy of a protective order, a magistrate’s order for emergency protection, or other independent documentary evidence.

NOTE: The voter’s phone number is also confidential, Section 13.004(c)(8).

v. **Website Restrictions (Section 13.004(d))**

1. The voter registrar or other county official who has access to the information furnished on a registration application may not post the following information on a website:
 - (1) a telephone number;
 - (2) a social security number;
 - (3) a driver's license number or a number of a personal identification card;

- (4) a date of birth; or
- (5) the residence address of a voter who submits documentation under Subsection (c)(4), (5), (6), or (7) to the voter registrar or regarding whom the registrar has received notification under Section 15.0215.

2. Voter Registration Lists

- i. *Section 15.0215* – Upon receiving notice from the Office of Court Administration of the Texas Judicial System of a person’s qualification for office as a federal judge, including a federal bankruptcy judge, a marshal of the United States Marshals Service, a United States attorney, or a state judge and of the names of the judge’s or federal official’s family members, the registrar must omit from the registration list the residence address of the judge or official and any family members of the judge or official. Additionally, the registrar must prepare a memorandum of the substance and date of the notice from the Office of Court Administration and retain the memorandum on file with the application.
- ii. *Section 15.082* – The registrar must furnish a copy of the suspense list to any person requesting it or furnish that portion of the list requested. The list shall be provided in accordance with Chapter 552, Government Code.
- iii. *Section 15.084* – The Secretary of State must furnish a copy of a suspense list to anyone requesting it or furnish that portion of the list requested. The fee for each list or portion of a list must not exceed the actual expense in copying the list and must be uniform for each type of copy furnished. The copy must be furnished in the form in which the list is stored or, if practicable, in any other form requested.
- iv. *Section 15.085* – A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Sections 15.082 or 15.084.

NOTE: It is a common practice for the voter registrar’s staff to notify a requestor that commercial use of the suspense list is a criminal offense under the Election Code. Some offices request that the person sign a statement that he or she has been advised of the relevant section(s). However, when noting the potential criminal liability to the requestor, the custodian must NOT actually ask the requestor the purpose of the request. **Asking about the purpose of an information request is prohibited under Government Code, Section 552.222.**

- v. *Section 18.008* – The registrar must furnish a copy of any list prepared under Subchapter A, Chapter 18 of the Election Code to any person requesting it. The list must be furnished as soon as practicable, but no later than the 15th day after the date the registrar receives a request or completes preparation of the list from which the copy is to be made, whichever occurs later.
- vi. *Section 18.009* – A person commits an offense if the person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.008. See note above following Section 15.085 regarding notice of potential criminal liability for unlawful use of voter registration information.
- vii. *Section 18.010* – The registrar’s fee must not exceed the actual expense incurred in reproducing the list of registered voters. Fees must be used to defray actual expenses incurred in the preparation of the copy.
- viii. *Section 18.0121* – If a county contracts with a private business to produce a list of potentially ineligible voters, the list may not be made available to the public or otherwise used by the voter registrar until the contracting county’s voter registrar has verified the accuracy of the list by using public records.
- ix. *Section 18.066* – The Secretary of State must furnish information on the state master file to any person, on request, not later than 15 days after a request is received. The information may not include voters’ social security numbers or the residence address of a voter whose address is confidential under Section 13.004. The requestor must submit an affidavit stating that the person will not use information obtained from the Secretary of State in connection with advertising or promoting commercial products or services. The fee charged must not exceed the actual expense incurred in reproducing the information requested.
- x. *Section 18.067* – It is a criminal offense if a person uses information in connection with advertising or promoting commercial products or services that the person knows was obtained under Section 18.066. See note above following Section 15.085 regarding notice of potential criminal liability for unlawful use of voter registration information.

3. Exception for Peace Officers and Other Officials

Section 552.1175 of the Government Code relates to the request for confidentiality of personal information by certain law enforcement and other personnel. The information that must be safeguarded against disclosure

includes: home address, home telephone number, emergency contact information, date of birth, social security number, and any information that reveals whether the individual has family members. To the extent information covered by Section 552.1175 is provided on a list, this information should be restricted from voter registration lists.

C. Candidate Filings

Section 141.035 – An application for a place on the ballot is public information immediately upon filing. Applications for a place on the primary ballot are also considered public record. Tex. Att’y Gen. Op. No. MW-0175 (1980); *see also* Tex. Att’y Gen. Letter Op. No. 93-65 (1993).

NOTE: There have been recent court rulings recognizing that public citizens’ dates of birth are protected by common-law privacy under the Public Information Act. In addition, the Office of Attorney General has issued open records rulings concluding that these protections extend to dates of birth on candidate applications and other election records, with certain exceptions. Unless the OAG’s Open Records Division has issued a previous determination allowing a specific entity to redact dates of birth on candidate applications or other particular types of election records, the entity should obtain the requestor’s consent to redact dates of birth from an election record or seek an open records ruling from the OAG if a request extends to such information.

Section 552.1175 of the Government Code also provides that information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual covered by that section, or information that reveals whether the individual covered by Section 552.1175 has family members is confidential and may not be disclosed to the public if the covered individual chooses to restrict public access to the information and provides notice accompanied by evidence of the elected public officer’s status to the governmental body with access to the information. Section 552.1175 allows individuals covered by that section to withhold personal information contained in records maintained by any governmental body in any capacity. Elected public officers are covered under Section 552.1175(a)(17). However, several other categories of individuals are covered by the section and any individual covered by the section could choose to restrict public access to their information. An individual covered by Section 552.1175 must notify the governmental body of the choice to restrict public access to the information on a form provided by the governmental body accompanied by evidence of the individual’s status. To the extent information covered by Section 552.1175 appears on an elected public officer’s or other covered individual’s candidate application, this information should be redacted from applications provided in response to a public information request if the individual has chosen to restrict public access to the information and provided appropriate notice. An individual may opt to keep the information confidential after the governmental body receives a request for the information.

In Open Records Decision No. 678 (2003), the Attorney General determined that notice provided by an individual under Section 552.1175 to a governmental body “imparts confidentiality to information only in the possession of the notified governmental body.” Individuals must provide separate notification to any receiving governmental bodies if the information is transferred in order for the information to remain confidential.

As noted above, elected public officers are covered under Section 552.1175(a)(17). If an individual has been appointed to a public office and the individual is not otherwise covered under Section 552.1175 but chooses to restrict public access to his or her information and has notified the governmental body with the appropriate form, we recommend that the governmental body produce copies of the individual’s candidate application if requested with the covered information redacted and seek a ruling from the Attorney General on whether the individual is covered by Section 552.1175.

Section 141.036 – The authority with whom an application for a place on the ballot is required to be filed shall preserve each application filed with the authority for two years after the date of the election for which the application is made.

For questions concerning campaign finance filings, please contact the Texas Ethics Commission at 512-463-5800.

D. Pre-Election Day Records

1. Election Information

- i. *Section 4.009(a)* – Not later than the 21st day before election day, a county that holds or provides election services for an election and maintains an Internet website shall post on its public Internet website for an election of public officials or of a governmental entity authorized by law to impose a tax administered by the county the following information: (1) the date of the election; (2) the location of each polling place; (3) each candidate for an elected office on the ballot; and (4) each measure on the ballot.
- ii. *Section 4.009(b)* – Not later than the 21st day before election day, a city or independent school district that holds an election and maintains an Internet website shall post on the public Internet website for the city or independent school district the following information: (1) the date of the next election; (2) the location of each polling place; (3) each candidate for an elected office on the ballot; and (4) each measure on the ballot.
- iii. *Section 32.076* – An e-mail address or personal phone number of an election judge or clerk collected or maintained by the authority conducting the election is confidential and does not constitute public information. However, an e-mail address or personal phone number of an election judge or clerk shall be made available upon request to any entity eligible to submit lists of election judges or clerks for that election or the state executive committee of a political party with a county chair eligible to submit lists of election judges or clerks for that election.

E. Early Voting

1. Early Voting Records Generally

- i. *Section 87.124* – The early voting election returns, voted early voting ballots, and other early voting election records shall be preserved after the election in the same manner as the corresponding precinct election records (all election records must be preserved for at least 22 months from election day, even when there is no federal office on the ballot, Sec. 66.058).

2. Early Voting Rosters

- i. *Section 87.121(f)* – Information on the roster for a person to whom an early voting mail ballot has been sent, but not returned, is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after election day.
- ii. *Section 87.121(h)* – Information on the roster for a person whose marked mail ballot has been returned shall be made available for public inspection not later than 11 a.m. on the day following the day the early voting clerk receives the ballot voted by mail.
- iii. *Section 87.121(g)* – The early voting by personal appearance roster shall be made available for public inspection not later than 11 a.m. on the day after the date the information has been entered on the roster in accordance with Section 87.121(c), which provides that the roster shall be updated daily.
- iv. *Section 87.121(i)* - The information under Subsections (g) and (h) must be made available for an election in which the county clerk is the early voting clerk on the publicly accessible Internet website of the county; or if the county does not maintain a website, on the bulletin board used for posting notice of meetings of the commissioners court. For an election where the county clerk or elections administrator is not the early voting clerk, on the publicly accessible Internet website of the authority ordering the election; or if the authority ordering the election does not maintain a website, on the bulletin board used for posting notice of meetings of the governing body of the authority.
- v. *Section 87.121(j)* - In a primary election or the general election for state and county officers, the early voting clerk must submit to the Secretary of State for posting on the Secretary of State’s Internet website, in a downloadable format, early voting rosters described by Section 87.121(g) and (h).
- vi. *Section 87.121(o)* - A person registered to vote in the county where the early voting clerk is conducting early voting may submit a complaint to the Secretary of State stating that the early voting clerk has not complied with Section 87.121.
- vii. *Section 87.121(q)* – The Secretary of State shall maintain a record of early voting clerks who have failed to comply with the requirements of Section 87.121.

NOTE: In Tex. Att’y Gen. Op. No. DM-168 (1992), the Attorney General held that the early voting records are available under the Open Records Act (now the Public Information Act), subject to restrictions under law, such as the statutory delays applying to early voting by mail materials discussed above.

NOTE: A person using the Attorney General Address Confidentiality Program would not appear on the roster. Information contained in the Roster for Early Voting by Mail for Address Confidential Applicants is not subject to public disclosure under the Public Information Act. (1 Tex. Admin. Code Sec. 81.38(g)-(h)). For a person using confidentiality under Section 13.004 of the Election Code or Section 552.1175 of the Government Code, the voter’s name should appear on the early voting roster but there should be an asterisk (***) in place of their address.

3. Corrective Action Process Rosters

- i. Voters’ names entered on this roster are not eligible for public disclosure until after the voter has returned the corrected carrier envelope, canceled their mail ballot, or appeared in person to correct any necessary defects. (Sec. 87.121).
- ii. Emails sent or received through the corrective action process are considered election records under the Election Code, are subject to the Public Information Act, and should be retained by the general custodian of election records. The general custodian should consult with their attorney regarding any requests for such emails, as certain information may be exempt from disclosure under the Public Information Act.

4. Applications to Vote by Mail

- i. *Section 86.014* – A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the earliest occurring election for which the application is submitted. Subsection (b) provides that originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

NOTE: Even if an application for ballot by mail may be available for public inspection under Section 86.014, certain information contained in the application may be subject to an exception from public disclosure under the Public Information Act. See the above note regarding candidate filings. Please note that an application for ballot by mail now requires a voter’s personally identifiable information, including the number of a driver’s license or personal identification card issued by the Department of Public Safety or social security number, and that this information is confidential under the Public Information Act.

- ii. *Section 101.103* – An e-mail address used by a Federal Post Card Application (FPCA) voter to request balloting materials is confidential and does not constitute public information for purposes of Chapter 552 of the Government Code. An early voting clerk shall ensure that a voter's provided e-mail address is excluded from public disclosure.

5. Location of Public Election Records

- i. *Section 81.004* – Election records for which the early voting clerk is custodian and that are public information shall be kept at the early voting clerk's main business office for an election in which a county clerk or the city secretary is the early voting clerk. For any other election, these election records shall be kept at a location designated by the authority appointing the clerk.

F. Provisional Voting

1. *1 Tex. Admin. Code Section 81.176(c)(13)* – All Provisional Ballot Affidavit Envelopes and the List of Provisional Voters are public records after the early voting ballot board has completed its review and the Provisional Ballot Affidavit Envelopes and the List of Provisional Voters have been returned to the general custodian of election records.
2. *Section 65.0581* – Provisional voting records are not available for public inspection until the first business day after the date the early voting ballot board completes the verification and counting of provisional ballots and delivers the provisional ballots and other provisional voting records to the general custodian of election records.

G. Election Night, After the Election

1. *Section 65.016* – A county that holds or provides election services for an election and maintains an Internet website shall post on its public Internet website for an election of public officials or of a governmental entity authorized by law to impose a tax administered by the county the following information: (1) the results of each election; (2) the total number of votes cast; (3) the total number of votes cast for each candidate or for or against each measure; (4) the total number of votes cast by personal appearance on election day; (5) the total number of votes cast by personal appearance or mail during the early voting period; and (6) the total number of counted and uncounted provisional ballots cast. The information must be posted as soon as practicable after the election and must be accessible without having to make more than two selections or view more than two network locations after accessing the Internet website home page of the county.
2. *Section 65.016* – A city or independent school district that holds an election and maintains an Internet website shall post on the public Internet website for the city or independent school district the following information: (1) the results of each election; (2) the total number of votes cast; (3) the total number of votes cast for each candidate or for or against each measure; (4) the total number of votes cast by personal appearance on election day; (5) the total

number of votes cast by personal appearance or mail during the early voting period; and (6) the total number of counted and uncounted provisional ballots cast. The information must be posted as soon as practicable after the election and must be accessible without having to make more than two selections or view more than two network locations after accessing the Internet website home page of the city or district, as applicable.

3. *Section 65.060* – A social security number, Texas driver’s license number, or number of a personal identification card issued by the Department of Public Safety furnished on a provisional ballot affidavit is confidential and does not constitute public information for purposes of Chapter 552, Government Code. The general custodian of election records shall ensure that a social security number, Texas driver’s license number, or number of a personal identification card issued by the Department of Public Safety is excluded from disclosure.
4. *Section 66.056* – The general custodian shall prepare an unofficial tabulation on election night and shall periodically make a public announcement of the state of the tabulation. The unofficial tabulation shall be preserved for the period for preserving precinct election records (22 months, Sec. 66.058).
5. *Section 66.057* – The election records for a particular precinct do not become public information until the custodian completes the unofficial tabulation of the results. The general custodian or his agent shall be present at all times when the records delivered in ballot box number 4 are inspected. The election records in envelope number 3 become public information when delivery of the precinct election records is completed.
6. *Section 66.0021* – Requires the general custodian of election records for a primary election or general election for state and county officers to maintain a list that states the total number of votes cast in each precinct on election day. This list must be available for public inspection not later than the day after election day. This information shall be submitted to the Secretary of State and posted in a downloadable format on the Secretary of State’s Internet website.
7. *Section 66.058* – Preservation of Precinct Election Records: Precinct election records shall be preserved by the authority to whom they are distributed for at least 22 months after election day. The voted ballots shall be secured in a locked box in a locked room for at least 60 days after election day, and thereafter may be transferred to a separate container for the remainder of the preservation period. It is a Class A misdemeanor to make an unauthorized entry into the box. The records in ballot box number 4 may be preserved by any method chosen by the custodian.

Precinct election records in an election involving a federal office shall be preserved by the authority to whom they are distributed for at least 22 months in accordance with federal law (42 U.S.C. § 1974).

8. *Section 127.1232* – The general custodian of election records in a county with a population of 100,000 or more shall implement a video surveillance system that retains a record of all areas containing voted ballots from the time the voted ballots are delivered to the central counting station until the canvass of precinct election returns; and from the time the voted ballots are delivered to the signature verification committee or early voting ballot board until the canvass of precinct election returns. The video recorded is an election record under Section 1.012 and shall be retained by the general custodian of election records until the end of the calendar year in which an election is held or until an election contest filed in the county has been resolved, whichever is later.
9. *Section 127.131* – The presiding judge of the central counting station shall provide and attest to a written reconciliation of votes and voters at the close of tabulation for election day and again after the central counting station meets for the last time to process late-arriving ballots by mail and provisional ballots. The reconciliation forms must be posted on a website maintained with the county along with election returns and results. We recommend that local entities post the reconciliation form on their website, if the entity maintains a website. We further recommend that the reconciliation forms remain posted at least until the next election, and that the forms are available for the full 22 month retention period for election records. An entity may choose to make older reconciliation forms available as part of historical results on their website.

H. Voting Systems Information

1. *Section 121.004* – A written letter, e-mail, or other communication, including a communication made confidential by other law, between a public official and a voting systems vendor is not confidential and is public information for purposes of Chapter 552 of the Government Code and is not subject to an exception to disclosure (other than Sections 552.110 and 552.1101, Government Code), unless the communication discloses information, data, or records relating to the security of elections critical infrastructure.
2. *Section 123.008* – A person who sells, leases, or otherwise provides an electronic voting system or equipment to a political subdivision shall also provide any user or operator manuals or other instructions or documents relating to the use of the system or equipment. The general custodian of election records for the political subdivision shall make those materials and any similar materials produced by the political subdivision for its elections available for public inspection in the custodian’s office on the request of any person.

I. Public Inspection of Anonymous Voted Ballots

1. In Tex. Att’y Gen. Op. No. KP-0411 (2022), the Attorney General opined that members of the public and legislators may inspect or obtain copies of anonymous voted ballots during the 22-month preservation period. Section 1.012 of the Code, as amended by House Bill 5180 (88th Leg., R.S., 2023), provides that original voted ballots must be made available for public inspection beginning on the 61st day after election day. The Secretary of State recommends

the following procedures for providing public access to anonymous voted ballots:

- i. The general custodian of election records should establish a written policy that specifies procedures for providing access to anonymous voted ballots through public inspection. This written policy should reflect “procedures as authorized by law to accomplish the dual priorities of ballot preservation and public access to anonymous voted ballots under the Election Code.” (Tex. Att’y Gen. Op. No. KP-0411, p. 5).
- ii. The general custodian’s policy should, at a minimum, include the following provisions:
 1. A defined time period for public inspection consistent with the Public Information Act.
 2. A log of all individuals accessing the anonymous voted ballots during the defined time period.
 3. General regulations regarding access to the ballots, including the following protocols:
 - a. At least one member of the general custodian’s staff must be present at all times in the room containing the voted ballots while public inspection is taking place.
 - b. Pens, pencils, and other marking devices are prohibited in the room containing the voted ballots.
 - c. Food and beverages are prohibited in the room containing the voted ballots.
 - d. Voted ballots must be kept in the same stacks, containers, or boxes, whichever is applicable, while public inspection is taking place.
 - e. Voted ballots may not be removed from the room in which public inspection is taking place.
 - f. Imaging devices may be used to take photos or make copies of the voted ballots.
 4. If video surveillance is available, the Secretary of State recommends that the surveillance system be utilized to monitor all activities in the inspection room during the time that the ballots are made available for public inspection.
 5. In the space where public access to the anonymous voted ballots will be provided, all other materials unrelated to the ballot request should be removed from that location.

J. Public Inspection of Ballot Images and Cast Vote Records

1. *Section 1.012* – Images of voted ballots or cast vote records must be made available for public inspection beginning on the first day after the final canvass of an election is completed.
2. The general custodian of election records must adopt procedures to ensure the redaction of any personally identifiable information of the voter contained on an original ballot, ballot image, or cast vote record before making those records available for public inspection.

K. Records Retention and Management of Anonymous Voted Ballots

1. Voted ballots containing personally identifiable information that could tie a voter's identity to their voting selections must be redacted before allowing public access to the ballots. As Opinion No. KP-0411 recognizes, "such information must be preserved, and the custodian of election records must redact such personally identifiable information to protect the constitutional right to a secret ballot in Texas." (Tex. Att'y Gen. Op. No. KP-0411, p. 4).
2. Voted paper ballots are the official ballot of record for recounts and election contests.
3. If a county has maintained an electronic copy (e.g., ballot image, cast vote record) in addition to the voted paper ballot, copies of the electronic records should be made available upon request just as paper ballots are made available.
4. If anonymous voted ballots have not already been scanned or imaged, they may be imaged prior to public inspection to ensure that there is a record of the image prior to public inspection.
5. If files are provided in any electronic format, the Secretary of State strongly recommends that a hash value be calculated to validate the integrity of the files and to ensure they are not altered in any way.
6. At the conclusion of the retention period, contents of locked ballot boxes or secure containers may only be destroyed if there is no election contest, criminal investigation, or pending public information request that has yet to be fulfilled. (Secs. 1.012, 66.058). The county attorney, district attorney, and any county records management officers should be consulted before disposing of materials after the 22-month retention period.

II. Federal Privacy Act of 1974

The Federal Privacy Act of 1974 (5 U.S.C. § 552a) provides that any federal, state, or local governmental agency which requests an individual to disclose his or her social security number shall inform that individual whether the request for disclosure is mandatory or optional, by what statutory or other authority the social security number is solicited, and what use will be made of it.

III. Sources, Opinions, Advice

The Texas Attorney General is granted authority under the Public Information Act to render rulings on open records matters, which are issued as open records decisions ("ORDs") or open records letter rulings ("ORLs"). The timeline of 10 business days for requesting a ruling under certain statutory provisions refers to these written decisions. The Attorney General's office also maintains an open government telephone hotline for informal verbal advice on open records questions.

The Office of the Secretary of State, Elections Division, has authority to interpret state laws applying to elections. Although our office's advice does not suffice when the situation calls for an ORD, we can help to provide answers on well-settled questions of public information law and suggest practical applications to various election records within those laws. The

State Library and Archives Commission specializes in the law governing proper maintenance and destruction schedules of public records.

IV. Contact Information

Secretary of State, Elections Division: (800) 252-8683
<https://www.sos.state.tx.us/elections/contact.shtml>

Texas Attorney General Open Government Hotline: (512) 478-6736 or (877) 673-6839
Texas Attorney General Cost Hotline: (512) 475-2497
For copies of AG publications, including handbooks: (512) 936-1730
<https://www.texasattorneygeneral.gov/open-government>

State Library and Archives Commission
Records Management Assistance: (512) 463-7610
<https://www.tsl.texas.gov/contact>

V. References

- Tex. Att’y Gen. Open Records Decision No. 467 (1987) (reasonable time standard)
- Tex. Att’y Gen. Open Records Decision No. 622 (1994) (Social Security number, new federal law affects state laws enacted after October 1, 1990); *see also* Tex. Att’y Gen. Open Records Decision No. 674 (2001)
- Tex. Att’y Gen. Open Records Decision No. 678 (2003) (request by law enforcement personnel for confidentiality of certain personal information)
- Tex. Att’y Gen. Op. No. MW-0175 (1980); *see also* Tex. Att’y Gen. Letter Op. No. 93-65 (1993) (applications for primary ballot are public record)
- Tex. Sec’y of State Op. No. JWF-24 (1984) (copying phone, social security, driver’s license numbers)
- Tex. Att’y Gen. Op. No. DM-168 (1992) (availability of early voting list to open records request)
- Tex. Att’y Gen. Op. No. KP-0411 (2022) (right to inspect or obtain copies of anonymous voted ballots during the 22-month preservation period)