



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 24, 2017

Mr. William Schultz
Assistant District Attorney
Denton County
1450 East McKinney, Suite 3100
Denton, Texas 76209

OR2017-16493

Dear Mr. Schultz:

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# 667730 (PIR# 17-078).

The Denton County Criminal District Attorney's Office (the "district attorney's office") received a request for ballot images from specified elections held in May 2017. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

You assert the requested information at issue, 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 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.

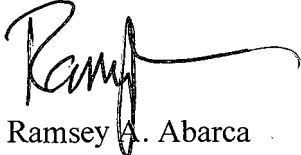
Elec. Code § 66.058 (a)-(b-1). “Precinct election records” means the precinct election returns, voted ballots, and other records of an election that are assembled and distributed under chapter 66 of the Election Code. *See id.* § 66.002; *see also id.* §§ 121.001 (noting other provisions of this code apply to an election in which a voting system is used), 127.132 (explaining voted ballots, election returns, and other election records of an electronic voting system shall be delivered to authorities who receive corresponding records from precinct polling places using regular paper ballots), 129.001 (stating chapter 129 applies to voting system that uses direct recording electronic voting machines and, to extent possible, procedures applicable to electronic voting system under chapter 127 are applicable to voting system under chapter 129). You assert, and we agree, the requested ballot images 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 elections at issue did not involve a federal office. Accordingly, in the instant case, the preservation periods are at least six months after the May 2017 elections at issue. *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,

A handwritten signature in black ink, appearing to read "Ramsey", with a long horizontal flourish extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 667730

c: Requestor