



KEN PAXTON

ATTORNEY GENERAL OF TEXAS

February 8, 2018

Ms. Jennifer Smith
Assistant District Attorney
Hidalgo County Criminal District Attorney's Office
100 East Cano
Edinburg, Texas 78539

OR2018-03008

Dear Ms. Smith:

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# 694652 (PIR No. 2017-0121-DA.CO).

The Hidalgo County Elections Administration Office (the "county") received a request for twenty-five categories of information pertaining to a specified election. You inform us the county will release some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified other interested parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from the City of Welasco (the "city").¹ We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹As of the date of this letter, we have not received comments from the remaining notified parties explaining why the submitted information should not be released. Although the city raises sections 552.101 and 552.131 of the Government Code for the submitted information, the city provides no arguments explaining the applicability of these exceptions. Therefore, we assume the city no longer asserts sections 552.101 and 552.131. *See* Gov't Code §§ 552.301, .302. Further, although the city raises sections 552.305 and 552.352, we note these sections are not exceptions to public disclosure under the Act. Rather, section 552.305 addresses the procedural requirements for notifying third parties their interests may be affected by a request for information and section 552.352 imposes criminal penalties for the release of confidential information. *See id.* §§ 552.305, .352.

²We 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.

Although the city argues the submitted information is excepted under section 552.110 of the Government Code, that exception is designed to protect the interests of third parties, not the interests of a governmental body. *See id.* § 552.110 (excepts from disclosure trade secret or commercial or financial information obtained from third party). Thus, we do not address the city's argument under section 552.110.

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. This section encompasses information protected by other statutes, such as section 66.058 of the Election Code, which provides, in relevant part:

(a) Except as otherwise provided by this code, the precinct election records shall be preserved by the authority to whom they are distributed for at least 22 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.

...

(g) Electronic records created under Chapter 129 shall be preserved in a secure container.

Elec. Code § 66.058 (a)-(b-1), (g). "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 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. Therefore, pursuant to section 66.058(a) of the Election Code, the information at issue is confidential for at least 22 months after election day. *See* Elec. Code § 66.058(a). Accordingly, the county must withhold the submitted information under section 552.101 of the Government Code on that basis 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,



Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 694652

Enc. Submitted documents

c: Requestor
(w/o enclosures)

8 Third Parties
(w/o enclosures)