

From: dferguson@burnetcountye... Monday 22 January 2024 at 17:28:26

RE: Hart Manuals

To: pattyinburnet2020@use.startmail.com

Cc: Earredondo@burnetcountytexas.org

Yes, completely filled out, initialed where required, and signed.
Thank you,
Doug



Doug Ferguson
Burnet County Elections Administrator
220 South Pierce St.
Burnet, TX 78611
512-715-5288

From: pattyinburnet2020@use.startmail.com <pattyinburnet2020@use.startmail.com>

Sent: Monday, January 22, 2024 3:55 PM

To: dferguson@burnetcountyelections.com

Cc: Earredondo@burnetcountytexas.org

Subject: Re: Hart Manuals

Please consider this a follow up to my previous email re the "Hart manuals".
Thank you.

On Friday, January 19, 2024 1:23 PM,
pattyinburnet2020@use.startmail.com wrote:

Do I understand correctly that the county requires my signature on the Hart form before I will be allowed access to the manuals?

On Friday, January 19, 2024 11:53 AM,
dferguson@burnetcountyelections.com wrote:

Attached is the procedure we follow. It is an SOS document that covers ours and other election equipment. Also I've attached a document from HART explaining the requirements of viewing HART equipment manuals etc. The form must be filled out and signed and returned to me before we can schedule a time for you to come into the office and view the documentation. I will make it available on a laptop computer for you to sit and look at. We do not release copies of the manuals.

Let me know if you have any questions.

Doug

From: pattyinburnet2020@use.startmail.com

<pattyinburnet2020@use.startmail.com>

Sent: Friday, January 19, 2024 8:58 AM

To: Doug Ferguson <dferguson@burnetcountyelections.com>

Subject: Hart Manuals

Good day Mr. Ferguson,

I would like to get a copy of the original Hart voting equipment manuals (the originals and updated manuals), and a copy of the related Burnet LAT test procedures. Are these digital documents or paper?
Please advise.

Patricia Cope

County Clerk



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 3, 2024

Ms. Jessica N. Morrison
Assistant County Attorney
Williamson County Attorney's Office
405 M.L.K. Street, #7
Georgetown, Texas 78626

OR2024-000106

Dear Ms. Morrison:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 23-091394 (Ref. No. 2023-1117-PIA).

The Williamson County Attorney's Office (the "county attorney's office") received a request for specified equipment manuals, audit logs, and communications. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of this information may implicate the proprietary interests of Election Systems & Software, LLC ("ES&S"). Accordingly, you state, and provide documentation showing, you notified these ES&S of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from ES&S. We have considered the submitted arguments and reviewed the submitted representative sample of information.¹

We note the submitted information consists of manuals and documents relating to the use of electronic voting equipment provided to Williamson County by ES&S. We note the

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

requestor has a right of access to this information pursuant to section 123.008 of the Election Code. Section 123.008 of the Election Code provides, in relevant part, as follows:

(a) Each 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 available for public inspection in the custodian's office on the request of any person.

Elec. Code § 123.008(a); *see id.* §§ 1.005(13) (defining "political subdivision"), 121.003(1)-(2), (4) (defining "voting system," "electronic voting system," and "voting system equipment"). Upon review, we find the requestor has a right of access to the submitted information pursuant to section 123.008 of the Election Code. Although ES&S raises sections 552.110, 552.1101, and 552.139 of the Government Code for the submitted information, a statutory right of access prevails over the Act's general exceptions to public disclosure. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exception to disclosure under the Act). However, the county attorney's office and ES&S also assert the submitted information is confidential under section 418.181 of the Government Code. Additionally, the county attorney's office also asserts the submitted information is confidential under section 418.182 of the Government Code. Where information falls within both a general and a specific statutory provision, the specific provision prevails over the general statute. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as exception to general provision unless the general provision is the later enactment and the manifest intent is that the general provision prevails); *Cuellar v. State*, 521 S.W.2d 277 (Tex. Crim. App. 1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Although section 418.181 of the Government Code generally makes confidential information in the possession of a governmental entity revealing vulnerabilities of critical infrastructure and section 418.182 of the Government Code generally makes confidential information in the possession of a governmental entity which consists of access codes and passwords or reveals the location of a security system used to protect public or private property from an act of terrorism or related criminal activity, section 123.008(a) of the Election Code specifically allows a person access to user or operator manuals or other instructions or documents relating to the use of an electronic voting system or equipment provided to a political subdivision. Thus, we find the right of access provided by section 123.008 of the Election Code is more specific than, and prevails over, the confidentiality provided by sections 418.181 and 418.182 of the Government Code. Therefore, the county attorney's office may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 418.181 or section 418.182 of the Government Code.

We note the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body

must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with copyright law and the risk of a copyright infringement suit. Accordingly, the county attorney's office must release the submitted information; however, any information subject to copyright law may only be released in accordance with copyright law.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Tim Neal
Assistant Attorney General
Open Records Division

TN/pt

Ref: ID# 23-091394

c: Requestor

Guidance to Texas Customers Regarding Hart Document Inspection

Hart InterCivic Inc. ("Hart") consistently advocates against public disclosure and release under the Texas Public Information Act (the "PIA") of its confidential, proprietary, trade secret, and security-sensitive documents and information, including the various manuals and related documents it provides to customers to assist in implementing Hart voting systems. The Texas Attorney General's Office has previously held that public release of Hart's manuals "would identify the technical details of particular vulnerability of critical infrastructure to an act of terrorism" and determined that Hart's manuals **should not be publicly disseminated** under Section 552.101 of the PIA in conjunction with Section 418.181 of the Government Code. *See OR2021-34130.*

Despite these prior opinions, the Texas Attorney General's Office has recently opined that PIA requestors have "a right of access" to "user or operator manuals or other instructions or documents related to the use of the [electronic voting] system or equipment" under Section 123.008(a) of the Texas Election Code. *See, e.g., OR2022-34104.*

Pursuant to that provision, "[t]he general custodian of election records for the political subdivision shall make those materials available for public inspection **in the custodian's office** on the request of any person." *TEX. ELEC. CODE § 123.008(a) (emphasis added).*

Hart's position is that these two lines of opinions from the Texas Attorney General make clear that Hart's manuals should not be copied, released, or otherwise disseminated to the public. Rather, the public's right of inspection under Section 123.008(a) means that a member of the public can **physically view a copy of Hart's "user or operator manuals or other instructions or documents related to the use"** of its voting systems during a visit to the office of the general custodian of election records in a particular county. "Inspection" does means:

- NO "Checking out" or otherwise removing from the office of the general custodian of election records a hard copy of any Hart manuals or other documents available for inspection under Section 123.008(a), as the PIA does not authorize the removal of an original copy of a public record from the office of a governmental body. *See TEX. GOV'T CODE § 552.226.*
- NO making copies for members of the public of any portion of the Hart manuals or other documents available for inspection under Section 123.008(a).
- NO members of the public photographing, video capturing or otherwise using their own devices to make copies of any portion of the Hart manuals or other documents available for inspection under Section 123.008(a).
- NO members of the public taking notes or manually copying text from the manuals.
- If viewing is done of a PDF of a document on-screen, NO saving the PDF document to a USB device or other media. View only.

This understanding of "inspection" aligns with guidance provided by the Texas Attorney General's Office for providing access under the PIA to information protected by copyright, which generally states:

"A custodian of public records must comply with the copyright law and **is not required to furnish copies** of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. Id.; see Open Records Decision No. 109 (1975)." *See, e.g., OR 2022-38976 (emphasis added).*

Finally, Hart recommends that its customers ensure that any members of the public who seek to inspect the Hart manuals or other documents available for inspection under Section 123.008(a) are fully informed of what the right of inspection entails. To do so, Hart advises customers to prepare a certification document to be signed by the inspector in advance of the inspection that acknowledges the inspector has been informed of any limitations on the right of inspection (under Section 123.008(a) and copyright laws), as well as the potential consequences for failing to respect those limitations. An example of such a certification is provided on the following page.

If you have any questions regarding any of the information contained in this document, please contact Hart Support at 866-ASK-HART (866-275-4278), or email hartsupport@hartic.com.

HART HVS Voting System

I, _____, have requested that **Burnet County Elections** make "available for public inspection" the "user or operator manuals or other instructions or documents related to the use of the [electronic voting] system or equipment" under Section 123.008(a) of the Texas Election Code. I certify the following:

I have been informed and understand that "public inspection" means:

- [initials]** _____ I will be provided the opportunity to view a copy of the materials available for inspection inside the office of **[political subdivision that is the general custodian of election records]** and only during normal business hours.
- _____ Neither the materials available for inspection nor any portion thereof may leave the office of **[political subdivision that is the general custodian of election records]** at any time.
- _____ I am not permitted to "check out" or otherwise remove any materials available for inspection or any portions thereof from the office of **[political subdivision that is the general custodian of election records]**.
- _____ Neither **[political subdivision that is the general custodian of election records]** nor any of its personnel will provide me with a copy of the materials available for inspection or any portion thereof.
- _____ Neither **[political subdivision that is the general custodian of election records]** nor any of its personnel have any obligation to provide me with a copy of the materials available for inspection or any portion thereof.
- _____ Neither **[political subdivision that is the general custodian of election records]** nor any of its personnel are permitted to assist in making any copies of the materials available for inspection or any portion thereof.
- _____ I am not permitted to photograph, video, take notes, copy by hand, take a digital copy, or otherwise use personal devices to make any copies of the materials available for inspection or any portion thereof.

I have been informed and understand that, to the extent that I make copies or otherwise remove the materials available for inspection or any portion thereof from the office of **Burnet County Elections**, I assume the risk of potential legal liability for doing so.

I have been informed and understand that, to the extent that the materials available for inspection or any portion thereof are copyrighted, I also assume the duty of compliance with copyright law and the risk of a copyright infringement lawsuit, including the risk of being liable.

Signed: _____ **Dated:** _____

Address: _____

Telephone: _____

Email: _____