



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 16, 2016

Mr. Bobby Maldonado
Counsel for the City of Dilley
Maldonado Diaz, PLLC
924 McCullough Avenue
San Antonio, Texas 78215

OR2016-18492

Dear Mr. Maldonado:

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# 622817.

The City of Dilley (the "city"), which you represent, received a request for (1) the forty-four carrier envelopes of the mail-in ballots from a specified election and (2) any writing regarding the nomination of two specified judges. You claim the submitted information is exempted 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.¹

Initially, we note the city has not submitted any material responsive to the request for any writing regarding the nomination of two specified judges. To the extent information responsive to this portion of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as

¹We 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.

soon as possible). If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), .302.*

You assert the remaining requested information, which consists of carrier envelopes, 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 disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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 the requested carrier envelopes constitute precinct election records subject to section 66.058 of the Election Code. However, we find the city has failed to demonstrate the requested carrier envelopes constitute election returns, voted ballots, or other records of an election that are assembled and distributed under chapter 66 of the Election Code. Accordingly, the city may not withhold the information at issue 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 also encompasses information protected by section 86.014 of the Election Code, which states in relevant part:

(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.

Id. § 86.014(b). We note that the general election of May 7, 2016 to which the submitted information pertains has now concluded. Thus, we find the submitted information is now available for public inspection. *Cf.* Attorney General Opinion No. DM-168 at 3 (1992). Accordingly, the city must release the submitted information to the requestor pursuant to section 86.014 of the Election Code.

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,



Ashley Crutchfield
Assistant Attorney General
Open Records Division

AC/dls

Ref: ID# 622817

Enc. Submitted documents

c: Requestor
(w/o enclosures)