



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2012

Ms. Ashley D. Fourt  
Assistant District Attorney  
Tarrant County  
401 West Belknap, 9th Floor  
Fort Worth, Texas 76196-0201

OR2012-13768

Dear Ms. Fourt:

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# 463942.

The Tarrant County Elections Department (the "department") received a request for the log activities and print-outs of each voted ballot for all voting machines used in a specified election.<sup>1</sup> You state the department is releasing some of the requested information upon payment of charges. 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 and reviewed the submitted representative sample of information.<sup>2</sup>

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

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<sup>1</sup>We note the department asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume 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.

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:

(1) in an election involving a federal office, for at least 22 months after election day in accordance with federal law; or

(2) in an election not involving a federal office, for at least six 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. *See 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 requested voted ballots in this case. Thus, this information is not subject to disclosure under the Act until the preservation period has run. We note the election at issue involved federal offices. Accordingly, the preservation period in the instant case is at least 22 months after the May 29, 2012 election. *See Elec. Code § 66.058(a)*. Therefore, the voted ballots at issue 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 must be withheld under section 552.101 of the Government Code for the duration of the retention period. After this period, this information is 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 463942

Enc. Submitted documents

c: Requestor  
(w/o enclosures)