Protecting Voter Privacy

August 2024

How did we get here?

- Constitutional Right to a Secret Ballot

- Laws moving towards more transparent elections
  - KP-0411 (2022)
  - HB 5180 (88th Leg. R.S., 2023)

There is a natural tension between transparency and security.
What we are experiencing today is that collision point.

Current Protections under Texas Law

- **Section 1.012, Texas Election Code (HB 5180)**

  - 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.

- **KP-0463 (May 1, 2024) – Spoiled Ballots**

  - 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

  - "The election records custodian must redact any such personally identifiable information to protect the constitutional right to a secret ballot in Texas."

Subsequent Actions by SOS

- **Advisory 2024-20 -Emergency Guidance on Voter Privacy**
  - Relies on existing protections under Texas Law
  - Personally identifiable information, in the context of election records, is much broader than originally believed.
  - Identified possible redactions in election records
  - Directed election official to request Open Records Decisions

Current Protections under Texas Law

- What constitutes an election record?
  - Precinct Election Records
  - Voter Registration Lists
  - Ballot by Mail Lists
  - Restricted Rosters
  - Voted Ballots
  - Spoiled Ballots
  - Any records generated in the course of the election

Subsequent Actions by SOS

- **Advisory 2024-21 – Updated Ballot Numbering Requirements**
  - Revised Standards for ePollbook Certification
  - Revised standards prohibit the generation of ballot numbers using electronic pollbook systems or using peripheral devices that directly connect to electronic pollbook systems.
  - Jurisdictions using those systems are now required to use ballot numbering methods that do not involve the use of the electronic pollbook systems or peripherals that are directly connected to those systems.

Potential Long-Term Changes

- Eliminating Precinct Splits

- Aggregating Precinct Level Data for Public Reporting

- Eliminating Precinct Level Reporting in Low Turnout Elections

- Criminal Penalties for Knowingly Revealing a Voter's Selections

- Redactions in other Precinct Election Records

Questions?

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