



Texas Secretary of State  
ELECTIONS DIVISION



# Public Information and Ballot Secrecy

36th Annual Election Law Seminar  
for Cities, Schools, and Other Political Subdivisions



# What is Public Information?

- Information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
  - By a governmental body;
  - For a governmental body, and the governmental body owns the information, has a right of access to the information, or spends or contributes public money for the purpose of creating or assembling the information; or
  - By an individual officer or employee of a governmental body in his or her official capacity if the information pertains to the official business of the governmental body.

Source: §552.002 of the Texas Government Code



# Election Related Public Information

- What would be considered public information for purposes of the Election Code?
  - All election records are public information (§1.012)
    - Election records are anything distributed or received by the government under the Code;
    - Anything required by law to be kept by others for information of government under the Code;
    - Or, any certificate, application, notice, report, or any other paper or document received by the government under the Code.



# Election Related Public Information

- Election Records:
  - Pre-Election Day Records
  - Voter Registration Information
  - Precinct Election Records (§66.002)
    - Precinct election returns
    - Voting rosters
    - Voted ballots
  - Candidate Applications
  - Post-Election Records



## Pre-Election Day Records

- No later than the 21<sup>st</sup> day before Election Day, a city or independent school district that holds an election and maintains an Internet website must post, on that website for the entity, the following information:
  - the date of the next election for the entity;
  - the location of each polling place;
  - each candidate for an elected office on the ballot; and
  - each measure on the ballot.
- E-mail address and personal phone numbers of election judges or clerks that are maintained by the entity conducting the election are confidential and are not public information.



# Voter Registration Information

- The following voter registration information is confidential and should not be disclosed as part of a public information request (§13.004):
  - Social Security Numbers
  - Texas Driver's License Numbers
  - Numbers on Personal ID cards issued by DPS
  - Residence addresses of federal or state judges, United States attorneys, and certain law enforcement personnel and their spouses
    - They must have filed the requisite affidavits/forms with the voter registrar to keep this information confidential
  - Residence address of a voter registration applicant if the applicant, the applicant's child or a person in the applicant's household is a victim of family violence, sexual assault or abuse, stalking or trafficking of persons.



# Voter Registration Information

- The following voter registration information is confidential and should **not** be disclosed as part of a public information request (§13.004):
  - Any information submitted on a voter registration application for a participant in the address confidentiality program administered by OAG who has provided the voter registrar with proof of certification for participation in the program.



## Precinct Election Records

- Precinct election records are made public information when they are returned to the custodian of election records.
- Precinct election returns are not made public until the general custodian of election records has completed tabulation of the returns. (§66.057)
- All precinct election returns must be preserved for a period of twenty-two months. (§66.058)





# Precinct Election Records

- In a primary election or the general election for state and county officers, the general custodian of election records must maintain a list that states the total number of votes cast in each precinct by personal appearance on election day.
- This list must be available for public inspection not later than the day after election day and also must be submitted to SOS for posting in a downloadable format on the SOS website.



# Precinct Election Records

- **Counties with populations of 100,000+:** The general custodian of election records must 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 CCS or to the EVBB/SVC until canvass of precinct election returns.
  - Recordings are public information and must be retained until the end of the calendar year of the election or an election contest has been resolved, whichever is later.
  - Election Advisory No. 2022-10



# Precinct Election Records – Voted Ballots

- General custodian of election records must make available for public inspection any election records that are images of voted ballots or cast vote records beginning on the first day after the date of the final canvass of an election. (Sec. 1.012)
- Law also requires the general custodian of election records to adopt procedures to ensure the redaction of any personally identifiable information of a voter that may be contained on a ballot.



# Precinct Election Records – Voted Ballots

- Voted ballots must be kept in a locked ballot box in a locked room for 60 days following election day.
  - The ballot box may not be opened during this time period (Class A misdemeanor)
- Once the 60 day period has elapsed, the voted ballots may be transferred to another secure container or the key to the ballot box may be transferred to the custodian of election records.



# Preparing for Public Inspection

- For information requests related to public inspection of voted ballots, we recommend establishing a **written** policy that identifies procedures for providing access to those records.



# Preparing for Public Inspection

- The written policy should, at a minimum, include the following:
  - A defined time period for public inspection that is consistent with the Public Information Act
  - A log of all individuals accessing voted ballots during the defined time period.
  - Other general regulations regarding access, including:
    - **Have at least one member of the general custodian's staff present at all times in the room containing voted ballots while public inspection is taking place.**
    - Prohibition on pens, pencils and other marking devices in the room containing voted ballots.
    - Prohibition on food and beverages in the room containing voted ballots.
    - Voted ballots must remain in the same stacks, containers or boxes during public inspection and may not be removed from the room in which public inspection is taking place.
    - Imaging devices may not be used to take photos or make copies of voted ballots.



# Management of Election Records

- The general custodian may want to consider having voted ballots scanned or imaged prior to public inspection.
- If files are being provided in an electronic format, we recommend calculating a hash value to validate the integrity of the files and to ensure they have not been altered.



## Precinct Election Records – Provisional Ballots

- 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 those affidavit envelopes and the List of Provisional Voters have been returned to the general custodian of election records.
- Voted provisional ballots are similarly not available for public inspection until the first business day after the date the early voting ballot board completes the verification/counting of provisional ballots and delivers the provisional ballots and records to the general custodian.





## Precinct Election Records – Corrective Action

- Voters' names entered on the corrective action 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 defects.
- Any e-mails that are sent or received during the corrective action process for voted mail ballots are considered election records under the Texas Election Code.
- Due to that fact that e-mails related to the corrective action process are public record, those e-mails must be retained by the general custodian of election records for the 22-month retention period.
- If a public information request is received for e-mails related to the corrective action process, the entity that receives the request should consult with their legal counsel regarding the request as certain information may be exempt from disclosure under the Public Information Act.



## Early Voting Rosters

- Early voting rosters are available for public inspection at the following times:
  - For voters who voted in person: No later than 11:00 a.m. on the day following the date the information is entered on the roster (in other words, the day after the person voted).
  - For voters who voted by mail: No later than 11:00 a.m. on the day following the day the early voting clerk receives the ballot voted by mail.
  - A roster of voters to whom an early voting ballot by mail has been sent is not available until the first business day after election day.
  - Applications for ballot by mail become public information on the first business day following the earliest election covered by the application.



## Early Voting Rosters

**NOTE:** We recommend that you create two rosters for your mail ballots—one for ballots that have been mailed but not returned and a separate list of ballots by mail that have been received. Neither roster should explicitly state that a voter on the list has submitted an Annual ABBM.



# Candidate Applications

- Candidate applications for a place on the ballot are public information immediately upon being filed. (§ 141.035)
  - Includes candidate petitions as well
- The filing authority for a candidate application must preserve the applications for a period of two years after the election date.



# Candidate Applications

- Section 552.1175 of the Government Code allows individuals covered by that section to withhold personal information contained in records maintained by a governmental body.
- Candidate applications containing personal information should be redacted if the individual has opted to restrict access to the information and has provided appropriate notice.
- The individual may opt to keep the information confidential after a public information request has been received.
  - See Form 2-67 (Request for Confidentiality for Candidates under Texas Government Code)



## Post-Election Records

- A city or independent school district that holds an election and maintains an Internet website shall post, on that website, the following information:
  - the results of each election;
  - the total number of votes cast;
  - the total number of votes cast for each candidate or for or against each measure;
  - the total number of votes cast by personal appearance on election day;
  - the total number of votes cast by personal appearance or mail during the early voting period; and
  - the total number of counted and uncounted provisional ballots cast.



## Miscellaneous

- The Office of the Attorney General is the agency that oversees the Texas Public Information Act.
- An entity seeking to withhold information from a requestor has a duty to seek a ruling from the Office of the Attorney General regarding the withholding of that information.
- However, a ruling is not required if the exact information was previously requested and permitted by OAG to be withheld by your entity (or a determination was made that applies to all governmental bodies), statutorily authorized redactions or if the requestor has agreed to such redactions.
- **Open Government Hotline (OAG):** (877) 673-6839 (877- OPEN TEX)
- **Open Government Cost Hotline (OAG):** (888) 672-6787 (888-OR COSTS)