



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 15, 2012

Mr. David P. Weeks
Criminal District Attorney
Walker County
P.O. Box 1659
Huntsville, Texas 77340

OR2012-03880

Dear Mr. Weeks:

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# 446829.

The Walker County Tax Assessor-Collector (the "county") received a request for the voted ballots from the 2010 and 2011 Huntsville city elections, all correspondence regarding the waiver of the spot check, a copy of the official returns, and copies of signed combination forms for both elections. You state you have made available some of the requested information. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. 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. Section 66.058 of the Election Code reads in part as follows:

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

(1) in an election involving a federal office, for at least 22 months after election day in accordance with federal law; or

(2) in an election not involving a federal office, for at least six 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.

Elec. Code § 66.058 (a)-(b), (b-1). “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. *Id.* § 66.002. You assert, and we agree, the requested voted ballots at issue are within this meaning of “precinct election records.” 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 voted ballots at issue in this case. Thus, this information is not subject to disclosure under the Act until the applicable preservation periods have run.

You inform us some of information at issue, specifically, the voted ballots from the November 2010 Huntsville city election, was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-03271 (2011). In Open Records Letter No. 2011-03271, we concluded the ballots from the November 2010 Huntsville city election must be withheld under section 552.101 of the Government Code in conjunction with section 66.058 of the Election Code. We note section 66.058 of the Election Code was amended by the 82nd Legislature. *See* Act of May 29, 2011, 82nd Leg., R.S., ch. 1164, § 13, sec. 66.058, 2011 Tex. Gen. Laws 3058, 3061. Prior to the 82nd Legislature’s amendments, section 66.058 required a preservation period of at least 22 months for both elections involving a federal office and elections not involving a federal office. *See* Act of May 13, 1985, 69th Leg., R.S., ch. 211, § 1, 1985 Tex. Gen. Laws 802 (amended 1997, 2003, 2005, 2007, 2009, 2011) (current version at Tex. Elec. Code Ann. § 66.058(a) (Vernon Supp. 2011)). Open Records Letter No. 2011-03271 was issued prior to the 82nd Legislature’s amendments to section 66.058, which reduced the preservation period for elections not involving a federal office from at least 22 months after election day to at least six months after election day. *See* Elec. Code § 66.058(a)(2). However, the November 2010 Huntsville city election involved a federal office. Thus, the preservation period for the voted ballots from the November 2010 election is at least 22 months after the election regardless of whether the prior or current version of section 66.058 applies. Therefore, the county must continue to withhold the November 2010

ballots under section 552.101 of the Government Code for the duration of the applicable 22 month retention period.

Next, we will consider the county's arguments against disclosure of the voted ballots from the November 2011 election, which occurred after the effective date of the current version of section 66.058. You inform us that the November 2011 election was a non-federal election. However, you assert the retention period for the voted ballots from the November 2011 election is 22 months due to a Joint Election Contract between the county and numerous governmental bodies that was in effect for the November 2011 election. You state this agreement provided that the record retention period would be 22 months based on a recommendation by the Secretary of State, since the election was ordered before the effective date of the current version of section 66.058. However, you do not inform us that the county or any of the governmental bodies who agreed to the contract have the express statutory authority to make such a promise. *See* Open Records Decision Nos. 594 at 3 (1991) (requiring statutory authority before governmental body may deem information confidential), 484 at 2 (1987) (governmental bodies may not by rule or contract render information confidential for purposes of Act); *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982). Thus, pursuant to section 66.058(a)(2), the preservation period for the voted ballots from the November 2011 election is at least six months after the election. *See* Elec. Code § 66.058 (a)(2). Therefore, the voted ballots are confidential as long as the ballots are required to be preserved pursuant to section 66.058 of the Election Code. Thus, the voted ballots from the November 2011 election must be withheld under section 552.101 of the Government Code for the duration of the applicable six month retention period.

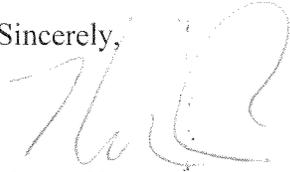
In summary, the preservation period for the voted ballots from the November 2010 Huntsville city election is at least 22 months after the election, and the preservation period for the voted ballots from the November 2011 election is at least six months after the election. The voted ballots are confidential as long as the ballots are required to be preserved and must be withheld under section 552.101 of the Government Code for the duration of their respective preservation periods. After these periods, the ballots at issue are 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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/ag

Ref: ID# 446829

Enc. Submitted documents

cc: Requestor
(w/o enclosures)