



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 26, 2007

Mr. William C. Bennett, Jr.  
Criminal District Attorney  
Madison County  
101 West Main, Rm. 207  
Madisonville, Texas 77864

OR2007-02228

Dear Ms. Bennett:

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# 272145.

The Madison County Clerk (the "clerk") received a request for "all ballots cast upon the Hart electronic voting machines during the November 2006, Madison County, General Election that were printed" for an election recount and all mail ballots that were cast during that election. You claim that 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.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

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. Section 66.058 of the Election Code states 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.

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<sup>1</sup>We assume that 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.

(b) 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. Except as permitted by this code, a ballot box containing voted ballots may not be opened during the preservation period.

...

(d) A custodian of a ballot box 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

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

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

Elec. Code § 66.058 (a)-(b), (d)-(e). "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. You assert that the requested ballots are within this meaning of "precinct election records." Based on this representation and our review, we agree that the requested ballots are within the definition of "precinct election records."

The Election Code authorizes access to voted ballots 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)*. You state that the Election Code does not authorize access to the records at issue in this case. Thus, this information is not subject to disclosure under the Act until the preservation period has run. The preservation period in the instant case is at least 22 months after the November 15, 2006 election at issue. *See Elec. Code § 66.058(a)*. Therefore, the responsive ballot records are confidential as long as the records are required to be preserved. After this period, the records are subject to public disclosure. *See Open Records Decision No. 505 at 4 (1988)* (a request made during the preservation period to inspect voted ballots must be treated as a request to inspect the ballots when the retention period expires).

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited

from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

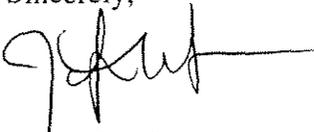
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 272145

Enc. Submitted documents

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(w/o enclosures)