



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 12, 2014

Mr. Charles D. Olson
Counsel for the City of Clifton
Haley & Olson, P.C.
510 North Valley Mills Drive, Suite 600
Waco, Texas 76710

OR2014-14010

Dear Mr. Olson:

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# 532459.

The City of Clifton (the "city"), which you represent, received a request for ten categories of information pertaining to a specified election, including copies of the six affidavit envelopes certified to have been provided to each provisional voter. You claim portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, we note you have not submitted any arguments or information responsive to some of the categories of information requested. To the extent any information responsive to these portions of the request existed and was maintained by the city on the date the city received the request, we assume the city has released it. If the city has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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, such as section 66.058 of the Election Code. Section 66.058 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.

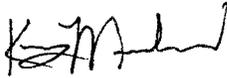
Elec. Code § 66.058 (a)-(b-1). “Precinct election records” means the precinct election returns, voted ballots, and other records of an election that are assembled and distributed under chapter 66 of the Election Code. *See id.* § 66.002. You inform us the requested affidavit envelopes are “contained in locked ballot boxes along with other election materials and the material contained within such ballot boxes is made confidential by Section 66.058[.]” *See id.* §§ 65.055(c) (for each accepted provisional ballot, the board shall place the corresponding envelope on which is printed the voter's affidavit and shall deliver the envelope to the general custodian of election records, to be retained for the period for preserving precinct election returns), .058 (provisional voting records shall be preserved after the election in the same manner as the corresponding precinct election returns). Upon review, we agree the requested affidavit envelopes are subject to section 66.058.

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 affidavit envelopes 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 did not involve a federal office. Accordingly, the preservation period in the instant case is at least six months after the May 10, 2014 election. *See Elec. Code § 66.058(a)*. Therefore, the information at issue is confidential as long as the precinct election records are required to be preserved pursuant to section 66.058 of the Election Code, and thus, the information at issue 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 532459

c: Requestor