



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 16, 2022

Ms. Hannah Bell
Assistant District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196-0201

OR2022-17424

Dear Mr. Belknap:

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# 954217.

The Tarrant County Commissioners Court and the Tarrant County Election Board (collectively, the "county") received two requests from the same requestor for certain information, including results tapes and cumulative voting reports, pertaining to two specified elections. You state 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.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.² Additionally, we have received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

¹ Although you also raise section 552.101 of the Government Code in conjunction with section 129.024 of the Election Code, you make no arguments to support the applicability of section 129.024. Therefore, we assume you have withdrawn your claim that the information at issue is made confidential under section 129.024 of the Election Code. *See* Gov't Code §§ 552.301, .302. Additionally, we understand the requestor to claim the county did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See id.* § 552.301(b). Regardless of whether the county complied with section 552.301, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301 of the Government Code, we will consider the applicability of section 552.101 to the information at issue. *See id.* §§ 552.007, .302, .352.

² We 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 those records contain substantially different types of information than that submitted to this office.

decision.” *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 66.058 of the Election Code, which provides:

(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. On the 61st day after election day, the general custodian of election records may:

(1) require a person who has possession of a key that operates the lock on a ballot box containing voted ballots to return the key to the custodian; and

(2) unlock the ballot box and transfer the voted ballots to another secure container for the remainder of the preservation period.

(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.

(c) If during the preservation period an authorized entry is made into a ballot box or other secure container containing voted ballots, when the purpose for the entry is fulfilled, the box or container shall be relocked or resecured, and the box and key or secure container returned to the custodian.

(d) A custodian of a ballot box or secure container containing voted ballots commits an offense if, during the preservation period prescribed by Subsection (a), the custodian:

(1) makes an unauthorized entry into the box or container; or

(2) fails to prevent another person from handling the box or container in an unauthorized manner or from making an unauthorized entry into the box or container.

(e) An offense under Subsection (d) is a Class A misdemeanor.

(f) The records in ballot box no. 4 may be preserved in that box or by any other method chosen by the custodian. If the records are removed from the box, they may not be commingled with any other election records kept by the custodian.

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

(h) For the preservation of precinct election records in an election involving

a federal office, the secretary of state shall instruct the affected authorities on the actions necessary to comply with federal law and otherwise implement this section.

Elec. Code § 66.058. “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 explain the information at issue consists of “precinct election records” for purposes of 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 information at issue, in this instance. Thus, 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 information at issue 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Blake Brennan
Assistant Attorney General
Open Records Division

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Enc. Submitted documents

c: Requestor
(w/o enclosures)