

OFFICE OF
COUNTY COUNSEL
675 TEXAS STREET, SUITE 6600
FAIRFIELD, CALIFORNIA 94533-6342
(707)784-6140
FAX (707)784-6862

BERNADETTE S. CURRY
COUNTY COUNSEL

CARRIE SCARLATA
ASSISTANT COUNTY COUNSEL



LEE AXELRAD
KIMBERLEY GLOVER
JAMES W. LAUGHLIN
RAMONA M. MARGHERIO
LORI A. MAZZELLA
JOANN IWASAKI PARKER
ADRIENNE PATTERSON
CLARISA SUDARMA
DANA VAUGHN
DANIEL WOLK
KIMBERLY ALEXANDER- YARBOR
DEPUTY COUNTY COUNSELS

April 2, 2020

VIA EMAIL

Ray Lutz
Executive Director
Citizens' Oversight
771 Jamacha Rd 148
El Cajon, CA 92019
Email: raylutz@citizenoversight.org

Re: Public Records Act Request Regarding Ballot Images

Dear Mr. Lutz:

This office represents the Solano County Registrar of Voters ("ROV"). Your request for certain public records related to ballot images was received on March 23, 2020. Our responses on behalf of the ROV are as follows.

Request No. 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 No. 1: Ballots are exempted from disclosure under the Public Records Act ("PRA"). (See Cal. Const., Art. II, § 7; Elections Code §§ 15370, 17301; Government Code §§ 6254(k), 6255.) In fact, as stated recently in *Citizens Oversight, Inc. v. Vu* (2019) 35 Cal.App.5th 612, 619-20:

[W]e conclude that the Legislature has exempted ballots from disclosure under the CPRA by specific, clear language in [Elections Code] sections 15370 and 17301. We must follow the plain meaning [of] a statute when, as here, the language is clear. [Citation.]

The law does not distinguish between a ballot image and the ballot itself, permitting the release of the former but not the latter. Nor should it. Such a result would be absurd, and it is a fundamental notion of legal interpretation that the law does not produce absurd results. (*See, e.g., Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1203 (proposed interpretation “would lead to absurd results the Legislature cannot have intended”).)

In sum, the ballot images are exempt from disclosure under the Public Records Act.

Request No. 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 No. 2: To the extent this request is for ballot images, please see our Response to Request No. 1 as to why such images may not be released. To the extent this request is for voter history information, such voter information is generally not subject to disclosure pursuant to Government Code § 6254.4 and Elections Code § 2194. That being said, you may be entitled to the information under Elections Code § 2194(a)(3). To make that determination, pursuant to Elections Code § 2188 you must first complete an application, which is to be reviewed by the ROV. As a courtesy, we have attached the ROV's "Application to Purchase/View Voter Registration Information (Multipurpose Voter File)" as **Exhibit 1**, which you may complete and return.

Request No. 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 No. 3: As noted above, such voter history information is generally not subject to disclosure pursuant to Government Code § 6254.4 and Elections Code § 2194. That being said, you may be entitled to the information under Elections Code § 2194(a)(3). To make that determination, pursuant to Elections Code § 2188 you must first complete an application, which is to be reviewed by the ROV. As a courtesy, we have attached the ROV's "Application to Purchase/View Voter Registration Information (Multipurpose Voter File)" as **Exhibit 1**, which you may complete and return.

Request No. 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 [sic] easy to provide export, we can reconstruct this data by examining the ballots.

Response to Request No. 4: Please see the records attached to this letter as **Exhibit 2**.

Request No. 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 No. 5: The ROV has no records responsive to this request.

Request No. 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 No. 6: For the reasons provided in our Response to Request No. 1, such ballot images may not be released.

Please do not hesitate to contact me if I may be of further assistance. Thank you.

Sincerely,
BERNADETTE S. CURRY
Solano County Counsel

By: 
Elvira N. Del Valle for
Daniel M. Wolk
Deputy County Counsel

cc: ROV

Encl.