



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1995

Ms. Laura S. Portwood
Senior Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR95-095

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31486.

The City of Houston (the "city") received a request for all mail-in ballots for the special election held on January 21, 1995, to fill a vacancy on the Houston City Council. You assert that until March 23, 1995, the city must withhold the requested ballots from required public disclosure under section 552.101 of the Government Code in conjunction with sections 66.058, 87.043(c) and 87.124 of the Election Code. We agree.

Section 552.101 of the Government Code requires a governmental body to withhold from public disclosure information that is confidential by law, including information that is confidential by statute. *See also* Gov't Code § 552.352 (providing penalty for distribution of information considered confidential under the Open Records Act). Three provisions in the Election Code work together to make the requested mail-in ballots confidential by statute, but they do so only for a period of sixty days after the election day. *See* Open Records Decision No. 505 (1988).

The Election Code provides that both voted and rejected early voting ballots must not be released, but must be "preserved" for a period of sixty days. *See* Elec. Code §§ 87.124, 87.043(c). The release of voted early voting ballots is covered by section 87.124, which provides that:

The early voting election returns, *voted early voting ballots*, and other early voting election records shall be preserved after the election in the same manner as the corresponding precinct election records. [Emphasis added].

As for the availability of the early voting ballots that are not voted, but are rejected, we turn to section 87.043(c) of the Election Code, which provides as follows:

A board member shall deliver the envelope containing the rejected ballots to the general custodian of election records to be preserved for the period for preserving the precinct election records. The envelope may not be placed in the box containing the voted ballots.

Thus, both the voted and the rejected early voting ballots must be “preserved . . . in the same manner as the corresponding precinct election records.” Section 66.058 of the Election Code provides the manner of preserving precinct election records, and provides in part as follows:

(a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for 60 days after election day.

(b) The voted ballots shall be preserved securely in a locked room in the locked ballot box in which they are delivered to the general custodian of election records. Except as permitted by this code, a ballot box containing voted ballots may not be opened during the preservation period.

You have not informed us that the requestor here has a right under the Election Code to gain access to the ballots during the retention period. *See* Open Records Decision No. 505, at 2 n. 2. Thus, during the sixty-day preservation period, the requested ballots are protected from required public disclosure by section 552.101 of the Government Code in conjunction with sections 66.058, 87.043(c) and 87.124 of the Election Code. *See id.* After the expiration of the preservation period, which is March 23, 1995, according to the Election Calendar for Municipalities of the Office of the Secretary of State, the requested ballots are subject to public disclosure under the Open Records Act. *See id.* You have not asserted that the requested ballots are excepted from required public disclosure after the preservation period; consequently, the city must release the ballots on March 23, 1995.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive style with a large, prominent "K" and "G".

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 31486

cc: Mr. James T. Evans
Attorney and Counselor
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