

MONTEREY COUNTY ELECTIONS



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Claudio Valenzuela
Registrar of Voters

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Assistant Registrar of Voters

May 8, 2020

Mr. Raymond Lutz, Executive Director
Citizens' Oversight Projects
771 Jamacha Road, No. 148
El Cajon, CA 92019

Re: Your request for Public Records dated March 23, 2020

Dear Mr. Lutz,

This letter responds to your request for records sent via email dated March 23, 2020 and follows an initial response dated April 2, 2020. In your request, you seek files and documents relating to the March 3, 2020 Presidential Primary Election described by you as follows:

Request 1:

"The complete (or nearly complete) set of ballot images for the March 3 primary election. We accept the format as produced by your election system as further described below. We understand that it may be practical to exclude a small set of ballots for privacy concerns. If so, then please provide the total vote counts for each contest included in the set of ballots that are excluded so we may add this to the total of the other ballots."

Response to Request 1:

The records sought in this request are exempt from disclosure pursuant to law. (See, Cal. Const. art. 1, §1 and art. II, §7, Govt. Code § 6254(k), Elections Code §§ 2300(a)(4) and 3107(b), Evidence Code § 1050, and Elections Code §§ 15370 and 17301.)

The recent case of Citizens Oversight, Inc. v Vu (2019) 35 Cal.App.5th 612 is instructive and applicable to your request. As you know, Citizens Oversight sought to inspect and copy ballots cast by registered voters during the June 7, 2016 election. The trial court ruled that the ballots were exempt from disclosure because Elections Code §15370 prohibited disclosure. It granted the Registrar's demurrer to the complaint without leave to amend and issued a judgment of dismissal. The Court of Appeal affirmed the judgment.

Your request for electronic images of actual ballots is no different than requesting copies of the actual ballots. In addition to Vu, at least two other cases have determined that electronic ballot images are protected from disclosure. (See, Kosmider v. Whitney (2019) 34 N.Y 3d 48 and White v. Skagit County (2015) 188 Wash.App.886.)

As such, the aforementioned statutes, coupled with the Court of Appeal's ruling in Vu, require that the Registrar withhold production of ballot images. Please note that your representation that other jurisdictions have produced ballot images is only illustrative and is not binding or persuasive.

Request 2:

"The set of "cast-vote records" which can be paired up with each ballot image, as your process has determined voter intent. Please include the "style(s)" designator(s) for each record for each sheet, and whether the ballot is from a BMD (ballot marking device) or not."

Response to Request 2:

The records sought in this request are exempt from disclosure pursuant to law. See, Cal. Const. art. 1, §1 and art. II, §7, Govt. Code § 6254(k), Elections Code §§ 2300(a)(4) and 3107(b), Evidence Code § 1050, and Elections Code §§ 15370 and 17301.)

Elections Code §15366(d) defines a cast vote record to be "auditable document or electronic record that purports to reflect the selections a voter made on a ballot. It lists the contests on the ballot and the voter's selections in each of those contests." In addition to the statutes set forth above, California Code of Regulations Section 20119 notes that the cast vote record data shall not be posted to the elections official's website, but shall be made available at the location where the audit is being conducted subject to the confidentiality requirements of Elections Code § 2194(a).

The legislative history of section 20119 notes that the purpose of such audit is to allow the public to observe the audit itself. This is further confirmed by Section 20124(a)(6) that allows the public to "observe the voters' marks on every audited ballot card during the audit." In short, the intent of the Legislature was to allow cast vote records to be observed, subject to the confidentiality requirements of the Elections Code, at the public audit process, not disclosed to the public at large.

Request 3:

"The "voted/non-voted" file, sometimes also called the "poll list" which provides the number of voters who cast a vote from the standpoint of polling place sign-in sheets or e-pollbooks."

Response to Request 3:

The County has identified records responsive to this request that are publicly available on our website now

https://montereycountyelections.us/files/mced/Election_Info/past_results/SOV_2020-03-03.pdf

Request 4:

“If available, a file containing the actual text printed as the title and description of each contest if they vary on each style of ballot. Generally, we find that the text is the same for a given contest on all styles except for those based on language differences, but that the text on the ballot differs from the official contest name. If this is not a easy to provide export, we can reconstruct this data by examining the ballots.”

Response to Request 4:

The County has identified records responsive to this request. Records responsive to this Request are held electronically. The responsive documents are too large to email and will be placed on a compact disc which will be provided at a cost of \$5.00. Please send a check payable to “Monterey County Elections” to Monterey County Elections, Attention: Public Records Act Request, 1441 Schilling Place – North Building, Salinas, CA 93901. Include with your correspondence a mailing address for your disc.

Request 5:

“In the future, we hope to also be able to obtain a file containing SHA-256 message digests of each ballot image as originally scanned by the ballot scanner device, especially if such devices are used in the precinct. As we are still working on standards regarding how these are to be produced, we understand if this is not available but if you do have such a file, we would appreciate it.”

Response to Request 5:

We understand this request as seeking digitized ballot images. Please see response to Request No. 1.

Request 6:

“Please also provide the ballot images used in the Logic & Accuracy test, and the corresponding cast-vote records so we can review that as well. As this has no privacy or other concerns, and is not related to the certification cycle, please provide this portion separately and earlier than the rest of the request.”

Response to Request 6:

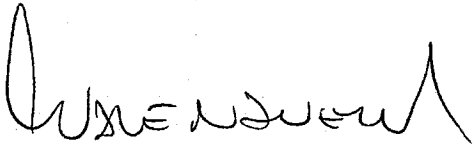
The ROV retains paper Logic & Accuracy test ballots only; no electronic ballot images are saved. The ROV has no documents that are responsive to this request.

Please be advised that every effort has been made to provide all of the disclosable records which might fall within your inquiry. As such, we believe our reply is quite thorough. However, if you have knowledge of a specific document which has not been provided in response to your inquiry, please notify us and we will be happy to provide the document(s) to you unless, of course, it is exempt from disclosure under applicable law.

If you wish to dispute any of the determinations contained in this response to your request(s) please advise us of your legal argument. If you would also please provide us with a citation or legal authority which supports your argument we will be willing to reconsider our opinion.

Please contact me if you have any questions over any statement in this Response.

Cordially,

A handwritten signature in black ink, appearing to read 'Claudio Valenzuela', with a horizontal line underneath the name.

Claudio Valenzuela
Monterey County Registrar of Voters