



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 31, 2017

Ms. Erin D. Thorn
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 East Cano
Edinburg, Texas 78539

OR2017-17068

Dear Ms. Thorn:

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# 668771.

The Hidalgo County Elections Administration Office (the "county") received a request for 23 categories of information pertaining to a specified election. You state the county will release some information upon payment of the cost estimate. You state the county does not have information responsive to portions of the request.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified the City of San Juan (the "city") of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released.² See Gov't Code § 552.304 (providing that interested party may submit comments

¹The act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²As of the date of this letter, we have not received comments from the city explaining why the submitted information should not be released.

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 the submitted information constitutes precinct election records made confidential by section 66.058. Upon review, we agree the information at issue is 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 submitted information 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 6, 2017, 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. Thus, the submitted information must be withheld under section 552.101 of the Government Code for the duration of the preservation period. After this period, the information at issue 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,



Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/tdw

Ref: ID# 668771

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)