
HARRIS COUNTY, TEXAS, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, ATTORNEY GENERAL OF THE STATE OF TEXAS,	§	
Defendant.	§	201ST JUDICIAL DISTRICT

**HARRIS COUNTY’S FOURTH AMENDED PETITION
FOR DECLARATORY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Harris County files this Fourth Amended Petition for Declaratory Judgment against Ken Paxton, the Attorney General of the State of Texas, pursuant to the Texas Public Information Act (“TPIA”), and other relief as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to Tex. R. Civ. P. 190.3, the County intends that discovery be conducted under Level 2.

II. PARTIES

2. Harris County is a political subdivision of the State of Texas and can be contacted through its undersigned counsel at the Harris County Attorney’s Office. The County seat is in Houston, Texas.

3. Defendant and Respondent, Ken Paxton, is the elected Attorney General for the State of Texas (“Attorney General Paxton”) and may be served at the Office of the Attorney

General, 300 W. 15th Street, Austin, Texas 78701. He is sued only in his official capacity as Attorney General.

III. OTHER INTERESTED INDIVIDUALS

4. Pursuant to Section 552.325(b) of the Texas Government Code, Harris County has informed the requestors by email and certified mail return receipt (for the requestors who provided their addresses) that this Petition has been filed. Harris County included information regarding the suit's subject matter and cause number, the court in which the action has been filed, their rights to intervene, the party against whom the lawsuit has been filed (the Attorney General), and the address and phone number of the Office of the Attorney General as listed on its website.

IV. JURISDICTION & VENUE

5. This Court has jurisdiction over this matter pursuant to Tex. Gov't Code §§ 552.324-552.325 and Tex. Civ. Prac. & Rem. Code § 37.003.

6. Venue for this action is mandatory in the District Court of Travis County pursuant to Tex. Gov't. Code § 552.324.

V. FACTUAL & PROCEDURAL BACKGROUND

7. Beginning in August 2022, the Harris County Elections Administrator ("Elections Administrator") and Harris County Clerk received several requests pursuant to the TPIA seeking cast vote records. In addition to requests for cast vote records, Harris County received numerous requests for various election-related documents and communications. .

8. Upon analyzing the requests, Harris County concluded that the requested information fell within one or more exceptions to disclosure under the TPIA.

9. First, the cast vote records are considered to be confidential by Tex. Elec. Code § 66.058, which requires that cast vote records be stored in a secure container for 22 months following an election.

10. As the Election Code makes clear, the requested documents must be maintained in a secure container that may not be opened during the 22-month preservation period. Tex. Elec. Code § 66.058(b-1). If the County's custodian allowed requestors to have access to such records during the preservation period, it would be a criminal offense. Tex. Elec. Code § 66.058(d)-(e).

11. Additionally, the TPIA exempts information from disclosure if it is information relating to litigation of which a political subdivision, such as Harris County, is a party. *See* Tex. Gov't Code § 552.103.

12. At the time of the various request, Harris County and its officials were parties to one or more lawsuits related to the cast vote records and Harris County elections. The lawsuits included *Strongin, et. al. v. Secretary of State of Texas John B. Scott, et. al.* case 4:22-cv-00576-P-BJ, filed on July 6, 2022 in the U.S. District Court for the Northern District Texas; *Saccomen et. al. v. Lina Hidalgo Harris County Judge, et. al.*, Case Number 2022-46699, filed on August 2, 2022 in the 333rd Judicial District Court for the State of Texas, located in Harris County; *George E. Riser, et al. vs. Isabel Longoria*, Case Number 2022-13773, filed on March 7, 2022 in the 133rd Judicial District Court for the State of Texas, located in Harris County; *Harris County Republican Party vs. Clifford Tatum*, filed on November 14, 2022 in the 157th District Court for the State of Texas, located in Harris County. In these lawsuits, Plaintiffs sued the County and its officials

bringing various state or federal claims related to the County’s election practices. All cases were on file prior to receipt of the various TPIA requests received to date.

13. The requests also concerned information confidential pursuant to other statutory law, which is exempted from public disclosure. *See* Tex. Gov’t Code § 552.101 (“Information is excepted from the requirements of Section 552.021 if it is information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”).

14. Finally, the TPIA also excepts the audit working papers of a county from disclosure. *See* Tex. Gov’t Code § 552.116. At the time Harris County received the requests, the Texas Secretary of State was conducting an audit of Harris County pursuant to Section 127.351(b) of the Texas Election Code. The information requested was maintained for purposes of the audit.

15. Pursuant to the TPIA, Harris County sought to withhold the requested records by requesting a ruling from the Attorney General on one or more of the exceptions outlined above, following the procedure in Tex. Gov’t Code § 552.301.

16. Harris County sent requests to the Attorney General describing how the information was excepted from disclosure in letters and briefs beginning September 2022 through December 2022. Harris County noted that the information was excepted from disclosure pursuant to Tex. Gov’t Code §§ 552.101, 552.103, and 552.116.

17. The Harris County Attorney’s Office received the following letters with decisions from the Attorney General.

OR 2022-36678
OR 2022-36784
OR 2022-37223
OR 2023-06773

OR 2023-06941
OR 2023-07010
OR 2023-07112
OR 2023-07112
OR 2023-07115
OR 2023-07184
OR 2023-07185
OR 2023-07199
OR 2023-07201
OR 2023-07202
OR 2023-07203
OR 2023-07204
OR 2023-07207
OR 2023-07769
OR 2023-07781
OR 2023-08208
OR 2023-08235
OR 2023-08250
OR 2023-08273
OR 2023-08274
OR 2023-08327
OR 2023-08331
OR 2023-08342
OR 2023-08344
OR 2023-08346
OR 2023-08349
OR 2023-08350
OR 2023-08352
OR 2023-08356
OR 2023-08358
OR 2023-08368
OR 2023-08400
OR 2023-08410
OR 2023-08472
no OR Number ID# 045191

18. The Attorney General wrongly concluded that the County may not withhold cast vote records that were still within the 22-month preservation period, despite the preservation period of Tex. Elec. Code § 66.058.

19. The Attorney General decisions failed to discuss and allow the County to withhold documents based on the Litigation exception—despite the ongoing litigation related to cast vote records and Harris County elections—and the Audit Working Papers exception—despite the Secretary of State’s audit of Harris County.

20. Further, the County can withhold the requested information because it had a compelling reason to do so under Tex. Gov’t Code § 552.302.

21. Harris County asserts there are compelling reasons to withhold the requested information from disclosure under Tex. Gov’t Code § 552.302. Harris County asserts that, for records still within the 22-month preservation period, Tex. Elec. Code § 66.058 provides a compelling reason to not disclose the information, as it would lead to criminal liability for the custodian if the requestors accessed the cast vote records in the secure container.

22. Harris County further asserts there is a compelling reason to withhold the information from disclosure under Tex. Gov’t Code § 552.103, the litigation exception, as producing records will harm the County’s position in ongoing and anticipated litigation.

23. Harris County further asserts there is a compelling reason to withhold the information from disclosure under Tex. Gov’t Code § 552.116, the Audit Working Papers exception, as the records are being produced for the Secretary of State’s audit of the November 2020 election in Harris County.

24. Harris County has timely filed this petition for declaratory relief under Tex. Gov't Code § 552.324(b).

VI. DECLARATORY JUDGMENT RELIEF

25. Based on the foregoing facts stated in Paragraphs 7-25 above, Harris County asks this Court to declare its right to withhold the requested information in response to the TPIA requests the County has received for cast vote records. Specifically, Harris County seeks a declaration from this Court that the cast vote records are confidential by law during the preservation period of Tex. Elec. Code § 66.058 and cannot be provided in response to a TPIA request.

26. Harris County further seeks a declaration that the requested cast vote records and other election related documents and communications are excepted from public disclosure under Section 552.101 (Confidential Information), 552.103 (Litigation), 552.116 (Audit Papers), and that the Attorney General failed to consider these exceptions and/or wrongly decided that the exceptions did not apply.

27. Harris County further seeks a declaration that the cited exceptions are compelling reasons for the County to withhold the various requests for information.

28. Harris County challenges and seeks a declaratory judgment as to Attorney General letter rulings listed in Paragraph 17 and all similar Attorney General rulings that Harris County must release cast vote records within the 22-month preservation period, as well as all rulings stating that the requested cast vote records and other election related documents and communications are not excepted from public disclosure under Sections 552.101, 552.103, and/or

552.116, including requests and rulings the County has already received and will receive in the future.

VII. CONDITIONS PRECEDENT

29. All conditions precedent to the filing of this lawsuit have been performed or have occurred.

VIII. PRAYER

For the foregoing reasons, Plaintiff Harris County asks this Court to render a declaratory judgment in its favor and for all other relief, at law or in equity, to which it is justly entitled.

Respectfully submitted,

CHRISTIAN D. MENELEE
Harris County Attorney

JONATHAN G.C. FOMBONNE
First Assistant Harris County Attorney

TIFFANY S. BINGHAM
Managing Counsel, Affirmative Litigation

/s/ Christopher Garza

CHRISTOPHER GARZA
Senior Assistant County Attorney
Texas State Bar No.: 24078543
Christopher.Garza@harriscountytexas.gov

HEENA KEPADIA
Assistant County Attorney
Texas State Bar No: 24110080
Heena.Kepadia@harriscountytexas.gov
Office of The Harris County Attorney
1019 Congress Plaza, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5101
Facsimile: (713) 755-8924

**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2023, a true and correct copy of the foregoing document was served via the Court's electronic filing system to all counsel of record.

/s/ Christopher Garza

CHRISTOPHER GARZA
Senior Assistant County Attorney