

**CALIFORNIA PUBLIC RECORDS ACT (CPRA) REQUEST FOR PUBLIC INFORMATION**

**Clarification of APRIL 24, 2009 CPRA Request**

June 19, 2009

Ms. Barbara Dunmore  
Riverside County Registrar of Voters  
2724 Gateway Drive  
Riverside, CA 92507-0918

Dear Ms. Dunmore,

The response to our previous public records request that we received from your office dated May 4, 2009 was non-responsive to a number of our requests, and requested further direction from EDA.

- 1. Thank you for providing the document requested in Item 1 of our request.**
- 2. You asked for our direction in further responding to Items 2 and 3 in our CPRA request of 04.29.09.**

You provided us with an Excel spreadsheet without any indication of where the required reconciliation occurs. If a reconciliation is contained in the spreadsheet, indicate where (what cells) such reconciliation may be observed. Illustrate where/how you comply with either of the two sections of the Election Code quoted below:

- a). "a reconciliation of the number of signatures on the roster with the number of ballots recorded on the Ballot Statement" can be found, -- EC§15302(b) or if unable, then
- b). "... the number of ballots received from each polling place shall be reconciled with the number of ballots cast, as indicated on the ballot statement." -- EC§15302(c)

If the ROV does not have documents that satisfy either of the two legal requirements [EC§15302 (b) or (c)], please so indicate.

- 3. In Item 4 of our CPRA request of 4.24.09, we requested:**

"... logs ... including but not limited to:

- a). the testing of the ballot definition files,
- b). the Logic and Accuracy (L&A) tests performed on all of the DREs utilized for the November 4 election, and
- c). all DRE Results Cartridges uploads. The period covered by this request is August 1, 2008 to February 28, 2009."

The ROV reply was only partially responsive, addressing only the Logic and Accuracy testing logs. Please address the requests related to testing of ballot definition files and DRE Results Cartridge uploads.

We (EDA) would like to view the paper Logic & Accuracy test logs offered by the ROV.

Unless you indicate to the contrary, we will send a representative to your office **on July 1, 2009 at 1:30 p.m.** to view these documents.

The representative may decide to scan or photograph none, some, or all of the documents presented.

**4. We wish to clarify our request for directory listings, stated as item #4 in our CPRA request of 04.24.09.**

We request you create directory listings for all computers comprising the Sequoia Voting System used by Riverside County including, but not limited to, those computers used to operate:

- a). each of the Optech 400C scanners and their master computer (each running the WinETP application); and
- b). those computers running the WinEDS and/or Microsoft SQL applications.

For each computer, issue the following command at the c:\ command prompt:

```
dir c:\*.* /s /> c:\stationname_cdrive_directorylisting.txt
```

and, if there is a d: drive as well, at the d:\ command prompt:

```
dir d:\*.* /s > d:\stationname_ddrive_directorylisting.txt
```

where "stationname" is to be the full computer name of the computer and which can be found on each computer by selecting the following menus and tab in turn:

**Start -> Control Panel -> System -> Computer Name.**

This electronic text file will be created at the root level of drive c: (or drive d:) and will contain filesize and last date modified information.

Do not delete or alter any of the information in the text files produced. We are requesting each of those text files as a public record.

**5. The ROV response to Item 5 of our CPRA request of 04.29.09 was to refuse to release the requested databases stating that "the election's SQL database is proprietary."**

Under what authority are records of the vote in the election database deemed to be proprietary? By definition, a database is comprised of data, not program code. The data in the database is public information and subject to release under the CPRA. Voter registration records and election results are public. **Cal. Elec. Code §§ 606, 17120, 17122.**

The fact that public records may be stored in a computer does not affect their status as public records. **Cal. Gov't Code § 6254.9(d).**

Therefore, we again request the release of these election database records, specifically **all the .MDB files**.

Assistant Registrar Kinzle's response letter of May 4, 2009, included the statement that "... the files are a record of the election and sealed under the same conditions as the ballots for the 22 month retention period."

We have read the relevant sections of the California Election Code and find no reference to election databases (or any electronic data of any kind) in the definition of election materials that are to be sealed and preserved for 22 months following a federal election, prior to destruction. Unless you can produce any explicit exemption or substantiate any exceptional exemption per section **6255** of the California Public Records Act, **please deliver the election database files** as specified in our CPRA letter of 04.29.09.

**6. You asked for more information regarding item #6 listed in our CPRA request dated April 24, 2009.**

We are seeking the following information related to the November 4, 2008 Presidential election from the Sequoia Election Information Management System (EIMS) used by Riverside County:

- a). Number of Vote By Mail (VBM) ballots ordered from vendor
- b). Number of VBM ballots received by ROV from vendor
- c). Number of VBM ballots mailed out
- d). Number of VBM ballots returned by voters to ROV
- e). Number of VBM ballots rejected (challenged) by ROV
- f). Number of VBM ballots accepted by ROV The equivalent to the Sequoia EIMS in the Diebold voting system, is DIMS-Net. The DIMS-Net application is a Diebold/Premier system for communicating with the statewide database and can certainly produce the information requested above which was also previously implied in item #6 of our original CPRA letter 04.29.09

As an example, an R709.07 "Absentee Voter Ballot Statistics" report can be generated by the DIMS-Net application. Please provide us the functionally equivalent report generated by the Sequoia EIMS system.

**Electronic Format**

Pursuant to Government Code section 6253.9, subdivision (a)(2), I ask that any information we seek that constitutes an identifiable public record, and that is available in an electronic format, be provided in the same electronic format in which you hold the information, or in the format that has been used by your agency to create copies for your own use or for provision to other agencies. **Cal. Gov't Code § 6253.9(a)(2).**

**10-Day Response**

I ask that your determination in response to this present public records request dated June 19, 2009, be relayed to me within 10 days of your receipt of this request, and an even earlier reply if you can make that determination without having to review the records in question.

**Cost Disclosure**

I ask that you notify me of any costs involved prior to incurring those costs.

**Terms of Request Are Severable**

Please treat the terms of this request as severable. That is, should you determine that one or more portions of the requested information cannot be released, please state the legal basis for such non-release, and release the remaining portions expeditiously as required by Government Code Sections 6250 et seq.

**Exemptions Must Be "Narrowly Construed"**

If you determine that any or all of the information is exempt from disclosure, I ask that you reconsider that determination in view of Proposition 59, which has amended the California Constitution to require that all exemptions be "narrowly construed." The newly amended Government Code, section 6250, et seq., may modify or overturn authorities on which you have relied in the past.

**Exclusion is Discretionary, Not Mandatory**

If you nonetheless determine that the requested records are subject to a still-valid exemption, I would further request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) that, with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest.

**Denials Must Be Supported by Citation of Legal Authority**

Finally, should you deny part or all of this request, you are required to provide a written response describing the legal authority or authorities on which you rely.

If you need clarification that will help expedite the processing of this request, please contact me by telephone at 510 233 2144 and e-mail at [Info@ElectionDefenseAlliance.org](mailto:Info@ElectionDefenseAlliance.org).

I look forward to your prompt and professional compliance with this clarifying request.

Sincerely,



Daniel Ashby  
Co-founder and Director  
Election Defense Alliance