



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 29, 2016

Mr. Arnold G. Polanco
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2016-17163

Dear Mr. Polanco:

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# 621175 (City Ref. No. W005938-050916).

The City of Friendswood (the "city") received a request for information pertaining to the city's May 7, 2016 special election.¹ You state the city has released some of the requested information. You claim the submitted 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.²

You assert the information submitted as Exhibit B, which consists of a voted ballot image, is protected under section 552.101 of the Government Code in conjunction with section 66.058 of the Election Code. Section 552.101 of the Government Code excepts from

¹You state the city sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We 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 those records contain substantially different types of information than that submitted to this office.

disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 66.058 of the Election Code. Section 66.058 provides, in part:

(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 information at issue constitutes precinct election records subject to section 66.058 of the Election Code.

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 ballot image at issue 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, in the instant case, the preservation period is at least six months after May 7, 2016. *See Elec. Code § 66.058(a)*. 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)*.

Section 552.101 of the Government Code also encompasses section 86.014 of the Election Code, which states:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the latest occurring election for which the application is submitted.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You explain voters may apply to vote by mail for an entire year by using an annual Application for Ballot by Mail (“ABM”) or may apply to vote by mail for a specific election. In instances where a voter has applied to vote by mail for an entire year, you state the latest occurring election for which the applications at issue were submitted will be on November 8, 2016. Thus, we conclude the city must withhold the ABMs submitted as Exhibit E under section 552.101 of the Government Code in conjunction with section 86.014(a) of the Election Code until the first business day after November 8, 2016. Further, the city must withhold the carrier envelope and carrier envelope certification submitted as Exhibits C and D under section 552.101 in conjunction with section 86.014(b) until the information is delivered to the general custodian of election records after the election on November 8, 2016.

You raise section 87.121 of the Election Code with regard to the submitted rosters in Exhibit F. Section 552.101 of the Government Code also encompasses section 87.121, which provides, in relevant part:

(a) The early voting clerk shall maintain for each election a roster listing each person who votes an early voting ballot by personal appearance and a roster listing each person to whom an early voting ballot to be voted by mail is sent.

(b) For each person listed, the applicable roster must include:

(1) the person’s name, address, and voter registration number;

(2) an identification of the person’s county election precinct of registration; and

(3) the date of voting or the date the ballot was mailed to the person, as applicable.

...

(f) Information on the roster for a person to whom an early voting mail ballot has been sent is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after election day.

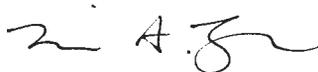
Id. § 87.121(a), (b), (f). You have submitted rosters which reflect those voters who requested absentee ballots, the date the request was received, the date the ballot was mailed, and the date the ballot was returned to the voting clerk, if in fact the ballot was returned. We understand you to contend the submitted voting rosters are confidential pursuant to section 87.121(f). However, we note the election to which the submitted rosters pertain is now concluded. Thus, we find the information contained on the rosters for these voters is now available for public inspection pursuant to section 87.121(f). Accordingly, the city may not withhold Exhibit F under section 552.101 of the Government Code in conjunction with section 87.121 of the Election Code. *See id.* § 87.121(f).

In summary, the city must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 66.058 of the Election Code for the duration of the retention period. The city must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 86.014(a) of the Election Code until the first business day after November 8, 2016. The city must withhold Exhibits C and D under section 552.101 of the Government Code in conjunction with section 86.014(b) of the Election Code until the information is delivered to the general custodian of election records after the election on November 8, 2016. The city must release the remaining information.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bw

Ref: ID# 621175

Enc. Submitted documents

c: Requestor
(w/o enclosures)