

TEXAS HOUSE *of* REPRESENTATIVES**RQ-0424-KP**FILE# **ML-48990-21**I.D.# **48990****COMMITTEE ON GENERAL INVESTIGATING***Chair Matt Krause • Vice Chair Victoria Neave*

August 16, 2021

The Honorable Ken Paxton
Office of the Attorney General
Attn: Opinion Committee
PO Box 12548
Austin, TX 78711-2548
opinion.committee@oag.texas.gov

Re: Whether the public or a legislator may inspect anonymous voted ballots

Dear General Paxton,

In order to promote public confidence in Texas elections, members of the public as well as members of the legislature are interested in auditing the results of Texas elections. However, election administrators have cited certain sections of the Election Code as preventing the release of materials necessary to conduct such an audit. The materials include voted ballots that by their nature in how Texas conducts its elections are anonymous and voted ballots that are not anonymous but have had any voter-identifying data contained on the ballots redacted (referred to herein as “anonymous voted ballots.”).

Texas Election Code Section 66.058 prescribes a 22-month period for the preservation of precinct election records, which includes voted ballots, and provides that it is a criminal offense if the custodian of election records makes an unauthorized entry to the records.

Election Code Section 1.012 states that, except as provided by the Election Code or the Public Information Act, all election records, including voted ballots, are public information. Under that section, election records that are public information shall be made available to the public.

Texas Government Code Chapter 552, the Public Information Act, prescribes the procedures for the public to request public information. Separately, Government Code Section 552.008 provides authority and procedures for members of the legislature to request public information for legislative purposes, including confidential information.

In a question of first impression over thirty years ago, Open Records Decision No. 505, dated September 2, 1988, opined that “voted ballots from a primary election become public information available for public inspection after the 22-month retention period.”

Technology and conditions have changed since 1988. Open Records Decision No. 505 did not consider the anonymous nature of voted ballots and was not apparently limited to anonymous voted ballots. Moreover, the opinion referenced portions of the Public Information Act that exempt disclosure of records that are “confidential” in light of sections of the Election Code that use the same term and equated the requirement in Election Code Section 66.058(b) to keep voted ballots preserved securely with requirements that the records must be kept confidential. If voted ballots are not confidential simply because they are secure, especially if they are anonymous voted ballots the release of which would not cause the secrecy of any person’s votes to be revealed, then Election Code Section 1.012 appears to require that these records be made available to the public so that the public can adequately audit the results of elections.

Accordingly, if a member of the public, or a legislator, in their capacity as a member of the public, requests to inspect or to obtain copies of anonymous voted ballots, is the custodian of election records authorized to access such records for purposes of fulfilling the request? Is the member of the public entitled, generally, to inspect or receive a copy of such anonymous voted ballots?

Even if Open Records Decision No. 505 is interpreted to mean that the requirement in Election Code Section 66.058(b) requiring voted ballots to be kept secure means they also are confidential and cannot be accessed for purposes of fulfilling requests under the Public Information Act, legislators may examine the voted ballots in light of Texas Government Code Section 552.008 granting a special right of access to legislators for legislative purposes, even to confidential records.

Thus, if a legislator requests to inspect or to obtain copies of anonymous voted ballots for legislative purposes, is the custodian of election records authorized to access such records for purposes of fulfilling the request?

Thank you for your attention to this matter. Please contact my office if we can be of assistance to you in rendering an opinion on this important question regarding individual and legislative access to public information and the ability of the legislature and the public to audit Texas elections.

Respectfully,

A handwritten signature in black ink that reads "Matt Krause". The signature is written in a cursive, slightly slanted style.

Matt Krause
State Representative, District 93
Chairman, Texas House Committee on General Investigating



RECEIVED

By Opinion Committee at 4:30 pm, Sep 28, 2021

The Senate of The State of Texas
SENATOR KELLY HANCOCK

September 28, 2021

FILE# RQ-0424-KP

I.D.# 49037

The Honorable Ken Paxton
Office of the Attorney General
Attn: Opinion Committee
P.O. Box 12548
Austin, TX 78711-2548

Re: Legislative Information Requests for Ballots

Dear Attorney General Paxton,

I respectfully request your opinion related to access by legislators to certain election records that may or may not be confidential, including voted ballots and other similar records which are submitted during the course of an election.

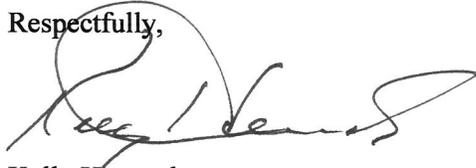
Members of the Legislature have expressed interest in researching the results of certain Texas elections in order to promote public confidence in Texas elections. However, election administrators and district attorneys have cited certain sections of the Election Code as preventing the release of materials necessary to conduct such an audit.

Texas Election Code § 66.058 prescribes a 22-month period for the preservation of precinct election records, which includes voted ballots, and provides that it is a criminal offense if the custodian of election records makes an unauthorized entry to the records. Texas Government Code § 552.008 provides authority and procedures for members of the legislature to request public information for legislative purposes, including confidential information.

If a member of the legislature requests to inspect or to obtain regular photocopies of the physical, original voted ballots or related election records for legislative purposes, is the custodian of election records authorized to access such records for purposes of fulfilling the request? Is the member of the legislature entitled, generally, to inspect or receive regular photocopies of physical, original, voted ballots or similar records that are asserted to be confidential?

Thank you for your attention to this matter. Please contact my office if we can be of assistance to you in rendering an opinion on this important question regarding legislative access to election records and the ability of the legislature to conduct research into Texas elections.

Respectfully,

A handwritten signature in black ink, appearing to read "Kelly Hancock". The signature is written in a cursive style with a large, prominent loop at the beginning.

Kelly Hancock
Texas Senate, District 9
Chairman, Veteran Affairs & Border Security