2014-087

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

August 22, 2014

Honorable Jim Bennett
Secretary of State
Post Office Box 5616
Montgomery, Alabama 36130-5616

Secretary of State – Public Records – Voter Registration List – Driver's License – Voter Identification

A sublist of the statewide voter registration list that is created by the Alabama Secretary of State, which has been modified by the Alabama Department of Public Safety, should not be considered a public record or writing that is subject to disclosure.

Dear Mr. Bennett:

This opinion of the Attorney General is issued in response to your request.

QUESTION

(1) Is a sublist of the statewide voter registration list that is created by the Alabama Secretary of State's Office, but is manipulated by the Department of Public Safety, a public record that is subject to disclosure?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that the Secretary of State's Office ("SOS") provided the Department of Public Safety ("DPS") with a statewide voter registration file. Your agency, the SOS, requested DPS to run a cross-check of the Alabama voters who may not

have either an Alabama driver's license or a nondriver identification card. This process was initiated by the SOS in an attempt to identify the number of Alabamians who were without some form of a valid photo identification card, which would be required pursuant to section 17-9-30 of the Code of Alabama for all elections beginning with the 2014 primary election.

The SOS provided the DPS with relevant information regarding each person sufficient to identify the qualified voter. Specifically, the SOS provided the name; race; last four digits of the number entered in the Social Security number field, where such number existed; voter registrant number; physical address; date of birth; and information, where received, regarding the license number or nondriver identification number. The DPS, in turn, ran a cross-check of each voter against its database of driver's licenses and nondriver identification cards and reported to the SOS the voters for which DPS' records reflected that a voter did or did not have a driver's license or nondriver identification card. This cross-check produced a sublist of voters who were without either of these forms of photo identification.

You further informed this Office that there were several potential errors or flaws in the sublist that was produced by DPS. Specifically, you noted that, for a period of years, you believe that Alabama voters were instructed to enter driver's license numbers in the field marked for Social Security numbers. Thus, it appears that the last four digits of the Social Security number provided to DPS for an unknown number of voters were, in fact, the last four digits of the driver's license or nondriver identification number. You further noted that a number of voters appearing on the sublist have what appear to be Alabama or out-of-state driver's license or nondriver identification card numbers by their names. Because of the discrepancies, you are concerned that the sublist may not accurately reflect the number of Alabama voters who lack either an Alabama driver's license or nondriver identification card. Inherently, you believe the document to be an incomplete record used in the preliminary stages of planning or preparation for a particular objective of the SOS.

The Open Records Act, codified in section 36-12-40 of the Code, provides that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." ALA. CODE § 36-12-40 (2013). The Code does not define the term "public writing." Section 41-13-1, however, defines a "public record" as follows:

> [A]ll written, typed or printed books, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filed with, in or by any such court, office, or officer.

ALA. CODE § 41-13-1 (2013).

The Alabama Supreme Court has defined the term "public writing" as "such a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status or condition of such business and activities can be known by our citizens." *Stone v. Consol. Publ'g Co.*, 404 So. 2d 678, 681 (Ala. 1981).

Not all public records, however, are subject to disclosure. Opinion to Honorable E. Shane Black, Attorney, City of Athens, dated March 13, 2012, A.G. No. 2012-045. Even the Public Records Act acknowledges that other statutes may expressly prohibit disclosure of certain information. ALA. CODE § 36-12-40 (2013). Moreover, this Office, on multiple occasions, has reasoned that the Public Records Law only contemplates the dissemination of completed records in final form. Documents containing mere impressions, such as notes, are not required to be disseminated pursuant to the Public Records Law. See the following opinions:

- Honorable Alvin Holmes, Member, House of Representatives, dated January 9, 2007, A.G. No. 2007-031 (determining that notes are not a public record);

- Honorable Donald B. Sweeney, Jr., Attorney, Pell City Board of Education, dated February 8, 1996, A.G. No. 96-00126 (determining that documents containing the opinions of individual members of a board are not subject to disclosure);

- Honorable Beth Chapman, Secretary of State's Office, dated March 17, 2010, A.G. No. 2010-050 (determining that internal

recommendations that are not the part of a final order may be withheld from public inspection).

The document in question is the product of a commingling of information housed within two different agencies. Because of the intrinsic issues surrounding development and production, the sublist was deemed by the SOS as flawed, incomplete, or in a preliminary format, much akin to the reduction of one's impressions or thoughts onto paper, as in notes. Moreover, you note that the sublist did not affect agency policy, structure, or function. The information contained therein was to be used in a predecisional manner and, once obtained, did not require a particular conduct or forbearance of a particular decision on the part of the SOS.

Based on the information received by this Office, the sublist should not be considered a finalized, complete document. Accordingly, the sublist is not required to be released pursuant to the Public Records Act. *See, generally*, *Coal. to Save Horsebarn Hill v. Freedom of Info. Comm'n*, 806 A. 2d 1130, 1135 (Conn. App. 2002) (defining factors used to determine if a document may be preliminary); *Asbury Park Press, Inc, v. State, Dep't of Health*, 558 A.2d 1363, 1368 (N.J. Super. Ct., App. Div. 1989) (determining that preliminary calculations, drafts, or incomplete records, even at common law, should not be considered public records).

CONCLUSION

A sublist of the statewide voter registration list that is created by the Alabama Secretary of State, which has been modified by the Alabama Department of Public Safety should not be considered a public record or writing that is subject to disclosure.

QUESTIONS

(2) Is the sublist a voter list?

(3) How much should the Secretary of State's Office charge for providing the sublist?

(4) What information must be redacted from the sublist?

(5) Is the Secretary of State's Office required to create specific lists, records, or documents in a certain manner/format such that the information is responsive to requests for public records?

FACTS, ANALYSIS, AND CONCLUSION

Based on the response given to Question 1, Questions 2, 3, 4, and 5 are moot.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
1816822/179134