

# PIRs: How to Prepare for Election-Related Public Information Requests

SOS Webinar



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



# Voter Registration Information

- Any person may request a list of registered voters from a voter registrar. (§18.008)
  - The requested list may exclude voters on the “S” list or similar notation if it is requested in that form.
    - A copy of the “S” list may also be requested (§§15.082; 15.084)
  - The list should be provided as soon as practicable upon request, but no later than the 15<sup>th</sup> day after the request is received or the list is prepared.



# Voter Registration Information

- Upon being provided with a voter registration list, the requestor must also be provided with written notice that use of information on the list for purposes of advertising or promoting commercial products or services is a Class A misdemeanor.



# 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 provided they have filed the requisite affidavits/forms with the voter registrar to keep this information confidential
  - The 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.
  - The telephone number of any applicant who has submitted documentation that the applicant, the applicant's child or another person in the applicant's household is a victim of family violence, sexual assault or abuse, stalking or trafficking of persons or is a participant in the address confidentiality program administered by the OAG.





# Voter Registration Information

- Any information on the voter registration application/application for a ballot of a participant in the address confidentiality program administered by the Texas Attorney General (Chapter 56, Texas Code of Criminal Procedure) is confidential and is not considered to be public information.



# Voter Registration Information

- The voter registrar may not transcribe, copy or otherwise record a telephone number furnished on a voter registration application.
- The voter registrar may transcribe, copy, or otherwise record a social security number furnished on the registration application ONLY in maintaining the accuracy of registration records.
- A voter registrar may not post on a website a telephone number, driver's license or personal ID card number, SSN, date of birth furnished on a voter registration application.



# Voter Registration Information

- A voter registrar also may not post the residence address of:
  - an applicant who has submitted documentation that the applicant, the applicant’s child or another person in the applicant’s household is a victim of family violence, sexual assault or abuse, stalking or trafficking of persons or is a participant in the address confidentiality program administered by the OAG.
  - an applicant (and their family members) for whom the registrar has received notification from the Office of Court Administration of the person’s qualification as a federal or state judge, a United States attorney or a United States marshal.



# 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.



# Precinct Election Records – Voted Ballots

- House Bill 5180 (2023) amended Section 1.012 of the Election Code to provide that the 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.
- The 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
- Once the 60 day period has elapsed, the voted ballots may be transferred to another secure container and the key to the ballot box may be transferred to the custodian of election records.





# Early Voting Rosters

- Early voting rosters are available for public inspection at the following times:
  - The early voting roster for voters who voted in person is available 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).
  - The early voting roster for voters who voted by mail is available 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)
- 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.



# 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.

