

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. 2024-20

To: All Election Officials
From: Christina Worrell Adkins, Director of Elections
Date: June 6, 2024
RE: Emergency Guidance on Voter Privacy

CWA

The purpose of this advisory is to address concerns regarding the constitutional right to a secret ballot. Recent events have highlighted how public information laws could impact a voter's right to a secret ballot. It is imperative that we make every effort possible to provide protections to voters while balancing the public's interest in transparent elections.

House Bill 5180 (88th Leg., R.S., 2023) amended Section 1.012 of the Texas Election 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. Section 1.012 of the Code also provides that original voted ballots shall be made available for public inspection beginning on the 61st day after election day. In addition, this provision states that 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.

On May 1, 2024, the Office of the Attorney General issued Opinion No. [KP-0463](#), regarding whether a member of the public may obtain copies of spoiled ballots on the 61st day following election day. The Attorney General determined that members of the public may obtain copies of spoiled ballots preserved in Ballot Box No. 4 during the 22-month preservation period. Additionally, Opinion No. KP-0463 broadly states that personally identifiable information contained in election records that could tie a voter's identity to their specific voting selections is confidential and excepted from public disclosure. Therefore, "the election records custodian must redact any such personally identifiable information to protect the constitutional right to a secret ballot in Texas." Opinion No. KP-0463 acknowledges that personally identifiable information in the context of a spoiled or voted ballot may include additional identifiers that are created when a ballot is reviewed in combination with other precinct election records.

After consulting with the Office of the Attorney General, we are providing the following guidance.

Our office cannot provide advice on public information requests that are specific to your individual county. However, in light of Opinion No. KP-0463 and recent events involving this topic, our office is issuing the following emergency guidance on possible redactions that may be necessary to protect a voter's right to a secret ballot. Section 1.012 of the Texas Election Code, on its own and combined with Opinion No. KP-0463, acknowledges the necessity in redacting personally identifiable information; however, these redactions must be as limited as possible in order to protect the public's right to review and inspect election records. The information redacted may vary depending on the type of election, the turnout in the election, the type of ballot (in-person, mail ballot, provisional ballot) and the specific request presented. Please note that there isn't any one piece of information on a ballot that could be redacted that would provide full protections to voters across the board. In many circumstances, it is a combination of data points that may allow for an individual's ballot to be located through process of elimination. Based on the request submitted and the facts surrounding the election, the custodian of election records—in consultation with their legal counsel and public information coordinator—should determine what redactions are necessary in their specific situation.

Posting Election Records and Ballot Images on County Website

Many election officials proactively post ballot images, cast vote records, and selected precinct election records on their website. As this action is not taken pursuant to a specific public information request, election officials should redact any information on the precinct election records or on the ballot image that identifies the location at which a voter voted before posting the information to their website. This would include any numbers (electronically affixed or pre-printed) that are tied to a specific polling location or device, and the signature of the presiding judge on the back of the ballot. This may also involve redacting the precinct number or ballot style in certain elections. Additionally, election officials should redact polling location information in selected precinct election records, including your early voting rosters or election day rosters. If you are using pre-printed ballot numbers, you also should redact your ballot inventory records that identify the range of ballots or blank ballot stock that was assigned to a given location.

Possible Redactions on Voted Ballots and Precinct Election Records Pursuant to a Specific Request

If an election official receives a public information request for specific election records and/or ballot images and the county election official determines that producing the records in their original form could compromise a voter's right to a secret ballot, the official should consider additional redactions in consultation with their county or district attorney and public information coordinator. Below are some specific categories to consider when evaluating a public information request.

- **Possible Redactions**

- Location at which a voter voted on the early voting roster or any associated epollbook reports
- Serial numbers and time stamps on epollbook reports
- Polling place identifiers such as a ballot number (either electronic or pre-printed) on the ballot image
- Precinct information on the ballot image
- Presiding judge's signature or early voting clerk's initials on the back of a ballot
- Information on chain of custody documents that provide location identifiers that would appear on a ballot
- Information on a ballot inventory form that shows what range of pre-printed ballot numbers are assigned to a given location
- Provisional notations on specific ballots
- Date a ballot was received on an Early Voting Roster
- The voter's name and the ballot serial number on the Register of Spoiled Ballots

Requesting an Open Records Decision

If a county election official decides that any of the above-referenced information should be redacted in response to a particular public information request, the official must obtain the requestor's consent to redact such information or seek an open records ruling from the Attorney General authorizing the redactions in that specific circumstance. For example, the Tarrant County Elections Administration sought—and obtained—an open records ruling from the Attorney General authorizing the county to redact information regarding the locations at which some of the voters cast their ballots. [Open Records Letter No. 2024-020047](#) (June 5, 2024). This ruling is expressly limited to the particular information at issue in Tarrant County's request and limited to the facts as presented to the Open Records Division, and the ruling cannot be relied upon as a previous determination regarding any other information or any other circumstances. Therefore, you will need to seek an open records ruling if you wish to redact polling place information or other categories of information identified above in response to a request presented to your office. However, the Open Records Division's June 5 ruling provides a helpful guide for election officials who receive requests for certain precinct election records and are considering whether to seek an open records ruling authorizing them to redact personally identifiable information.

In some instances, it would be next to impossible to produce a ballot image or cast vote record and protect a voter's right to a secret ballot, including when a request is for a specific ballot or set of ballots or if a voter is the only person from their precinct or territory that voted in a given election. In these situations, the election official may only be able to protect a voter's right to a secret ballot by withholding the ballot or by redacting specific vote selections. As noted above, the election official must obtain the requestor's consent or seek an open records ruling in order to withhold such information in response to a request.

In all circumstances, an election official must be sure to maintain the security and integrity of the ballots and the public's right to review records, as well as the voter's constitutional right to a secret ballot.

We recommend that the elections office work closely with the county or district attorney and the county's public information division in ensuring that records have been properly redacted before being made publicly available. Election officials should 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 via its Open Government Hotline, (877) 673-6839.

If you have any questions regarding this advisory, please contact the Elections Division toll-free at 1-800-252-VOTE (8683).

CA