



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1996

Ms. Linda Jann Lewis
Elections Administrator
McLennan County
P.O. Box 2450
Waco, Texas 76703

OR96-1342

Dear Ms. Lewis:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100233.

The McLennan County Elections Administrator (the "elections administrator") received a request for several items of information pertaining to the March 12, 1996, primary election. You have released all of the requested information with the exception of items I, J, N and M. You state that "I believe some information being requested may be included in sealed ballot boxes. And as you are aware, The Texas Election Laws required ballot boxes to be sealed for 22 months after an election with federal offices on the ballot." As a representative sample of the information you seek to withhold from public disclosure, you submitted a copy of what you say are "log printer tapes" which you say should be stored with the voted ballots.

The requested records include the following information:

- I. Record by serial number and Precinct number of ballots used in the Resolution Committee. This involves mismarked or damaged ballots and duplicated or modified ballots with oval stickers.
- J. The record of log of the following items:
 1. Precinct numbers counted at each scanning machine
 2. Number of tapes used at each machine
 3. Name of operator at each scanning machine

4. A cumulator record that shows when these tapes were entered and request by whom

M. Magnetic tapes of the primary (store tapes) for

1. election day
2. election early votes
3. cumulative

N. Print out from "Scanner Printer Logs" and time ballots were run and from which Precinct.

We assume that you seek to withhold the requested information from required public disclosure based on section 552.101 of the Government Code, which excepts from disclosure information that is deemed confidential by law, including information made confidential by statute.

Chapter 66 of the Election Code governs the disposition of precinct election records.¹ On completing a precinct's election returns, the presiding judge must place each election record in either the appropriate envelope or ballot box for distribution to certain parties. *See* Election Code § 66.021(a); *see also* Election Code §§ 66.022 (contents of envelope No. 1); 66.023 (contents of envelope No. 2); 66.024 (contents of envelope No. 3.); 66.025 (contents of ballot box No. 3); 66.026 (contents of ballot box No. 4); 66.051 (distribution of election records).

Section 66.058 of the Election Code governs the preservation of precinct election records.² Subsection (b) of section 66.058 contains a restriction on public access to one particular ballot box, the ballot box containing the voted ballots:

(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.

¹Precinct election records include "election returns, voted ballots, and other records of an election that are assembled and distributed" under chapter 66. *See* Election Code § 66.002

²Subsection (a) of that provision sets the preservation period for all precinct election records at 60 days after the election day. *See* Election Code § 66.058(a). The requested records pertain to a federal election. The preservation period for records of a federal election is 22 months after election day in accordance with federal law. *See* Election Code § 66.058(g).

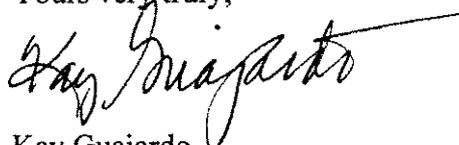
Thus, this provision prohibits an elections records custodian from opening the ballot box containing the voted ballots during the preservation period except as permitted by the Election Code. The voted ballots are contained in ballot box no. 3. *See* Election Code § 66.025. Ballot box no. 3 must also contain three other election records: a copy of the precinct returns, a tally list, and a copy of the poll list. *See id.* As it does not appear that the records at issue need be placed in ballot box no. 3, we need not address whether the election administrator may open ballot box no. 3 in this situation.

Consequently, we cannot conclude that the requested information may be withheld from public disclosure pursuant to Election Code section 66.058. We note that Election Code section 66.059 provides a remedy for erroneously placed election records by which a district judge of the county in which the ballot box is located may order the opening of a ballot box under certain circumstances.

Finally, we note that Election Code section 66.058(g) requires the secretary of state to instruct the election administrator on the actions necessary to comply with federal law. *See* Election Code § 66.058. Thus, you may wish to seek guidance from the secretary of state concerning compliance with federal law.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100233

Enclosures: Submitted documents

cc: Mr. Fred Binner
Commissioner, Precinct 3
McLennan County
P.O. Box 648
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(w/o enclosures)