



OUR MISSION: We are a nonpartisan organization whose mission is to restore public ownership and oversight of elections, work to ensure the fundamental right of every American citizen to vote, and to have each vote counted as intended in a secure, transparent, impartial, and independently audited election process.

Brad Nelson, (CERA)

Pima County Elections Director
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August 15, 2016

Subject: REQUEST FOR PUBLIC RECORDS

Dear Mr. Nelson:

Pursuant to the Arizona Public Records Law, A.R.S. § 39-121, et seq, and Arizona's Election Oversight By Observers Process, ARS 16-590 and 16-603, we submit this public records request. We begin by making the following notes relevant to the request. **All requests are for data in electronic form ONLY.** If the records exist only on paper, please inform us by Email at the contact addresses listed below, and please submit any cost requirements for each item via Email as well. Electronic records are always more valuable to us, and cost less for your office to process. Please note that we expect to get the metadata, and not documents that were printed or imaged, or in any way altered from their complete original source, **with no metadata.** We will provide a new unopen factory sealed Portable Backup Hard drive for your use.

All of these requests are for non-commercial purposes.

- Several of the records we need to inspect and review are present in electronic form on the Election Management System "EMS" computer, and possibly a secondary or "bad ckup" computer of the same type.
- The files need to be copied AS whatever standard file formats ES&S normally supplies such as text files, PDF files, graphics files and the like to preserve the metadata.

All requests herein refer to records related to both the Presidential Preference Election of March 22, 2016, the May 17th Special Election and the August 30, 2016 Primary Election unless otherwise noted below.

[Link to Clip 1 Below to hear ES&S representatives explain why the ES&S system was designed to use ballot images to count votes and audit an election.](#)

With the previous caveats in mind, we ask for the following public records:

- 1) Electronic copy of all Ballot images for the past two elections if they exist. We understand from the audio recording of the July 15 meeting of Pima County Election Integrity Commission that these records were illegally destroyed. If necessary, we will file an emergency protective order for future elections. We understand you intend to destroy these records on a daily basis as you process Vote by Mail and the ballots cast at precincts on Election day for the August 30th Primary. [Link to 2 YouTube as proof below.](#)
- 2) Electronic copy of Cast Vote Record (CVR) that tie to the Ballot images.
- 3) Electronic copy of contract or contracts with ES&S.
- 4) Electronic copy of contract or contracts with ballot printing company.
- 5) Electronic copy of invoices that shows how many ballots that were purchased for the August 30, 2016 Primary election.
- 6) Electronic copies of the Election Management System "EMS", known as the "ES&S version 5.2.0.0" audit logs" for the central tabulator data files involved in either the setup and/or execution of the last 3 elections printed to electronic PDF file and the August 30, Primary election.
- 7) Electronic copies of all emails between Pima Elections and ES&S going back 2 years.

- 8) We also request an onsite visit to inspect and review the ES&S operation manuals. State law requires responses to be "*prompt.*" 39-121. [Inspection of public records](#); "*Public records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours.*"
- 9) We request a copy of the "File Allocation Table" on each Election Management System "ES&S version 5.2.0.0" server and if not available plain text file with the following command on each disk drive of each server:
`C:\> dir *.* /s > c:\EMSlist.txt` (C: replaced by D: if a second drive exists, by E: if a third drive exists, etc).

Clip 1 of 2 to my YouTube channel. This clip is 5 minutes, lays out how the ballot images work in the system for good audits and this is what Pima is destroying. Link to YouTube: <https://youtu.be/WEIcRziVmlA>

Clip 2 of 2 Short Video clip – Excerpt: Pima County EIC on 7.15.16, Item 10 of Agenda. It slips out that after 7 months of the Commission thinking that the ballot images are saved for the March PPE and the May 17th Pro 123 state elections are saved, only to find out that ballot images were destroyed and the Cast Vote Record (CVR) is no good without ballot images. Link to video: <https://youtu.be/itlU2JnMdHo>

Chairman of PC EIC Dr. Tom Ryan points out. As reported in the [Jan 18 agenda's meeting notes](#): ITEM 12. "*Tom Ryan had a conversation with Ken Carbullido of ES&S who presented several options for this issue. **One is to leave the images on the scanners and then transfer them later**; Ken thinks there is enough storage space on the scanners to do that. The **second option is to do the transfer but not pull them into the database and just leave them on the disc.** The **third is to pull them into the database each night which would cause the disc to fill up rapidly because there would be duplication of images each night.***"

Pima Elections completely ignores all 3 options above and just **destroys ballot images.**

For the purposes of this request, the term "Records" is defined in its broadest sense to include all responsive information in whatever form, including, but not limited to, hard copies, audio tapes, video tapes, disks, electronic mail, computer files, other electronic files and compilations of any sort.

If any documents are withheld from production, please provide to us an index of records or categories of records that have been withheld and the explicit reasons the records or categories of records have been withheld.

Additionally, [A.R.S. 39-121.02](#). States "*Action on denial of access; costs and attorney fees; damages. A. Any person who has requested to examine or copy public records pursuant to this article, and who has been denied access to or the right to copy such records, may appeal the denial through a special action in the superior court, pursuant to the rules of procedure for special actions against the officer or public body. B. The court may award attorney fees and other legal costs that are reasonably incurred in any action under this article if the person seeking public records has substantially prevailed. Nothing in this subsection shall limit the rights of any party to recover attorney fees, expenses and double damages pursuant to section 12-349. C. Any person who is wrongfully denied access to public records pursuant to this article has a cause of action against the officer.*"

Thank you for your prompt attention to this request.

Respectfully,

John R. Brakey, of Americans United for Democracy, Integrity, and Transparency, Arizona & Special task force leader for Citizens Oversight for Verifiable Elections.

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