KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 2, 2017

Mr. Randall Miller
Assistant District Attorney
Dallas County
411 Elm Street, 5th Floor
Dallas, Texas 75202

OR2017-02342

Dear Mr. Miller:

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# 644113.

The Dallas County Elections Department (the "county") received three requests from different requestors for the provisional ballots, reasonable impediment affidavits filed at specified polling locations, provisional combination forms, and provisional voter roster for a specified election. You state you will release information responsive to the second, third, and fourth categories of information requested. 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.

The county asserts the remaining requested information, which consists of ballots, 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." 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. The county asserts, and we agree, the requested ballots constitute 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 requested 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 did not involve a federal office. Accordingly, in the instant case, the preservation period is at least six months after November 8, 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. Thus, the requested 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.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,

Kaelan A. Henze
Assistant Attorney General
Open Records Division

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Ref: ID# 644113

c: 3 Requestors