



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 3, 2017

Mr. Evaristo Garcia, Jr.
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2017-17464

Dear Mr. Garcia:

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# 669125 (PIR# W024104-051217).

The City of McAllen (the "city") received a request for information pertaining to votes cast in a specified election on May 6, 2017. You state the city does not have information responsive to some of the request.¹ You further state the city released some 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 information.

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:

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 dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(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. Upon review, we find you have failed to demonstrate the submitted information is confidential under section 66.058 of the Election Code and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 127.099 of the Election Code which provides as follows:

(a) On completing each test, the presiding judge shall place the test ballots and other test materials in a container provided for that purpose and seal the container so it cannot be opened without breaking the seal. The manager, tabulation supervisor, presiding judge, and not more than two watchers, if one or more watchers are present, shall sign the seal. The watchers must be of opposing interests if such watchers are present.

(b) The test materials shall remain sealed for the period for preserving the precinct election records.

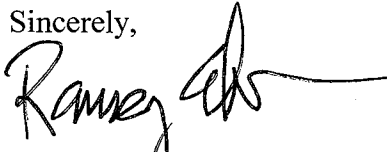
(c) The container may not be unsealed unless the contents are necessary to conduct a test under this subchapter, a criminal investigation, election contest, or other official proceeding under this code. If the container is unsealed, the authority in charge of the proceeding shall reseal the contents when not in use.

Elec. Code § 127.099(a)-(c). Section 127.099 prohibits the unsealing of the container holding election test materials except in certain circumstances. Upon review, we find you have failed to demonstrate the submitted information is confidential under section 127.099 of the Election Code and it may not be withheld under section 552.101 of the Government Code on that basis. Accordingly, the city must release the submitted 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 669125

Enc. Submitted documents

c: Requestor
(w/o enclosures)