



FLORIDA STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS

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MEMORANDUM

TO: ES & S Counties

FROM: Ronald Labasky

DATE: 11/1/18

RE: Public Records Request/Ballot Images

Last week you received and we discussed a public records request from Susan Pynchon indicating that she would be asking for any ballot images that your office may have from the upcoming November 2018 General Election. There is no authority under the Florida Public Records Act which allows for a “standing request” for documents which may exist in the future. Following those discussions we contacted ES & S concerning its equipment and the possible creation of ballot images during the course of the election. Based on the response it appears that:

- Ballot images are not automatically created for each ballot that is scanned into your system. Therefore, ballot images are not created automatically.
- Ballot images are only created if you have determined to create those for whatever use you feel is appropriate and programmed your equipment to do so.
- The choices that are available are:
 - NONE – create no image
 - ALL – create image of all scanned ballots
 - Write-In – images only ballots with a write-in designated and provides a clip file of write-in

The ballot images will need to be provided pursuant to public record request if you have made the choice to create an image, either

in its entirety or related to write-ins. If there are no images created, there will be no response/document to be produced pursuant to the request. Ballot images that are created would be subject to the state retention schedule, GS 3 for Election Records. A federal statute 52 USCA 20701 provides for retention of records created in a federal election for the same twenty-two months. Since we have to maintain the actual paper ballots pursuant to the state schedule, ballot images would appear to serve little if any purpose.

As we have previously discussed a public records request requires you to produce any document you may have in the form of that it is generally maintained. A document maintained in an electronic format is subject to being provided in electronic or paper format. The record retention schedule does not require that a document be created, only retained if created. Also, in conjunction to the letter from Kuehne Davis Law, since your L & A has long ago occurred, and votes have already been cast and received, it would be difficult to change your system at this time without, as I understand, reprogramming your data base and starting over again with a new L & A and normal subsequent actions.

I am not aware of and the Division has not indicated any statute or rule which requires the creation or use of ballot images, but has merely stated the obvious, that if you create a ballot image it must be retained pursuant to the schedule, just as you do with the ballots. There is no legal requirement that you respond to the letter from the law firm sent to you last night. I suggest you advise your attorney of this issue, in the event a public records request is made.