



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 23, 2009

Mr. William R. Pemberton
Attorney at Law
P.O. Box 1112
Crockett, Texas 75835

OR2009-10257

Dear Mr. Pemberton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 349960.

The City of Crockett (the "city"), which you represent, received a request for documents relating to the 2009 city election, including but not limited to, all sign-in sheets, all early voting ballots, and all ballots for all precincts that were used and not used. You state you have released the requested sign-in sheets. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 66.058 of the Election Code reads in relevant 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 at least 22 months after election day.
- (b) For a period of at least 60 days after the date of the election, 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.

...

(b-1) Except as permitted by this code, a ballot box or other secure container containing voted ballots may not be opened during the preservation period.

Elec. Code § 66.058 (a)-(b-1). "Precinct election records" means the precinct election returns, voted ballots, and other records of an election that are assembled and distributed under chapter 66 of the Election Code. *Id.* § 66.002. Precinct election records encompass various items collected during an election, including voted and unused ballots. *See id.* §§ 66.025 (ballot box no. 3 must contain voted ballots), .026 (ballot box no. 4 must contain unused ballots), .051 (providing for distribution of ballot box nos. 3 and 4). Section 66.058(b-1) of the Election Code prohibits the opening of a ballot box or other secure container containing voted ballots during the preservation period. *See id.* § 66.058(b-1). Thus, records contained in ballot box no. 3 are not subject to disclosure under the Act until the preservation period has run. The preservation period in the instant case is 22 months from the time of the city election. *See id.* § 66.058(a). The Election Code authorizes access to voted ballots during the preservation period for several purposes, including, for example, election contests, criminal investigations, and counts conducted pursuant to chapter 127 of the Election Code. *See* Open Records Decision No. 505 at 2 n. 2 (1988). We have no indication the Election Code authorizes access to the items responsive to the present request contained in ballot box no. 3 in this instance. Therefore, the items responsive to the present request contained in ballot box no. 3 are protected from required public disclosure pursuant to section 66.058(b-1) of the Election Code and must be withheld under section 552.101 of the Government Code for the duration of the preservation period. After the preservation period, the requested information contained in ballot box no. 3 is subject to public disclosure. *See* ORD 505 at 4 (request made during the preservation period to inspect information protected from public disclosure by the Election Code must be treated as request to inspect such information when the preservation period expires).

We note, however, the request encompasses other items, including unused ballots, not required to be placed in ballot box no. 3. Items contained in ballot box no. 4, including unused ballots, are not required to be locked during the preservation period as are items contained in ballot box no. 3. They are only required to be preserved during the preservation period and then may be destroyed. *See* Elec. Code § 1.013 (providing election records may be destroyed after preservation period); *see also* ORD 505 at 2. Items contained in ballot box no. 4 may be preserved in that box or by any other method chosen by the custodian of election records. *See* Elec. Code § 66.058(f). The general custodian of election records or the custodian's designee shall be present at all times when the records delivered in ballot box no. 4 are inspected. *See id.* § 66.057(b). Because section 66.058(b-1) of the Election Code specifically provides for the protection of ballot box no. 3 but does not provide the same protection for ballot box no. 4, we conclude unused ballots are not confidential by law. Thus, the requestor must be allowed access to unused ballots, as well as the remaining

requested information that is not contained in ballot box no. 3. As you raise no further exceptions against disclosure of the remaining requested information, it must be released.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 349960

Enc. Submitted documents

c: Requestor
(w/o enclosures)