



July 31, 2000

Mr. Wes Swift
Public Information Officer
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR2000-2877

Dear Mr. Swift:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137528.

The City of Galveston (the "city") received a request for five categories of information relating to a city council election, held on May 6, 2000.¹ You claim that the information requested in categories 1 and 2 is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of the information requested.² Because you have only submitted representative samples of and arguments for categories 1 and 2 of the request, we assume that the city has released the rest of the requested information to the requestor. If not, you must do so at this time. *See* Gov't Code §§ 552.301(e), .302; *see also* Gov't Code § 552.352.

¹Specifically, the requestor seeks:

"1) Precinct 313 ballots for Districts 1 & 2, including any document supporting votes cast, including those casting any such votes.

2) Precinct 216 ballots for Districts 1 & 2, including any documents supporting votes cast, including those casting any such votes.

3) A list of eligible voters for the election of May 6, 2000 for Precincts 1 & 2.

4) A boundary maps [sic] for Precincts 1 & 2.

5) A copy of any complaint from any registered voters, citizens with respect to the election that took place in Precincts 1 & 2."

²In reaching our conclusion here, 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.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 66.058(a) of the Election Code requires, with exceptions which do not appear to be applicable here, that precinct election records be preserved for 60 days after election day. Subsection (b) of section 66.058 requires that voted ballots and ballot stubs be preserved in a locked room in the locked ballot box or sealed envelope in which they are delivered to the general custodian of election records and that, “[e]xcept as permitted by this code, a ballot box containing voted ballots or an envelope containing ballot stubs may not be opened during the preservation period.” *See also* Elec. Code §§ 213.007 (access to voted ballots for recounts), 221.008 (access to voted ballots for election contest), 1.013 (election records may be destroyed after preservation period unless election contest or criminal investigation or proceeding in connection with election is pending). Thus, voted ballots are not subject to disclosure under chapter 552 of the Government Code until the preservation period has run. The preservation period in the instant case is sixty days after the May 6, 2000 election. *See* Election Code § 66.058(a). As this time period has now elapsed, the city must provide the requestor with access to or copies of the voted ballots. *See* Open Records Decision No. 505 at 4 (1988) (a request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/pr

Ref: ID# 137528

Encl. Submitted documents

cc: Mr. Anthony P. Griffin
1115 Moody
Galveston, Texas 77550
(w/o enclosures)