



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 9, 2011

Mr. Jack K. Choate
First Assistant Criminal District Attorney
Walker County
P.O. Box 1659
Huntsville, Texas 77340

OR2011-03271

Dear Mr. Choate:

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# 410866.

The Walker County Tax Assessor-Collector (the "county") received a request for all ballots cast in a specified city election and unused ballots or documentation of their disposal. You state you have made available some of the requested information. 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 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.

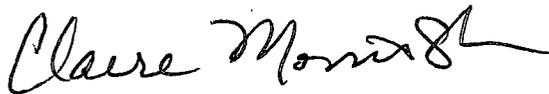
Elec. Code § 66.058 (a)-(b), (b-1). "Precinct election records" means the precinct election returns, voted ballots, and other records of an election that are assembled and distributed under chapter 66 of the Election Code. *Id.* § 66.002. You assert, and we agree, the requested voted ballots are within this meaning of "precinct election records."

The Election Code authorizes access to election records during the preservation period for several purposes, including, for example, recounts, 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 voted ballots at issue in this case. Thus, this information is not subject to disclosure under the Act until the preservation period has run. The preservation period in the instant case is at least 22 months after the November 2, 2010 election. *See* Elec. Code § 66.058(a). Therefore, the voted ballots are confidential as long as the ballots are required to be preserved pursuant to section 66.058 of the Election Code, and thus, the voted ballots at issue must be withheld under section 552.101 of the Government Code for the duration of the retention period. After this period, these ballots are subject to public disclosure. *See* ORD 505 at 4 (request made during preservation period to inspect voted ballots must be treated as request to inspect ballots when retention period expires).

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, toll free at (888) 672-6787.

Sincerely,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 410866

c: Requestor