

Brian E. Washington
COUNTY COUNSEL

March 12, 2020

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ASSISTANT COUNTY COUNSEL

Attn: Raymond Lutz
Citizen's Oversight Projects (COPs)
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El Cajon, CA 92019

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Re: COPs Election Audit Coordinating Requests

DEPUTIES

Dear Mr. Lutz,

This office represents the County of Marin Registrar of Voters (ROV). I am in receipt of the letter you sent to my client, dated February 26, 2020, in which you outline several requests related to coordinating public oversight of the election process. Although your letter did not constitute a request for records under the California Public Records Act, I did want to get back to you as soon as practicable with some feedback related to your questions/comments.

Colleen McGrath
ADMINISTRATIVE SERVICES
OFFICER

With respect to your request that the ROV provide you with cast-vote record files, broken down by precinct and/or batch, of all votes in the election included in the manual tally prior to the random selection process, the statement of votes cast posted on March 13 provides this information. You may also contact Tony Aquilino at TAquilino@marincounty.org to request an Excel file.

Marin County Civic Center
3501 Civic Center Drive
Suite 275
San Rafael, CA 94903
415 473 6117 T
415 473 3796 F
415 473 2226 TTY
www.marincounty.org/cl

You go on to mention that this is not a usual public records request, but a question which the ROV is required to answer pursuant to Election Code § 2300. While I agree that this is not a usual public records request, I disagree that your request for records which do not currently exist constitutes a question under the Voter Bill of Rights. The ROV cannot, and is not required to, produce any records that do not currently exist but which will be created in the future. If you would like a copy of any existing public records and cannot find or access them online, you are welcome to request the same and the ROV will provide you in accordance with the law.

Your letter further requests that the ROV provide you with emailed notifications regarding the selection of the 1% manual tally. The ROV does not affirmatively contact individuals or entities regarding ongoing elections tasks and the timing of the same. This information is found on the ROV's website (www.marinvotes.org) and is publicly available prior to the process beginning. However, the ROV has

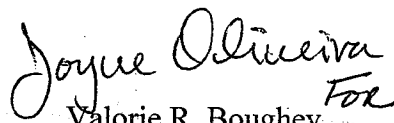
scheduled the manual tally to begin on March 18 and notice has been posted online. The ROV does and will continue to conduct its manual tally in accordance with the requirements of the law. Video recording of the manual tally, or any other elections activities, is not permitted. The existing Marin County ROV Election Observer Rules make it clear that "No use of pagers or cell phones, cameras or recording devices is permitted in the office." The California Secretary of State has also provided guidance statewide which specifies that "Elections officials are responsible for: Establishing security rules of public observations. Examples of such rules are... prohibiting the use of... video equipment." (<https://elections.cdn.sos.ca.gov/ccrov/pdf/2020/january/20020jl.pdf>)

The ROV sends the 1% Manual Tally Report to the Secretary of State once the manual tally is complete. As mentioned above, the California Public Records Act does not allow for standing or continuing requests for documents that may be generated in the future, nor is there a requirement to provide documents that do not yet exist. Once the ROV has fully completed the 1% manual tally and finalized its report on the same, you can request that report either directly from the ROV or from the Secretary of State and either should be able to provide you with a copy.

Ballot images will be saved as required under the law. The ROV has no plans to publish ballot images at this point in time. The final statement of votes cast will be posted online once the election is certified. The ROV will not be conducting a Risk Limiting Audit.

Should you have any additional questions, feel free to contact me at any time.

Sincerely,


Valorie R. Boughhey
Deputy County Counsel