



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 29, 2022

Ms. Sharen Wilson
Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2022-30184

Dear Ms. Barnett:

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# 975127.

The Tarrant County Elections Administration Office (the "county") received four requests from the same requestor for information pertaining to four specified elections. You state you will release some information to the requestor. You also state you have no information responsive to portions of the requests.¹ You claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Initially, the county informs us it sought clarification of portions of the requests for information. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). We understand the county has not yet received a response to the requests for clarification. We note a governmental body has a duty to make a good-faith effort to relate a request for information to information the

¹ The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

governmental body holds. Open Records Decision No. 561 (1990). In this instance, the county has made arguments against the disclosure of responsive information. Thus, we assume the county has made a good-faith effort to relate the requests to information it holds, and we will address the applicability of the arguments to the information. However, the county has no obligation at this time to release any additional responsive information for which it has not received clarification. If the requestor responds to the request for clarification, the county must seek a ruling from this office before withholding any additional responsive information from the requestor. *See* Gov't Code § 552.222(b); *City of Dallas*, 304 S.W.3d at 387.

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. 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). The term “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.* § 66.02; *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 the 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 the extent possible, procedures applicable to electronic voting system under chapter 127 are applicable to voting system under chapter 129). Although you assert some of the information at issue may not be released until the expiration of the 22-month preservation period set out in section 66.058(a), we note the one of the elections at issue in the present request occurred on November 3, 2020. Thus, as of the date of this letter, the 22-month period has since passed. Accordingly, we need not determine whether the information at issue cannot be released in response to a request under the Act pursuant to section 66.058 of the Election Code.

Next, we address your assertion the remaining information at issue cannot be released in response to a request under the Act pursuant to section 66.058 of the Election Code. Although you assert the remaining information at issue may not be released until the expiration of the 22-month preservation period set out in section 66.058(a), we note section 1.012 of the Election Code establishes this information as public information and requires the election records custodian to make the information available to the public. *See* Attorney General Opinion KP-411 at 3, 6 (2022); *see also* Elec. Code § 1.012(c), (d) (defining “election record”). In Attorney General Opinion KP-411, this office concluded, “By expressly requiring the custodian to provide public access to such records, the Legislature authorized entry into the locked ballot box for such purpose during the 22-month period.” Attorney General Opinion KP-411 at 6; *see also* Elec. Code §§ 1.012(c), (d), 66.058(b-1). Thus, members of the public may inspect or obtain copies of the information during the 22-month preservation period, and the county may not withhold any of the information at issue under section 66.058 of the Election Code. As you raise no further exceptions to disclosure, the county must release the requested 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 <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,

Colin Henry
Attorney
Open Records Division

CEH/jxd

Ref: ID# 975127

c: Requestor