



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 5, 2016

Mr. Bobby Maldonado
Counsel for the City of Dilley
Maldonado Diaz, PLLC
924 McCullough Avenue
San Antonio, Texas 78215

OR2016-15177

Dear Ms. Maldonado:

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# 620375.

The City of Dilley (the "city"), which you represent, received a request for all mail-in applications, mail-in ballots, and vote counts from a certain election. You claim 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 representative sample of information.

Initially, we note you have submitted a representative sample of information responsive to only some portions of the request. You have not submitted any information responsive to the portion of the request seeking vote counts from the election. Although you state the city has submitted a representative sample of the requested information, we find the submitted information is not representative of all the information to which the requestor seeks access. Please be advised this open records letter applies to only the types of information you have submitted for our review. This ruling does not authorize the city to withhold any information that is substantially different from the type of information you submitted to this office. *See* Gov't Code § 552.302. Therefore, to the extent any information responsive to the portion of the request seeking vote counts from the election existed and was maintained by the city on the date it received the request, we assume the city has released it to the requestor. If the city has not released any such information, it must do so. *Id.* §§ 552.301(a), .302: Open

Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

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 86.014 of the Election Code, which states in relevant part:

(a) A copy of an application for a ballot to be voted by mail is not available for public inspection, except to the voter seeking to verify that the information pertaining to the voter is accurate, until the first business day after the election day of the latest occurring election for which the application is submitted.

(b) Originals of the applications and carrier envelopes are not available for public inspection until those materials are delivered to the general custodian of election records after the election.

Elec. Code § 86.014. You explain voters may apply to vote by mail for an entire year by using an annual Application for Ballot by Mail (“ABM”) or may apply to vote by mail for a specific election. In instances where a voter has applied to vote by mail for an entire year, you state the latest occurring election for which the applications at issue were submitted will be in November 2016. Thus, we conclude the city must withhold the annual ABM applications under section 552.101 in conjunction with section 86.014(a) until the first business day after the election day of the latest occurring election for which each application was submitted.

Section 552.101 of the Government Code also encompasses 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:

(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.

...

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

Id. § 66.058 (a)-(b-1), (g). “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 assert the remaining information constitutes precinct election records made confidential by section 66.058. Upon review, we agree the information at issue is subject to section 66.058.

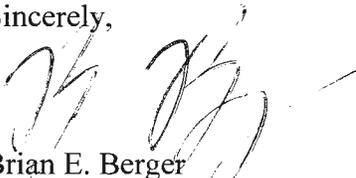
The Election Code authorizes access to election records during the preservation period for several purposes, including, for example, recounts, election contests, criminal investigations, and counts conducted pursuant to chapter 127 of the Election Code. *See Open Records Decision No. 505 at 2 n. 2 (1988)*. You state there is no indication the Election Code authorizes access to the submitted information in this case. Thus, this information is not subject to disclosure under the Act until the preservation period has run. We note the election at issue did not involve a federal office. Accordingly, the preservation period in the instant case is at least six months after the May 2016 election. *See Elec. Code § 66.058(a)*. Therefore, the information at issue is confidential as long as the precinct election records are required to be preserved pursuant to section 66.058 of the Election Code. Thus, the remaining information must be withheld under section 552.101 of the Government Code 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)*.

In summary, the city must withhold the annual ABM applications under section 552.101 in conjunction with section 86.014(a) until the first business day after the election day of the latest occurring election for which each application was submitted. The city must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 66.058 of the Election Code for the duration of the preservation period.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 620375

Enc. Submitted documents

c: Requestor
(w/o enclosures)