



# STATE OF INDIANA

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November 16, 2021

Clerk of the Bartholomew Circuit Court

Shari Lentz, Clerk

234 Washington Street

Columbus, IN 47201-6784

VIA EMAIL: [shari.lentz@bartholomew.in.gov](mailto:shari.lentz@bartholomew.in.gov)

**RE: 21-INF-7; Disclosure of Election-Related Records**

Dear Clerk Lentz,

This informal opinion is in response to your inquiry regarding the disclosure of public records related to election matters, per multiple records requests filed with the Office of the Bartholomew County Clerk. In accordance with Indiana Code section 5-14-4-10(6), I issue the following informal opinion. You asked this office to determine whether any of the documents requested—to the extent those documents are in possession of your office or the Bartholomew County Election Board—should be disclosed in accordance with the Access to Public Records Act.

## **1. Access to Public Records Act (APRA)**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. The Access to Public Records Act (APRA) says "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *Id.*

## **2. Election-related records**

This inquiry explores the types of materials sought in recently reviewed public records requests from across the state and the statutes that would be potentially invoked in response.

Under APRA, public records are presumptively disclosable. Even so, the presumption is subject to well-recognized exemptions and exceptions for records containing particularly sensitive information. While those governing statutes are not an invitation to withhold records for secrecy's sake, it is more to protect the integrity of the underlying data or information.

For example, APRA gives a public agency the discretion to except the following records from disclosure:

(10) Administrative or technical information that would jeopardize a record keeping system, voting system, voter registration system, or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it...

Ind. Code §§ 5-14-3-4(b)(10) to -(11). Nevertheless, this office is aware of boilerplate requests being circulated among the public for submission to county clerks' offices and election boards. Generally, these requests follow the same format. Two examples have been attached herein.

While transparency and integrity of elections is certainly not a cause to be dismissed, these requests do not approach any adequate standard of specificity under the law. APRA places a burden on the requester to craft a request with "reasonable particularity." Ind. Code § 5-14-3-3(a)(1).

The term reasonable particularity is not statutorily defined. Instead, it is evaluated on a request-by-request basis. The analysis is certainly rooted in elements of practicality and realism. The requests in question do not meet those standards. Some of the bullet points even imply that new records would have to be created to satisfy the request. This is not an expectation the law places on a public agency.

This office is available for guidance as to how to appropriately craft and respond to any request, but the templates for election-related records such as the attached exhibits do not pass muster in terms of reasonable particularity. They call for an uncertain and universal set of records, which may or may not exist and often are seeking information that can be justifiably withheld from disclosure. Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt  
Public Access Counselor

## Exhibit

### Detailed Documents Request

Please produce copies of the following items related to the 2020 General Election (hereinafter "Election") from the time period of July 1, 2020 through August 1, 2021 (hereinafter "Subject Time Period") unless another time period is indicated in the numbered request.

1. Please provide all penetration/security testing documentation that was provided by any vendor that provided quotes and/or invoices to the State for purchase of any voting related equipment. Additionally, please provide any reports on penetration/security testing that was performed by the State or any representative of the State-owned voting equipment. Please note: the request is for testing that was performed to ensure the security of the systems when utilized and is not intended to be interpreted as a request for cyber monitoring during operation of these machines during an actual election. If the reports cannot be released, then please provide the date of the testing, the date of the report, the name of the entity performing the testing, the vendor/model of equipment being tested and if any security flaws were noted in the findings as a (Y/N) response. If no reports are available, please provide the security certifications, such as Achilles, that the devices received and the date of their approval that would make penetration testing not required.
2. All processes, procedures, directives, manuals, and/or instructions on the storing of ballots, supplies, records, machines and any/all documents related to the election.
3. A listing of all voting equipment, including brand, model, location used, access logs as well as current location where stored and the name of the person or entity that has the care, custody, and control of the equipment.
4. All computer event logs and computer logs (including "activity logs" and FIM (file integrity monitoring) logs for each individual voting machine in your county and for any computer involved in aggregating, storing, communicating, uploading, or serving as a repository for votes in the election.
5. All upload and download logs for all external applications and databases involved in the hosting, aggregating, tabulation, and/or serving as a repository for the official and/or unofficial results in the election.
6. Because the integrity of the production is partially dependent on ensuring limited access to such computers/machines, please identify the steps taken to ensure limited access to such machines as well as any known breaches of the steps outlined to include the date, nature, and identity of person or entity breaching the step(s).

If you believe allowing access is not required or possible, please state the reasons for such positions/opinions and a list of persons to whom and how access was granted.

If any documents are withheld or redacted from production in whole or in part, please provide an exemption log index of each record or category of records that have been withheld or redacted, the explicit statutory citation that allows the exemption of the records, and a brief explanation of how the statutory exemption applies to the records.

## Exhibit

### Detailed Documents Request

Please produce copies of the following items related to the 2020 General Election (hereinafter "Election") from the time period of July 1, 2020 through August 1, 2021 (hereinafter "Subject Time Period") unless another time period is indicated in the numbered request.

1. A copy of all election voter roll registrations (from July 1, 1988 to present), absentee ballot requests, records regarding the sending and/or return of absentee ballots, and aggregated tabulation of absentee ballots and voter rolls.
2. All internal communications and/or deliberations regarding the creation, maintenance, purging, and/or preservation of voter registration and/or voter rolls.
3. All records of internet connectivity, electronic system updates and/or maintenance for all electric machines used in the Election.
4. All documents which show chain of command for the adjudication processes, as well as all documents which show the process and procedures for the transport of supplies, machines, materials, and ballots.
5. All rubrics, instructions, and processes and procedures for the adjudication of votes, tabulation of votes, and vote counting of absentee ballots.
6. All logs, receipts, records, and/or notations of any kind which evidence all levels of machine activity and access including, but not limited to, maintenance and updates.

If you believe restricting access is not required or possible, please state the reasons for such positions/opinions and a list of persons to whom and how access was granted.

If any documents are withheld or redacted from production in whole or in part, please provide an exemption log index of each record or category of records that have been withheld or redacted, the explicit statutory citation that allows the exemption of the records, and a brief explanation of how the statutory exemption applies to the records.

## Exhibit

### Detailed Documents Request

Please allow inspection and/or produce copies of the following items related to the 2020 General Election (hereinafter "Election") from the time period of July 1, 2020 through August 1, 2021 (hereinafter "Subject Time Period") unless another time period is indicated in the numbered request.

1. Communications of any kind occurring between, from, and/or to any County personnel including contractors, sub-contractors, full, and/or part-time employees and/or private individuals and entities working on behalf of the County and anyone conducting any type of work regarding the Election.
2. A copy of all election voter roll registrations, absentee ballot requests, records regarding the sending and/or return of absentee ballots, and aggregated tabulation of absentee ballots and voter rolls.
3. All internal communications and/or deliberations regarding the creation, maintenance, purging, and/or preservation of voter registration and/or voter rolls.
4. All internal and/or external communications regarding the conduct of the Election and voting processes and procedures including, but not limited to, the set-up of voting locations and/or machines, selection of voting tools, selection of personnel, the carrying out of the election, the counting of votes, the tabulation and/or adjudication of votes, as well as the processes, procedures, and tools utilized during live voting.
5. All records of internet connectivity, electronic system updates and/or maintenance for all electric machines used in the Election.
6. All documents which show chain of command for the adjudication processes, as well as all documents which show the process and procedures for the transport of supplies, machines, materials, and ballots.
7. All rubrics, instructions, and processes and procedures for the adjudication of votes, tabulation of votes, and vote counting of absentee ballots.
8. All processes, procedures, directives, manuals, and/or instructions on the storing of ballots, supplies, records, machines and any/all documents related to the Election.
9. All logs, receipts, records, and/or notations of any kind which evidence all levels of machine activity and access including, but not limited to, maintenance and updates.
10. Because the Election in various parts of America is known to have accepted private funds to administer the Election, please provide all records which detail any private funds received by the County, the source and amount of the funds, where and how the funds were spent, any/and all records of deliberations and/or decision making for the receipt of and spending of the funds as well as copies of all receipts given and received for the receipt and use of the funds.
11. A copy of all election reports related to vote tabulation.
12. A listing of all voting equipment, including brand, model, location used, access logs as well as current location where stored and the name of the person or entity that has the care, custody, and control of the equipment.
13. Pictures or scanned images of the original tapes as well as any subsequent tapes from any voting machines used.
14. Every electronic or digital ballot image file created, held, or used by you, your office, or assigns, including all metadata associated with each image and/or file.
15. Every ballot image file's filename, unchanged from the file name generated by the voting system and linked to the corresponding cast vote record's file name.
16. Every cast vote record file created, held, or used by you, your office, or assigns, including all metadata associated with each cast vote record.
17. Every cast vote record file's filename, unchanged from the filename generated by the voting system, linked to the corresponding ballot image file's filename, and provided in the format or formats in which they are maintained by the voting system and exported or exportable from the voting system.

18. All computer event logs and computer logs (including "activity logs" and "FIM (file integrity monitoring) logs") for each individual voting machine in your County and for any computer involved in aggregating, storing, communicating, uploading, or serving as a repository for votes in the Election.
19. All upload and download logs for all external applications and databases involved in the hosting, aggregating, tabulation, and/or serving as a repository for the official and/or unofficial results in the Election.
20. Because the integrity of the production is partially dependent on ensuring limited access to such computers/machines, please identify the steps taken to ensure limited access to such machines as well as any known breaches of the steps outlined to include the date, nature, and identity of person or entity breaching the step(s).

If you believe restricting access is not required or possible, please state the reasons for such positions/opinions and a list of persons to whom and how access was granted.

If any documents are withheld or redacted from production in whole or in part, please provide an exemption log index of each record or category of records that have been withheld or redacted, the explicit statutory citation that allows the exemption of the records, and a brief explanation of how the statutory exemption applies to the records.

## Exhibit

### Detailed Documents Request

Please produce copies of the following items related to the 2020 General Election (hereinafter "Election") from the time period of July 1, 2020 through August 11, 2021 (hereinafter "Subject Time Period") unless another time period is indicated in the numbered request.

1. A listing of all central count computers, to include the serial and/or identification number(s), manufacturer, model, the present physical location at the time of this request, and where the central computer was located (at all times) during the Subject Time Period.
2. Any and all event logs from all central count computers.
3. Contracts between internet providers and the county, and its subcontractors, during the Subject Time Period.
4. A listing of all devices provided by the internet provider and/or device owned by the county which has wireless capabilities by make, model, all functions, and location during the Subject Time Period.
5. Location range capabilities of wireless internet contracted through internet provider and the county.
6. Names chosen by county of wireless internet used during election within location range of polling place.
7. Passwords of all wireless internet provided by internet providers to county for county polling place.
8. If handheld electronic devices were used for any function of voting, please provide make, model, function, and name of individuals who used the electronic devices during the Subject Time Period.
9. Provide the software update version of electronic devices used during the recording, tabulation, computation, examination and/or dissemination of votes for every computer listed in Request No. 1, above.
10. Provide a listing of all applications, software, scripts, and/or code of any kind, downloaded and/or installed to any device utilized in the Election for the recording, tabulation, computation, examination and/or dissemination of voting information, including version numbers, on all machines used in the Election and during the entire Subject Time Period including date, time, and individual updating or downloading the application or software.
11. Provide the names and positions of all persons authorized to use electronic devices, including subcontractors.
12. Provide the names and positions of all persons who accessed the electronic devices in Request No. 11 above, including subcontractors.
13. Provide chain of custody for all handheld electronic devices used to record votes during drive thru voting.
14. Provide chain of custody for data recording during drive through voting.
15. The names, addresses, employers, of any individual who installed, modified, updated, changed, tested, administered any/all software, script, programs, and/or databases of any kind on any machine used in the Election to include the date of the activity, the type of the activity, whether remote or in person, anyone who witnessed the event, and any and all forensic images taken prior to and/or after the interaction.
16. Provide a copy of any/all invoices, work orders and/or documents of any kind which evidence, authorize, and/or describe the work to be done and/or costs to complete.
17. A complete record of any and all certifications, including a copy of any and all certifications in compliance with any and all election laws, including the name, address, and employer of the individual(s) testing for certification.

18. A forensic copy of the hard drive of each and every machine used in the Election which will be or is scheduled for any modification, update, maintenance, change, of any kind, after the Subject Time Period.

If you believe allowing access is not required or possible, please state the reasons for such positions/opinions and a list of persons to whom and how access was granted.

If any documents are withheld or redacted from production in whole or in part, please provide an exemption log index of each record or category of records that have been withheld or redacted, the explicit statutory citation that allows the exemption of the records, and a brief explanation of how the statutory exemption applies to the records.