



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 13, 2012

Ms. Margaret Ward  
Attorney for City of Meadow  
Shotts, Treviño & Guevara, L.L.P.  
2237 Hillside Drive  
San Angelo, Texas 76904

OR2012-20060

Dear Ms. Ward:

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# 473630.

The City of Meadow (the "city"), which you represent, received a request for information pertaining to the May 12, 2012 election, including the ballots and seals used during early voting. You state the city has released some of the information to the requestor. You state the city does not possess some of the requested information.<sup>1</sup> You claim that 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>

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request, create responsive information, or obtain information that is not held by the governmental body or on its behalf. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

<sup>2</sup>We note you have submitted a blank ballot as a representative sample of the requested completed ballots and broken seals. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the city in the future to submit for review the information that it seeks to protect from disclosure and for which it seeks a ruling from this office. See Gov't Code §§ 552.301, .302.

Initially, you note the requestor asks to view the ballot box, a tangible physical item. The Act is applicable to "public information," which is defined as information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body, and the governmental body owns the information or has a right of access to it. *See Gov't Code § 552.002.* This office has ruled, however, that tangible physical items are not "information," as that term is contemplated under the Act. *See Open Records Decision No. 581 (1990).* Therefore, the ballot box is not public information for purposes of section 552.002 of the Government Code, and the Act does not require the city to make this item available to the requestor. *See Gov't Code §§ 552.002, .021.*

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:

- (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 and broken seals are within this meaning of "precinct election records."

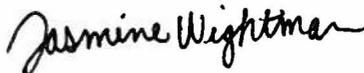
The Election Code authorizes access to election records during the preservation period for several purposes, including, for example, recounts, election contests, criminal investigations,

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 information at issue in this case. Thus, this information is not subject to disclosure under the Act until the preservation period has run. The election at issue does not involve a federal office. Accordingly, the preservation period in the instant case is at least six months after the May 12, 2012 election. *See* Elec. Code § 66.058(a)(2). As this time period has now elapsed, the city must provide the requestor with access to or copies of the information at issue. *See* ORD 505 at 4 (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 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,



Jasmine D. Wightman  
Assistant Attorney General  
Open Records Division

JDW/dls

Ref: ID# 473630

Enc. Submitted documents

c: Requestor  
(w/o enclosures)