



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 4, 2022

Ms. Dorothy Oliver
Elections Administrator
Burleson County
100 West Buck Street, Suite #107
Caldwell, Texas 77836

OR2022-34389

Dear Ms. Oliver:

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# 983087.

The Burleson County Elections Administrator's Office (the "county") received a request for information pertaining to specified election records.¹ You claim the requested information is excepted from disclosure under section 552.101 of the Government Code.² We have considered the exception you claim.

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:

¹ As you have not submitted a copy of the request for information for our review, we take our description from your brief to our office.

² We note the county did not comply with the requirements of section 552.301 of the Government Code. See Gov't Code § 552.301(e). Nevertheless, 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.

(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 the requested information 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,

D. Michelle Case
Assistant Attorney General
Open Records Division

DMH/jxd

Ref: ID# 983087

c: Requestor