



THE COUNTY COUNSEL
COUNTY OF ORANGE

333 W. SANTA ANA BLVD., SUITE 407
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 834-2359

Jacqueline Guzman
Senior Deputy
(714) 834-3300

March 26, 2019

LEON J. PAGE
COUNTY COUNSEL

JAMES C. HARMAN
CHIEF ASSISTANT

MARIANNE VAN RIPER
NICOLE M. WALSH
SENIOR ASSISTANTS

KAREN L. CHRISTENSEN
ANGELICA CASTILLO DAFTARY
ROBERT N. ERVAIS
LAURA D. KNAPP
TERI L. MAKSOUDIAN
MARK D. SERVINO
NICOLE A. SIMS
DANA J. STITS
SUPERVISING DEPUTIES

JASON C. BROWN
DIRECTOR OF ADMINISTRATION

JANELLE B. PRICE
LAURIE A. SHADE
DANIEL H. SHEPARD
STEVEN C. MILLER
CAROLYN S. FROST
NIKHIL G. DAFTARY
JEANNIE SU
WENDY J. PHILLIPS
MICHAEL A. HAUBERT
BRAD R. POSIN
SAUL REYES
AURELIO TORRE
DEBBIE TORREZ
JACQUELINE GUZMAN
ANDREA COLLIER
PAUL M. ALBARIAN
D. KEVIN DUNN
LORIA. TORRISI
MASSOUD SHAMEL
SHARON VICTORIA DURBIN
REBECCA S. LEEDS
ELIZABETH A. PEJEAU
LAUREN C. KRAMER
GABRIEL J. BOWNE
JULIA C. WOO
MARK A. BATARSE
ADAM C. CLANTON
KRISTEN K. LEONG
ERIC A. DIVINE
JAMES D. P. STEINMANN
VANESSA D. ATKINS
SUZANNE E. SHOAI
DEBORAH B. MORSE
MATTHEW S. SPRISLER
KAYLA N. WATSON
CAROLYN M. KHOUZAM
ANNIE J. LOO
RONALD T. MAGSAYSAY
JOHN P. CLEVELAND
SAMARA BELGARDE
CHRISTOPHER S. ANDERSON
JUSTIN A. GRAHAM
BRITTANY McLEAN
JEFFREY A. STOCK
MARK N. SANCHEZ
GOLNAZ ZANDIEH
CYNTHIA G. INDA
STEPHANIE L. WATSON
RAY DIAZ
JESSICA PAULSON-DUFFY
BENJAMIN L. BERNARD
JON-MICHAEL R. BRADLEY
PATRICK K. BRUSO
MEG K. TANAKA
TIFFANY PONCY
WILLIAM NINH
DEPUTIES

Raymond Lutz
771 Jamacha Rd #148
El Cajon, CA 92019

Re: Your letter, dated March 17, 2019.

Dear Mr. Lutz:

We are in receipt of your letter, dated above, where you request, pursuant to the California Public Records Act (the "Act"), "ballot images for the November 2018 election." You additionally request that the images be provided "electronically in a machine-readable format, either on CD or thumb-drive." You cite California Elections Code section 2300 as the authority for your ability to receive these records under the Act.

Regrettably, we find that the California Voter Bill of Rights does not authorize the Registrar of Voters to release ballot images. First, as part of a citizen's enumerated voter rights, Elections Code section 2300 (a) (4) affords every voter in this state the right to "cast a secret ballot free from intimidation." This right to a secret ballot is consistent with the enumerated right to privacy bestowed upon every Californian and the requirement that voting must be "secret," also found in the California Constitution. *See*, Cal. Const. art. I, § 1 and art. II, § 7. It is important to note that California voters specifically amended article I, section 1 of our state Constitution in 1972 to include among the various "inalienable" rights of "all people" the right of "privacy." (*White v. Davis* (1975) 13 Cal. 3d 757, 773.) A principal aim of the amendment was to "limit the infringement upon personal privacy arising from the government's increasing collection and retention of data relating to all facets of an individual's life." (*Id.* at p. 761.) Finally, we also note that Elections Code Section 3017(b) requires the Orange County Registrar of Voters to "establish procedures to ensure the *secrecy of a ballot* returned to a precinct polling place and the security, confidentiality, and integrity of any personal information collected, stored, or otherwise used pursuant to this section." (Emphasis added.)

In keeping with the privacy principle enshrined in the California Constitution, the California Public Records Act also exempts voter information from disclosure. Government Code section 6254.4 exempts disclosure of voter registration information and further declares signatures on voter registration affidavits as "confidential," prohibiting their disclosure to "any person." Section 6254 (k) also exempts records whose disclosure is

Raymond Lutz
March 26, 2019
Page 2

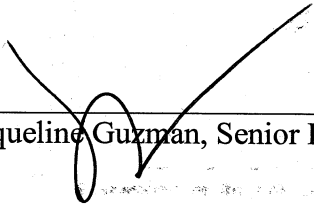
either exempt or prohibited under federal or state laws, including those laws relating to privilege. In turn, California Evidence Code section 1050 prohibits the disclosure of “the tenor” of a voter’s “vote at a public election where the voting is by secret ballot.”

Of course, in the event a candidate requests a recount, the candidate may examine ballots, whether voted or not, and any other relevant material even though such materials might otherwise be exempt from disclosure under the Public Records Act. (See Election Code, § 15630 [all ballots, whether voted or not, and any other relevant material, may be examined as part of any recount if the voter filing the declaration requesting the recount so requests], § 17302 [packages containing ballots and identification envelopes shall be kept by the elections official, *unopened and unaltered*, for six months from the date of the election].) However, this right of examination does not otherwise abrogate voters’ rights to privacy and secrecy in their votes. In fact, Elections Code sections 17301 through 17306, taken as a whole, prohibit the disclosure of voting materials, including ballots, unless *expressly* allowed under statute. The aforementioned statutory scheme further expressly authorizes an elections official to destroy these materials after the statutorily designated time for an election contest or criminal prosecution necessitating these materials has lapsed.

In short, the California Constitution, the Elections Code and the exemptions found in the Act prohibit the disclosure of the requested ballot images for the November 2018 election. The Elections Code, read in conjunction with the California Constitution, give a voter the right to vote a secret ballot. And, consistent with the California Constitution, the California Public Records Act provides an exemption from disclosing the requested records under the Act.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

By 
Jacqueline Guzman, Senior Deputy

JG:po

cc: Neal Kelley, Registrar of Voters