

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION**

JEAN KACZMAREK,)
)
Plaintiff,)
)
v.)
)
DUPAGE COUNTY BOARD OF)
ELECTION COMMISSIONERS, and any)
successor public body,)
)
Defendant.)

COMPLAINT

Plaintiff Jean Kaczmarek, by and through her attorney, Daniel Massoglia, Esq., brings this Freedom of Information Act suit seeking release of public records that Defendant DuPage County Board of Election Commissioners is withholding in willful and intentional, and bad faith, violation of the Act. These records pertain to the serial numbers of election machines provided to the county by vendor Liberty Systems, LLC. Kaczmarek alleges the following in support:

NATURE OF THE ACTION

1. This is a complaint under the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 140/1 *et seq.* against DuPage County Board of Election Commissioners (“DCEC” or “the Commission”) and any successor agency that assumes the Commission’s responsibilities in coming months or years.

2. Jean Kaczmarek (“Kaczmarek”) seeks public records containing the serial numbers of election machines provided to DuPage County by vender Liberty Systems as part of a June 2018 transaction in which Liberty Systems provided 118 previously-used machines to the County following malfunctions of Liberty Systems equipment in the March 2018 primary election. Kaczmarek’s seeks to ensure that all election machines in use in DuPage county are in top

condition, a matter of pressing public interest.

3. Election machines in DuPage County, and the Commission itself, have been recent sources of considerable public discussion and consternation following malfunctions of untested voting equipment affecting the March 2018 primary election and other election-related mishaps, such as mislabeled legislative district boundaries provided by the Commission.

4. Kaczmarek made a FOIA request to the Commission on June 14, 2018, and, after missing a statutory production deadline, the Commission denied the request, citing exemptions found in 7(1)(b) and 7(1)(o) while alleging that releasing serial numbers was a threat to election security. 5 ICLS 140/7(1)(b), 7(1)(o).

5. Kaczmarek has also made FOIA requests for voting machine serial numbers to the Illinois State Board of Elections and Bond, Boone, Crawford, Bureau, Coles, Douglas, Hardin, Macon, Mason, Moultrie, and Stephenson counties. None of these public bodies asserted a statutory exemption, and all provided relevant serial numbers, including, in the case of the Illinois State Board of Elections request, the most recently reported serial numbers for all DuPage County machines. Additionally, DCEC has previously provided serial numbers of its voting machines in response to FOIA requests. *See* Group Exhibit 1, attached and incorporated by reference.

PARTIES

6. Plaintiff Jean Kaczmarek is the requester of the records at issue in this action and a longtime watchdog of elections and election processes in the County, frequently attending public meetings of DCEC and taking other actions to help ensure the safety and reliability of elections.

7. Kaczmarek is a resident of DuPage County and the Democratic candidate for DuPage County Clerk but brings this suit as a member of the public concerned about the public's right to know the origin of replacement Liberty Systems machines, the appropriateness of the transaction

that procured them, their possible use in upcoming elections, and the general health of DuPage County election equipment.

8. Defendant DuPage County Board of Election Commissioners is a public body as defined by 5 ILCS 140/2(a) and is located in DuPage County.

BACKGROUND

Illinois FOIA

9. The Illinois FOIA, in its first sentence, states that “all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials.” 5 ILCS 140/1.

10. “All records in the custody or possession of a public body are presumed to be open to inspection or copying.” 5 ILCS 140/1.2.

11. The proper handling of requests from the public is, in the eyes of the Illinois Legislature, essential to the “fundamental philosophy of the American constitutional form of government.” 5 ILCS 140/1.

12. The Act permits a public body to in certain circumstances limit access to public records via statutory exemptions, but “*restraints on access to information... are limited exceptions* to the principle that the people of this State have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of any or all of the people.” 5 ILCS 140/1 (emphasis added).

13. “Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.” 5 ILCS 140/1.2.

14. “Except as to causes the court considers to be of greater importance, proceedings arising [under section 11 of the FOIA] shall take precedence on the docket over all other causes

and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.” 5 ILCS 140/11(h).

15. The FOIA is “the exclusive State statute on freedom of information.” 5 ILCS 140/1.

16. When a court “determines that a public body willfully and intentionally failed to comply with the FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.” 5 ILCS 140/11(j).

17. DCEC willfully and intentionally violated the law, and in bad faith, applying exemptions where they do not apply in a manner contrary to fact and law and the actions of numerous other counties’ FOIA offices, the Illinois State Board of Elections’ FOIA office, and its own FOIA office’s prior actions, conduct designed to subvert public scrutiny on the June 2018 transaction that procured used Liberty Systems voting machines for DuPage County, or designed for other improper reasons.

Kaczmarek’s Request and DCEC’s Inadequate Response

18. On June 14, 2018, Kaczmarek, via email, sent a FOIA request seeking: “Copies of documents containing serial numbers of all incoming opti-scan voting machines from Liberty Systems in 2018 to replace any broken machines.” *See* Exhibit 2, attached and incorporated by reference.

19. Kaczmarek has spoken about her concern that replacement Liberty Systems voting machines were out-of-warranty, cast-off, or otherwise not in appropriate condition for use by DuPage County publicly, and has attended more than 150 Commission meetings as an election watchdog seeking public transparency and a healthy and secure election process in DuPage County.

20. The Commission did not approve or deny Kaczmarek’s June 14, 2018 FOIA request

within the statutorily required five-business-day time frame under 5 ILCS 140/3, nor did it seek an extension of time to respond, but on June 25, 2018, via a letter from its counsel, the Commission denied the request, writing that:

...the Election Commission is obligated to ensure safety and security in its administration of elections. This is of particular concern in matters involving voting equipment. Consequently, the Election Commission cannot publicly disclose unique identifying serial numbers associated with any voting machine maintained by the Election Commission. Such public disclosure would jeopardize the security of voting equipment; accordingly, such information is exempt from public disclosure pursuant to section 7(1)(b) and 7(1)(o) of FOIA. that those accounts and devices are used for the transaction of public business.

See Exhibit 3, attached and incorporated by reference.

21. Section 7(1)(o) of the FOIA provides for, subject to the statute's preference for narrow construction of exemptions, the withholding of "administrative or technical information associated with data processing operations" where disclosure would "jeopardize the security of the system or its data or the security of materials exempt under [Section 7 of the FOIA]." 5 ILCS 140/7(1)(o).

22. Kaczmarek replied to the Commission's denial by stating that voting machine serial numbers do not allow special access to a voting machine or voting process, and further that, as they are found on the *outside* of voting machines, they are already visible to "...staff, temporary staff, trainers, trainees, election judges... poll watchers and voters." *See Exhibit 3.*

23. Relevant voting machine serial numbers do not threaten the secrecy of a person's vote.

24. Relevant voting machine serial numbers may not be used to coerce a person to vote in a certain way, to not vote at all, or to vote when they otherwise would not have voted.

25. Relevant voting machine serial numbers do not ensure that votes cast on a given machine are accurately counted except to the degree that they may, as Kaczmarek fears, show upon release that DuPage County is again using substandard equipment provided by Liberty

Systems.

26. Relevant voting machine serial numbers do not threaten the integrity of conducting an election except to the degree that they may, as Kaczmarek fears, show upon release that DuPage County is again using substandard equipment provided by Liberty Systems.

27. The Illinois State Board of Elections has already released to Kaczmarek the most recently reported serial numbers of all voting machines possessed by DuPage County in response to a September 10, 2018 FOIA request. *See* Group Exhibit 1. Kaczmarek's present request, at issue in this lawsuit, specifically seeks serial numbers of DuPage County machines acquired from Liberty Systems in the 2018 transaction. *See* Exhibit 2.

28. In addition to the Illinois State Board of Elections, Bond, Boone, Crawford, and Stephenson counties have released serial numbers of active voting machines to Kaczmarek—in the cases of Bond, Boone, and Crawford, for machines identical in type to those in use in DuPage County—without alleging that these documents are exempt under the FOIA as a threat to election security or for any other reason. *See* Group Exhibit 1.

29. Further, Bureau, Coles, Douglas, Hardin, Macon, Mason, Moultrie, and Tazewell counties have released serial numbers of traded-in voting machines to Kaczmarek without alleging that these documents are exempt under the FOIA as a threat to election security or for any other reason. *See* Group Exhibit 1.

30. DCEC released active voting machine serial numbers in response to FOIA requests in 2007 and 2008 without claiming these numbers constituted a threat to election security. *See* Group Exhibit 1.

31. Disclosure of relevant voting machine serial numbers does not jeopardize the security of the voting system or its data.

32. The Commission's position regarding alleged threats to election security and its

attempted application of FOIA exemption 7(1)(o) is a willful and intentional violation of the FOIA and not grounded in a good faith application of the law, coming due to the Commission's aversion to public scrutiny on the June 2018 transaction that provided for the transfer of used machines from Liberty Systems to the County, or due to other improper reasons.

33. The Commission's application of the section 7(1)(b) "private information" exemption to Kaczmarek's request is similarly a willful and intentional violation of the FOIA and not grounded in a good faith application of the law, coming due to the Commission's aversion to public scrutiny on the June 2018 transaction that provided for the transfer of used machines from Liberty Systems to the County, or due to other improper reasons.

34. Section 7(1)(b) operates in reference to section 2(c-5) of the FOIA and allows a public body to withhold:

...unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person.

5 ILCS 140/7(1)(b); 5 ILCS 140/2(c-5) (emphasis added).

35. As is visible from the text of the statute, exemption 7(1)(b) is concerned only with private information identifiable to a *person* or implicating *personal privacy*.

36. Voting machine serial numbers are not identifiable to a person and nor do they implicate personal privacy.

Kaczmarek's Appeal to the Public Access Counselor and Other Efforts to Avoid Litigation

37. Hearing no response to her June 26, 2018 follow-up letter to the Commission explaining that releasing the serial numbers at issue was not a security threat, Exhibit 3, Kaczmarek turned to the Public Access Counselor at the Office of the Illinois Attorney General ("PAC") and on June 25, 2018 submitted a Request for Review of the FOIA denial. *See* Exhibit

4, attached and incorporated by reference.

38. The parties corresponded with the PAC, providing supplementary information as requested, but the PAC has yet to make a determination on the request or the Request for Review. *See* Exhibits 5, 6, attached and incorporated by reference.

39. On September 4, 2018, through counsel, Kaczmarek submitted a demand letter for production of records to the Commission. *See* Exhibit 7, attached and incorporated by reference. The Commission did not immediately change its position.

40. Later, on September 17, 2018, through counsel, Kaczmarek informed the Commission's counsel of the contrary determinations of numerous other public bodies including the Illinois State Board of Elections, seeking a change in the Commission's position. In communications in following days, the Commission's counsel stated to Kaczmarek that the Commission was considering the new information, but never indicated whether the Commission would change its position.

41. Repeated email and telephone attempts at communication to the Commission's counsel since September 26, 2018 have gone unreturned.

42. On October 9, 2018, Kaczmarek filed this suit.

COUNT I – VIOLATION OF FOIA

43. Kaczmarek incorporates Paragraphs 1-42 of this Complaint by reference.

44. The DuPage County Board of Election Commissioners is a public body.

45. Requested serial numbers are "public records" under the FOIA as they pertain to the transaction of public business: namely, the operation of elections, the equipment the public uses to vote, and the process by which DuPage County obtains election equipment for use by the public.

46. DCEC has illegally withheld public records by applying statutory exemptions where

they do not apply.

47. Requested records do not implicate the confidentiality of votes, or implicate the accuracy of vote counting, or pose the potential for coercing a person to vote in a certain way, vote, or not vote.

48. Requested records do not pose a threat to election security or its data and exemption 7(1)(o) is inapplicable. 5 ILCS 140/7(1)(o).

49. Requested records do not constitute “private information” under section 2(c-5) of the FOIA and section 7(1)(b) is inapplicable. 5 ILCS 140 7(1)(b).

50. The Commission has not, and cannot, meet its statutory burden of showing by clear and convincing evidence that asserted exemptions apply. 5 ILCS 140/1.2.

51. These records are subject to disclosure under the FOIA and are currently being withheld in violation of section 3 and section 7 of the FOIA. 5 ILCS 140/3, 7.

52. The Court has jurisdiction to “enjoin [DCEC] from withholding public records and to order the production of any public records improperly withheld from the person seeking access [Kaczmarek].” 5 ILCS 140/11(d).

53. Kaczmarek is entitled to recover costs and reasonable attorneys’ fees under 5 ILCS 140/11(i).

54. Pursuant to section 11 of the FOIA, which reads in part, “[e]xcept as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way,” the Court should at its discretion expedite proceedings on the present lawsuit in every way. 5 ILCS 140/11(h).

COUNT II – WILLFUL VIOLATION OF FOIA

55. Kaczmarek incorporates Paragraphs 1-42 of this Complaint by reference.

56. The DuPage County Board of Election Commissioners is a public body.

57. Requested serial numbers are “public records” under the FOIA as they pertain to the transaction of public business: namely, the operation of elections, the equipment the public uses to vote, and the process by which DuPage County obtains election equipment for use by the public.

58. The Commission has willfully and intentionally violated the FOIA, and in bad faith, under 5 ILCS 140/11(j) by applying statutory exemptions 7(1)(b) and 7(1)(o) where they do not apply contrary to the determinations of the Illinois State Board of Elections, numerous other counties’ FOIA offices, and its own prior actions. 5 ILCS 140/7(1)(b), 7(1)(o), 11(j).

59. The Commission has continued its willful and intentional and bad faith violation of the FOIA despite being informed of the contrary determinations of the Illinois State Board of Elections and numerous other counties’ FOIA offices.

60. The Commission’s willful and intentional and bad faith violation of the FOIA is an effort to subvert public scrutiny on the June 2018 transaction that procured used Liberty Systems voting machines for DuPage county, or for other improper reasons. 5 ILCS 140/11(j).

61. While in violation of the FOIA, the Commission ignored repeated good faith attempts by Kaczmarek to reach a resolution of the matter without litigation, informing Kaczmarek that the Commission was considering new information regarding contrary determinations of other public bodies and subsequently leaving emails and phone calls unreturned.

62. Kaczmarek is entitled to recover costs and reasonable attorneys’ fees under 5 ILCS 140/11(i).

63. Pursuant to section 11 of the FOIA, which reads in part, “[e]xcept as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest

practicable date and expedited in every way,” the Court should at its discretion expedite proceedings on the present lawsuit in every way. 5 ILCS 140/11(h).

WHEREFORE, Kaczmarek asks that the Court enter a judgment in her favor that:

- 1) Declares the Commission’s actions contrary to law;
- 2) orders the Commission to promptly produce responsive, non-exempt withheld public records;
- 3) grants this matter precedence on the Court’s docket and expedites proceedings in every way;
- 4) awards Kaczmarek reasonable attorney's fees and costs;
- 5) awards Kaczmarek a statutory penalty of between \$2,500 and \$5,000 for each willful and intentional violation or bad faith violation of the FOIA; and
- 6) awards Kaczmarek any other relief the Court should deem appropriate and just.

Respectfully Submitted,

_____/s/ Daniel E. Massoglia_____
One of Plaintiff’s Attorneys

Daniel E. Massoglia, Esq.
Daniel E. Massoglia
2865 W. Lyndale St
#1
Chicago, IL 60647
dmassoglia@gmail.com
(336) 575-6968
DuPage County Attorney No. 338994

Group Exhibit 1

Granted Illinois State Board of Elections FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: [EXTERNAL] Re: [EXTERNAL] FOIA request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Oct 7, 2018 at 1:37 PM

----- Forwarded message -----

From: **Dietrich, Matt** <MDietrich@elections.il.gov>
Date: Fri, Sep 14, 2018 at 1:30 PM
Subject: RE: [EXTERNAL] Re: [EXTERNAL] FOIA request
To: J K <jeankaczmarek78@gmail.com>

It was compiled by our Voting and Registration Systems division on Sept. 10 from reports submitted to us by DuPage.

Matt Dietrich

Public Information Officer

Illinois State Board of Elections

(217) 558-1955 (o)

(217)685-2503 (c)

MDietrich@elections.il.gov

From: J K [mailto:jeankaczmarek78@gmail.com]
Sent: Friday, September 14, 2018 1:21 PM
To: Dietrich, Matt <MDietrich@elections.il.gov>
Subject: [EXTERNAL] Re: [EXTERNAL] FOIA request

Matt, can you supply me with the date of this document and any information of where it came from (was it part of a certain file or application for approval)? Thank you.

On Sep 14, 2018 1:17 PM, "J K" <jeankaczmarek78@gmail.com> wrote:

Thank you!

On Fri, Sep 14, 2018, 12:57 PM Dietrich, Matt <MDietrich@elections.il.gov> wrote:

Jean: The attached spreadsheet contains the serial numbers you requested. Please let me know if you have any questions.

Matt Dietrich

Public Information Officer

Illinois State Board of Elections

(217) 558-1955 (o)

(217)685-2503 (c)

MDietrich@elections.il.gov

From: J K [mailto:jeankaczmarek78@gmail.com]

Sent: Monday, September 10, 2018 9:23 AM

To: Dietrich, Matt <MDietrich@elections.il.gov>

Subject: [EXTERNAL] FOIA request

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

The most recent documents containing serial numbers of voting equipment in use in DuPage County (OS machines purchased in 2001 and TSx machines purchased in 2006) which may be found in: applications for approval containing serial numbers, testing reports containing serial numbers, etc.

(To clarify, I am not requesting every document containing serial numbers - only the most recent documents showing the serial numbers of all or most voting machines currently in use in DuPage County. Also, I do not require entire applications for approval - only the portion/s pertaining to serial numbers.)

Thank you,

Jean Kaczmarek

Granted Bond County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
To: Daniel Massoglia <dmassoglia@gmail.com>

Fri, Sep 28, 2018 at 8:57 AM

----- Forwarded message -----

From: **Meg Sybert** <bococlerk@bondcountyil.com>
Date: Wed, Sep 12, 2018 at 9:48 AM
Subject: RE: Freedom of Information Act Request
To: J K <jeankaczmarek78@gmail.com>
Cc: Dora Mann <dmann@bondcountyil.com>

Please see attached

From: J K <jeankaczmarek78@gmail.com>
Sent: Friday, September 07, 2018 12:58 PM
To: bococlerk@bondcountyil.com
Subject: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following to be sent to: jeankaczmarek78@gmail.com

Documentation containing the make/s, model/s, year/s and serial numbers of voting machines in possession of your county.

Thank you very much,

Jean Kaczmarek



Virus-free. www.avg.com



Current equipment.xlsx
13K

Granted Boone County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>

Sun, Sep 30, 2018 at 1:40 PM

Bcc: dmassoglia@gmail.com

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>

Date: Fri, Sep 28, 2018 at 8:57 AM

Subject: Fwd: Freedom of Information Act Request

To: Daniel Massoglia <dmassoglia@gmail.com>

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>

Date: Mon, Aug 27, 2018 at 8:56 AM

Subject: Re: Freedom of Information Act Request

To: <jstapler@boonecountyil.org>

Thank you!

On Thu, Aug 23, 2018 at 3:50 PM Julie Stapler <jstapler@boonecountyil.org> wrote:

Good afternoon,

Here is the response to the FOIA request. Please let me know if you have any questions.

Sincerely,

Julie A. Stapler

Boone County Clerk & Recorder

1212 Logan Ave #103

Belvidere, IL 61008

(815) 544-3103

From: J K [mailto:jeankaczmarek78@gmail.com]

Sent: Tuesday, August 21, 2018 5:10 PM

Subject: Freedom of Information Act Request

Pursuant to the Freedom of Information, I request copies of the following to be sent to: jeankaczmarek78@gmail.com

Documentation containing the make/s, model/s, year/s and serial numbers of voting machines in possession of your county.

Thank you very much,

Jean Kaczmarek

Granted Bureau County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Fw: - Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Fri, Sep 28, 2018 at 9:18 AM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Aug 27, 2018 at 9:11 AM
Subject: Re: Fw: - Freedom of Information Act Request
To: kami hieronymus <bureaucckami@yahoo.com>

Thank you!

On Wed, Aug 22, 2018 at 12:52 PM kami hieronymus <bureaucckami@yahoo.com> wrote:

I am sorry. I researched this a while back and thought I had sent it to you. Attached is the letter of response and copies of our old equipment lists.

*Kami Hieronymus
Bureau County Clerk/Recorder
700 South Main Street
Princeton, IL. 61356
815-875-2014*

From: J K <jeankaczmarek78@gmail.com>
To: kami hieronymus <bureaucckami@yahoo.com>
Sent: Tuesday, August 21, 2018 4:33 PM
Subject: Re: Fw: - Freedom of Information Act Request

Hello.

Just a reminder that I still have not received your FOIA response.

Please respond soon.

Thank you very much,

Jean Kaczmarek

On Mon, Jun 18, 2018 at 3:37 PM, kami hieronymus <bureaucckami@yahoo.com> wrote:

Jean

We have received your FOIA request below. This will take some

research time as we converted to new equipment in March of 2016.
We will look for minutes of when the new equipment was approved.

Kami Hieronymus
Bureau County Clerk/Recorder
700 South Main Street
Princeton, IL. 61356
815-875-2014

----- Forwarded Message -----

From: J K <jeankaczmarek78@gmail.com>

Sent: Thursday, June 14, 2018, 3:54:59 PM CDT

Subject: TO: County Clerk's Office - Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek

Granted Coles County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: FW: FOIA Info

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Fri, Sep 28, 2018 at 9:19 AM

----- Forwarded message -----

From: **Lisa Standerfer - Coles Co Clerk's Office** <LStanderfer@co.coles.il.us>
Date: Wed, Aug 22, 2018 at 10:38 AM
Subject: FW: FOIA Info
To: jeankaczmarek78@gmail.com <jeankaczmarek78@gmail.com>
Cc: Sue Rennels - Coles Co Clerk's Office <SRennels@co.coles.il.us>, Sheryl Thomas - Coles Co Clerk's Office <SThomas@co.coles.il.us>

Jean,

The information that you requested from the Coles County Clerk's office was sent to you on June 21, 2018. Please see message from below.

From: Lisa Standerfer - Coles Co Clerk's Office
Sent: Thursday, June 21, 2018 11:42 AM
To: 'jeankaczmarek78@gmail.com'
Cc: Sue Rennels - Coles Co Clerk's Office
Subject: FOIA Info

Ms. Kaczmarek,

Attached you will find the information that you requested from our office on Friday, June 15, 2018.

Lisa Standerfer
Deputy County Clerk, Elections
Coles County Clerk's Office
651 Jackson Avenue, Rm 122
Charleston, IL 61920
(217) 348-0523
(217) 348-7337 Fax

 **FOIA Information.pdf**
2561K

Granted Crawford County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Sep 30, 2018 at 1:40 PM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Fri, Sep 28, 2018 at 8:58 AM
Subject: Fwd: Freedom of Information Act Request
To: Daniel Massoglia <dmassoglia@gmail.com>

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Wed, Sep 12, 2018 at 4:19 PM
Subject: Re: Freedom of Information Act Request
To: Fayrene Wright <countyclerk@crawfordcountyclerk.net>

Thank you!

On Wed, Sep 12, 2018, 4:14 PM Fayrene Wright <countyclerk@crawfordcountyclerk.net> wrote:

Pursuant to your request I have attached a complete listing of all election equipment used in Crawford County.

Please feel free to contact me with any questions regarding the same. Thank you.

Fayrene Wright

Crawford County Clerk

PO Box 616

Robinson, IL 62454

From: J K [<mailto:jeankaczmarek78@gmail.com>]
Sent: Friday, September 07, 2018 1:02 PM
To: Fayrene Wright
Subject: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following to be sent to: jeankaczmarek78@gmail.com

Documentation containing the make/s, model/s, year/s and serial numbers of voting machines in possession of your county.

Thank you very much,

Jean Kaczmarek

Granted Douglas County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: FW: County Clerk's Office - Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Fri, Sep 28, 2018 at 9:21 AM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Tue, Aug 21, 2018 at 4:35 PM
Subject: Re: FW: County Clerk's Office - Freedom of Information Act Request
To: Kate Watson <kate.watson@douglascountyil.com>

Thank you very much.

On Fri, Jun 22, 2018 at 3:59 PM, Kate Watson <kate.watson@douglascountyil.com> wrote:

Re: FOIA Request *received 6/14/18*

Dear Ms. Kaczmarek:

Thank you for submitting your request for information pursuant to the Illinois Freedom of Information Act. On June 14, 2018, you requested documents relating to: "see below."

Please find with this email the documents you requested, which includes all the information found to be in the possession of the Douglas County Clerk & Recorder

You have a right to have any denial of your request reviewed by the Public Access Counselor (PAC) at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General [500 South 2nd Street](#)
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us

You also have the right to seek judicial review of your denial by filing a lawsuit in the State circuit court. 5 ILCS 140/11. If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this denial letter when filing a Request for Review with the PAC.

Very truly yours,

Kate Watson

State's Attorney/ Freedom of Information

Cc: Judi Pollock, Douglas County Clerk & Recorder

From: J K [<mailto:jeankaczmarek78@gmail.com>]

Sent: Thursday, June 14, 2018 3:55 PM

To: undisclosed-recipients:

Subject: TO: County Clerk's Office - Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek

Granted Hardin County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Reminder - Freedom of Information Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Oct 7, 2018 at 8:04 PM

----- Forwarded message -----

From: **Hardin County Clerks Office Office** <jcowsert@shawneelink.net>
Date: Wed, Aug 22, 2018 at 1:42 PM
Subject: Re: Reminder - Freedom of Information Request
To: J K <jeankaczmarek78@gmail.com>

I apologize, I must have missed your first request. I am attaching the serial numbers from our old equipment that Liberty Systems purchased from us. I will have to look at the board minutes when I have time. I am currently working alone in this office. We do not really have documented problems. Our only complaint with the machines were that the printers on the TSX machines were problematic, and the OS machines would get the cards erased if the judges scooted them at times. But we mainly bought new machines because we were unhappy with our current vendor (Platinum) and my deputy is very tech savvy and loved that the new machines have a jump drive that stores all the results instead of the old cards that had to be burned before each use. Also our customer service is greatly improved with Liberty Systems.

From: "J K" <jeankaczmarek78@gmail.com>
Sent: Tuesday, August 21, 2018 4:42:00 PM
Subject: Reminder - Freedom of Information Request

On June 14th, your office was sent the following FOIA request. I still have not received a response.

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to: jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek



DOC082218-082218.pdf

25K

Granted Macon County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Reminder - Freedom of Information Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Fri, Sep 28, 2018 at 9:22 AM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Aug 27, 2018 at 1:32 PM
Subject: Re: Reminder - Freedom of Information Request
To: <sbean@co.macon.il.us>

Thank you very much for this information.

On Mon, Aug 27, 2018 at 10:28 AM Steve Bean <sbean@co.macon.il.us> wrote:

Equipment list that was traded in.

From: J K [mailto:jeankaczmarek78@gmail.com]
Sent: Tuesday, August 21, 2018 4:42 PM
Subject: Reminder - Freedom of Information Request

On June 14th, your office was sent the following FOIA request. I still have not received a response.

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to: jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek

Granted Mason County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: FW: County Clerk's Office - Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Fri, Sep 28, 2018 at 9:30 AM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Tue, Aug 21, 2018 at 4:36 PM
Subject: Re: FW: County Clerk's Office - Freedom of Information Act Request
To: Summer Brown <countyclerk@masoncountyl.org>

Thank you very much.

On Tue, Jun 19, 2018 at 8:23 AM, Summer Brown <countyclerk@masoncountyl.org> wrote:

I apologize..

I am resending with updated information. The first time I sent it, I sent the new equipment listing. This one has the retired equipment.

Thank you,

Summer

From: Summer Brown [mailto:countyclerk@masoncountyl.org]
Sent: Tuesday, June 19, 2018 8:12 AM
To: 'J K' <jeankaczmarek78@gmail.com>
Subject: RE: County Clerk's Office - Freedom of Information Act Request

Attached please find the listing of our retired equipment, election night problems of that equipment that was turned into the SBE over the years, and the Board Resolution of when the new equipment was approved. Should you need anything further please let me know.

Thank you,

Summer

Summer R. Brown

Mason County Clerk & Recorder

100 N. Broadway

P.O. Box 77

Havana, IL 62644

309/543-6661

From: J K [<mailto:jeankaczmarek78@gmail.com>]

Sent: Thursday, June 14, 2018 3:55 PM

To: undisclosed-recipients:

Subject: TO: County Clerk's Office - Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek

Granted Moultrie County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: FW: County Clerk's Office - Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>

Sun, Oct 7, 2018 at 8:05 PM

Bcc: dmassoglia@gmail.com

----- Forwarded message -----

From: **Georgia England** <ctyclrk@moultrie.com>

Date: Mon, Jun 18, 2018 at 11:51 AM

Subject: RE: County Clerk's Office - Freedom of Information Act Request

To: J K <jeankaczmarek78@gmail.com>

Per your FOIA request, please find an inventory listing of the previous voting machines, all of which was traded in for the new equipment, plus copy of Election Committee and Board meeting minutes. Discussions about why we needed to update equipment was in the form of, outside of meetings, where no minutes were required. Election Judge comments were either at the polls, at my office, or over the phone, with no written notes.

Georgia England

Moultrie County Clerk

From: J K [mailto:jeankaczmarek78@gmail.com]

Sent: Thursday, June 14, 2018 3:55 PM

To: undisclosed-recipients:

Subject: TO: County Clerk's Office - Freedom of Information Act Request

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
3. Copies of records containing problems with voting machines from Jan. 1, 2012 to the time of purchase of Unisyn equipment, including but not limited to: election judge remarks, Election Day summaries, test summaries, etc.

To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek



moultrie-18062018111914.pdf

233K

Granted Stephenson County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Follow-up on FOIA Request

J K <jeankaczmarek78@gmail.com>
To: Daniel Massoglia <dmassoglia@gmail.com>

Fri, Sep 28, 2018 at 8:59 AM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Sep 10, 2018 at 8:50 AM
Subject: Re: Follow-up on FOIA Request
To: Vici Otte <votte@co.stephenson.il.us>

Received, thank you.

On Mon, Sep 10, 2018, 8:37 AM Vici Otte <votte@co.stephenson.il.us> wrote:

Please find the attached.

Let me know if you need any additional information.

Vici Otte

Stephenson County Clerk

50 W Douglas Street

Suite 500

Freeport, IL 61032

815-235-8289

From: J K [mailto:jeankaczmarek78@gmail.com]
Sent: Friday, September 07, 2018 12:50 PM
To: votte@co.stephenson.il.us
Subject: Followup on FOIA Request

Hello. On Aug. 21st, I sent the following FOIA request. According to my record, I don't believe you responded. Please respond.
Thank you.

Pursuant to the Freedom of Information, I request copies of the following to be sent to: jeankaczmarek78@gmail.com

Documentation containing the make/s, model/s, year/s and serial numbers of voting machines in possession of your county.

Thank you very much,

Jean Kaczmarek

Granted Tazewell County FOIA Request

Part of Group Exhibit 1



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: TO: County Clerk's Office - Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>

Fri, Sep 28, 2018 at 9:31 AM

Bcc: dmassoglia@gmail.com

----- Forwarded message -----

From: **Tina Rudd** <TRudd@tazewell.com>

Date: Tue, Jun 19, 2018 at 1:48 PM

Subject: Re: TO: County Clerk's Office - Freedom of Information Act Request

To: <jeankaczmarek78@gmail.com>

FOIA Response

1. Attached are 2 excel spread sheets including serial numbers
2. Attached are 2 documents from committee meetings that make mention of the need for new election equipment
3. Issues with the equipment include but are not limited to:
 - OS memory cards failing
 - OS tabulator jamming
 - OS machines failing on election day- had to replace machines with extras on election day multiple times
 - Multiple OS machines were in need of repair

The life expectancy of the equipment was 8 years, we had it for 12 yrs. Due to the aging equipment and multiple repairs needed we felt it was time to move forward.

I have not received a response from you stating if this is for commercial use or not. Please confirm you have received this information.

Tina D. Rudd
Chief Deputy
Tazewell County Clerk/Recorder
11 South 4th St. Suite 203
Pekin, IL 61554
Desk # (309) 478-5913
Fax # (309) 477-2244

>>> J K <jeankaczmarek78@gmail.com> 6/14/2018 3:54 PM >>>

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to:
jeankaczmarek78@gmail.com

1. Copies of documents containing the serial numbers of all previous voting machines which were traded in or sold after acquiring the new Unisyn equipment.
2. Copies of memos, reports, summaries, and board meeting minutes/decisions/resolutions prepared (from Jan. 1, 2012 to time of purchase of Unisyn) to justify/explain the necessity for purchasing new voting machines, which led to the purchase of Unisyn equipment.
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To clarify, I am interested in documents which may answer the question: What was the recent history of problems of voting machines prior to Unisyn and why was it necessary to purchase new equipment?

Thank you very much.

Jean Kaczmarek

4 attachments

 **08-22-17-Finance-Minutes.pdf**
113K

 **09-13-17 Finance Budget Committee Minutes.doc**
76K

 **Touch Screen Inventory-Final.xls**
128K

 **Optical Scan Inventory-Final.xls**
77K

Serial Numbers Previously Produced by the
Commission via FOIA Request

Part of Group Exhibit 1

DuPage County Election Commission

Early Voting Lock Load Logsheet

3/20/2008

EV SITE	TSX	Printer	Canister 1	Memory Card	Seal	Memory Card	Supervisor Card	Voter Card	Voter Card	Ritkin Seal
	2522270	P1157	CN1637	TMC1107	958800		SKY1690	VKY4162	VKY2894	379094
	258020	P1546	CN1468	TMC1069	958801			VKY3268	VKY2090	
	257661	P1305	CN2073	TMC1503	958802			VKY1363	VKY4138	
	252926	P1602	CN1392	TMC1119	958803			VKY2405	VKY1867	
	255794	P1025	CN1743	TMC1702	958804			VKY4229	VKY2580	
	253816	P1188	CN2300	TMC1634	958805			VKY4271	VKY2502	
								VKY3575	VKY1947	
								VKY3814	VKY2163	
								VKY3523	VKY1057	
								VKY1785	VKY1930	

DuPage EC
14th Cong Special Election

ESC CABINET ESC1287

DOOR SEAL

9096

3/10/08-
704a

Response - 3/19/08
#

14 x 15

2 pp -

DuPage County Election Commission

Election Day Lock Load Logsheet

Special General 3/08/08

Poll ID	ESC Cabinet	Door Seal	TSX Memory Card	TSX	Printer	Canister 1	Canister 2	TSX Seal Memory Card	Express Poll	Supervisor Card	Voter Card 1	Voter Card 2	Voter Card 3	Voter Card 4	Voter Card 5	Rhino Seal	Active/OS	OS Memory Card	OS Seal
27	ESCI008	9190	TMC1383	258753	P1273	cn1363	cn1358	958815	90431	SKY1583	WKY2132	WKY2404	WKY3516	WKY1548	WKY3160	378423	780 MC455A		2087
103	ESCI008	9182	TMC1370	264572	P1427	cn1906	cn1027	958816	90454	SKY1578	WKY2011	WKY4562	WKY1528	WKY1548	WKY1226	378403	408 MC288A		2087
150	ESCI124	9181	TMC1404	256026	P1134	cn2458	cn2014	958817	90455	SKY1618	WKY1745	WKY3856	WKY4531	WKY2815	WKY3525	378408	165 MC428A		2089
157	ESCI127	9191	TMC1038	258706	P1694	cn1558	cn1370	958818	90456	SKY1601	WKY3068	WKY4085	WKY2286	WKY1573	WKY3595	378443	274 MC1230A		2182
246	ESCI306	9184	TMC1041	255726	P1146	cn1239	cn2829	958819	90458	SKY1800	WKY1521	WKY3767	WKY3229	WKY2652	WKY1350	378406	294 MC344A		2082
265	ESCI420	9185	TMC1673	255766	P1632	cn1089	cn2591	958820	90453	SKY1400	WKY3026	WKY2864	WKY1520	WKY2130	WKY4429	378445	201 MC106A		2065
291	ESCI022	9186	TMC1729	255732	P1422	cn2099	cn1220	958821	90451	SKY1884	WKY4514	WKY2864	WKY1523	WKY2130	WKY1572	378403	701 MC796A		2063
353	ESCI084	9186	TMC1321	258732	P1708	cn1478	cn2820	958822	90438	SKY1786	WKY1786	WKY3786	WKY1523	WKY2130	WKY1572	378403	501 MC15A		2099
382	ESCI084	9189	TMC1034	258747	P1492	cn1379	cn1458	958814	90432	SKY1418	WKY2317	WKY1043	WKY3884	WKY4295	WKY3888	378405	378 MC278A		2073
398	ESCI285	9189	TMC1325	255803	P1185	cn2474	cn1386	958823	90440	SKY1539	WKY2306	WKY4522	WKY4537	WKY4563	WKY4139	378405	788 MC807A		2089
425	ESCI133	9187	TMC1244	258741	P1292	cn2777	cn1386	958824	90436	SKY1286	WKY1407	WKY4044	WKY2514	WKY2846	WKY4589	378402	219 MC745A		2083
438	ESCI005	9184	TMC1112	257688	P1175	cn2558	cn1326	958825	90446	SKY1625	WKY3182	WKY3125	WKY1568	WKY1834	WKY2724	378426	519 MC377A		2085
502	ESCI005	9183	TMC1380	241111	P1244	cn1380	cn1364	958826	90450	SKY1732	WKY3182	WKY3125	WKY3671	WKY3893	WKY4013	378441	242 MC198A		2075
503	ESCI005	9182	TMC1380	249800	P1092	cn1793	cn2553	958827	90452	SKY1732	WKY3182	WKY3125	WKY3671	WKY3893	WKY4013	378407	801 MC66A		2058
627	ESCI122	9200	TMC1105	259005	P1684	cn2713	cn1270	958828	90444	SKY1417	WKY1132	WKY3182	WKY3125	WKY3671	WKY4013	378407	112 MC898A		2081
649	ESCI241	9185	TMC1373	257941	P1476	cn2487	cn2487	958810	90453	SKY1786	WKY1141	WKY1812	WKY3559	WKY3572	WKY4536	378428	777 MC99A		2059
687	ESCI140	9183	TMC1388	255620	P1352	cn1789	cn2407	958811	90456	SKY1329	WKY1383	WKY3883	WKY1197	WKY3530	WKY3724	378401	221 MC828A		2074
690	ESCI197	9186	TMC1533	257858	P1643	cn1211	cn2436	958812	90460	SKY1764	WKY2274	WKY2607	WKY2519	WKY1485	WKY3537	378410	387 MC65A		2116
691	ESCI344	9188	TMC1298	253757	P1396	cn1130	cn2499	958813	90461	SKY1237	WKY3509	WKY4639	WKY4635	WKY4602	WKY4617	378427	570 MC44A		2086

YORKTOWN CENTER MALL
EARLY VOTING

2/5/08
GENERAL PRIMARY ELECTION

AccuVote-TSX Unit Serial # 08433327

OUT of SERVICE
1/18/08

FIXED on 1/21/08
Down AGAIN 1/25/08
VERIFICATION SHEET

Memory Card Seal # 174020

NOTE: Morning beginning count should be the same as previous day's ending count. If the count is not the same, call the Election Commission.
Do not continue use of the machine.

DATE	BEGINNING BALLOT COUNT	ENDING BALLOT COUNT	Canister #	CANISTER SERIAL #	Canister Security Seal Serial #	Democratic Judge Initials	Republican Judge Initials
Monday, January 14, 2008	0	6	1	08433327	1902	ETK	DLB
Tuesday, January 15, 2008	6	37		1011		EMH	DLB
Wednesday, January 16, 2008	37	74				EMH	DLB
Thursday, January 17, 2008	74	102				DLB	DLB
Friday, January 18, 2008	102	124				DLB	DLB
Saturday, January 19, 2008	124	124		Machine Shut down		ETK	DLB
Sunday, January 20, 2008	124	124				ETK	DLB
Monday, January 21, 2008	124	127	Machine Shutdown #2	1901	1515	DLB	DLB
Tuesday, January 22, 2008	127	155				DLB	DLB
Wednesday, January 23, 2008	155	192				DLB	DLB
Thursday, January 24, 2008	192	229				ETK	DLB
Friday, January 25, 2008	229	229				DLB	DLB
Saturday, January 26, 2008	229	229				DLB	DLB
Sunday, January 27, 2008	229	231				DLB	DLB

REPLACEMENT DECOMMIS STORED TSX 258877 VERIFICATION SHEET

Place Label Here

AccuVote-TSX Unit Serial # 252878

Memory Card Seal # 173254

NOTE: Morning beginning count should be the same as previous day's ending count. If the count is not the same, call the Election Commission. Do not continue use of that machine.

DATE	BEGINNING BALLOT COUNT	ENDING BALLOT COUNT	Canister #	CANISTER SERIAL #	Canister Security Seal Serial #	Democratic Judge Initials	Republican Judge Initials
Monday, January 14, 2008			1	1929 1088	1929	CT	
Tuesday, January 15, 2008							
Wednesday, January 16, 2008	08	21 21		258877		DA	PS
Thursday, January 17, 2008	2	4				DA	136
Friday, January 18, 2008	4	6				PC	21/105
Saturday, January 19, 2008	6	10				PC	CT/102
Sunday, January 20, 2008	10	12				DA	106/105
Monday, January 21, 2008	12	16				PC	DA/102
Tuesday, January 22, 2008	16	19				PC	DA/102
Wednesday, January 23, 2008	19	19				PC	DA/102
Thursday, January 24, 2008	19	24				CT	21/106
Friday, January 25, 2008	24	27				PC	DA/102
Saturday, January 26, 2008	27	32				PC	DA/102
Sunday, January 27, 2008	32	37				PC	DA/102

EARLY VOTING SITE - OFFICIAL BALLOT RECORD
FOR THE APRIL 17, 2007, CONSOLIDATED ELECTION
DuPage County Election Commission

Record Number of Ballots Issued per TSX Unit

**Record Number of
EARLY VOTER
APPLICATIONS**

Date	TSX Serial #	TSX Serial #	TSX Serial #	TSX Serial #	TSX Serial #	TSX Serial #	TSX Serial #	Total Ballots Issued (Add columns across)	Total Applications (from Poll Binder)
Monday, March 26, 2007	0253725	0248716	0251250	0253740	0252165			28	28
Tuesday, March 27, 2007	27	18	5	6	1			57	57
Wednesday March 28, 2007	43	26	9	6	2			86	86
Thursday March 29, 2007	57	30	13	8	2			110	110
Friday March 30, 2007	74	40	17	9	3			143	143
Saturday March 31, 2007	77	45	20	12	5			159	159
Sunday April 1, 2007	82	48	20	14	6			170	170
Monday April 2, 2007	100	56	23	15	6			200	200
Tuesday April 3, 2007	113	60	29	19	6			227	227
Wednesday April 4, 2007	131	66	34	26	9			266	266
Thursday April 5, 2007	151	78	43	27	13			312	312
Friday April 6, 2007	176	88	52	31	13			360	360
Saturday April 7, 2007	193	100	63	40	22			418	418
Sunday April 8, 2007	—	—	—	—	—			—	—

28 29 29 29 24 33 16 11 30 27 39 46 48 58

Exhibit 2



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Freedom of Information Act Request

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Sep 23, 2018 at 8:46 PM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Jun 25, 2018 at 12:36 PM
Subject: Fwd: Freedom of Information Act Request
To: <charles.walker@dupageco.org>, Kantner, Lori <lori.kantner@dupageco.org>

Charles & Lori,

Eleven days ago I sent in a FOIA request for a document or documents containing the serial numbers of the incoming optiscan voting machines from Liberty Systems. Although there was an email referencing it in a disk I received of Liberty correspondence, there was no attachment containing the serial numbers.

Please forward this information to me today.

Thank you very much,

Jean Kaczmarek

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Jun 25, 2018 at 10:48 AM
Subject: Fwd: Freedom of Information Act Request
To: Karin.huber@dupageco.org, FOIA - Election Commission <FOIAElectionCommission@dupageco.org>

Hi Karin,

Eleven days ago I sent in this FOIA request seeking document/s containing the serial numbers of all incoming opti-scan voting machines from Liberty Systems in 2018 replacing any broken machines. I have not received a response. At the board meeting a week ago, I learned that the voting machines had just arrived several days earlier and that serial numbers had been gathered.

Today, please send me the document/s containing the serial numbers.

Thank you very much,

Jean Kaczmarek

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Thu, Jun 14, 2018 at 2:55 PM
Subject: Freedom of Information Act Request
To: FOIA - Election Commission <FOIAElectionCommission@dupageco.org>

Pursuant to the Freedom of Information Act, I request copies of the following information to be emailed to

jeankaczmarek78@gmail.com

Copies of documents containing serial numbers of all incoming opti-scan voting machines from Liberty Systems in 2018 to replace any broken machines.

If this information is already included in the response of my FOIA request on May 31, 2018 (which I plan to pick up on June 18th), please disregard this request; no formal response will be expected.

Thank you,

Jean Kaczmarek
Glen Ellyn, IL



Virus-free. www.avast.com

Exhibit 3



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Request for Unique Serial Numbers Associated with Voting Equipment

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Sep 23, 2018 at 8:48 PM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Tue, Jun 26, 2018 at 5:58 AM
Subject: Re: Request for Unique Serial Numbers Associated with Voting Equipment
To: Sean Conway <seanconway@bond-dickson.com>
Cc: FickerTerrill, Cathy <cfterrill@thecouncil.org>

Dear Mr. Conway,

You should be aware that serial numbers are found on the outside of voting machines and can be easily seen by staff, temporary staff, trainers, trainees, election judges, staff at buildings where polling places are set up overnight (church lobbies, for example), poll watchers and voters. In fact, poll watchers could collect the serial numbers of voting machines in use in the entire county and beyond on a given election day without a FOIA request. Further, other counties release voting machine serial numbers.

As a long-time advocate for election security, I assure you that releasing serial numbers poses no threat. A serial number is not a password, nor does it allow any access to a machine or the voting process. It is like a vehicle license plate.

There is a difference between whether or not one should release information to the public and whether or not one wants to release information to the public. This falls within the latter.

Further, your response came 11 days after I sent in my FOIA request. As you're aware, the deadline is five business days.

To avoid unnecessary legal fees and delay, please reconsider your FOIA denial. Thank you.

Respectfully,

Jean Kaczmarek

On Mon, Jun 25, 2018 at 2:48 PM, Sean Conway <seanconway@bond-dickson.com> wrote:

Dear Ms. Kaczmarek,

The DuPage County Election Commission (the "Election Commission") has requested that I assist in providing a response to your request for unique identifying serial numbers of certain voting equipment.

As you may appreciate, the Election Commission is obligated to ensure safety and security in its administration of elections. This is of particular concern in matters involving voting equipment. Consequently, the Election Commission cannot publicly disclose unique identifying serial numbers associated with any voting machine maintained by the Election Commission. Such public disclosure would jeopardize the security of voting equipment; accordingly, such information is exempt from public disclosure pursuant to section 7(1)(b) and 7(1)(o) of FOIA.

Pursuant to Section 9 of the FOIA, 5 ILCS 140/9, portions of your FOIA Request have been denied, as indicated. Should you believe that this Response constitutes an improper denial of your request, you may appeal such by filing a request for review within sixty (60) days of the date of this letter with the Public Access Counselor of the Illinois Attorney General's Office, Public Access Bureau, 500 South Second Street, Springfield, Illinois 62706; telephone 1-887-299-FOIA; e-mail: publicaccess@atg.state.il.us. You may also have a right of judicial review of the denial under Section 11 of FOIA, 5 ILCS 140/11.

Sean Conway
Bond, Dickson & Conway
[400 S. Knoll Street, Unit C](#)
[Wheaton, IL 60187](#)
Phone: [\(630\) 681-1000](#)
Fax: [\(630\) 681-1020](#)

Exhibit 4



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: Request for Review of FOIA denial

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Oct 7, 2018 at 1:35 PM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Jun 25, 2018 at 6:13 PM
Subject: Request for Review of FOIA denial
To: <publicaccess@atg.state.il.us>

To: Illinois Attorney General Public Access

From: Jean Kaczmarek, 78 Forest Ave., Glen Ellyn, IL 60137

Re: FOIA Denial

I request a review of a Freedom of Information Act denial from the DuPage County Election Commission today.

On June 14, 2014, I sent a FOIA request to the Election Commission seeking copies of documents containing serial numbers of refurbished opti-scan voting machines being provided by Liberty Systems to replace broken voting machines. (I stated that if this information was to be found within a recent FOIA request seeking correspondence with Liberty Systems, that my request for serial numbers could be dismissed. However the serial numbers were not in that response from an earlier request.)

At the June 18th board meeting, the executive director of the Election Commission announced to the board that he had received the voting machines from Liberty Systems along with the serial numbers. The Election Commission has this information within their possession. Today I reminded the Election Commission that I had not received the information requested 11 days earlier, nor had I received a response.

Later today I received a response from the Commission's law firm stating that they would not release documents containing serial numbers because it would "jeopardize the security of voting equipment" and was "exempt from public disclosure pursuant to section 7(1)(b) and 7(1)(c) of FOIA".

Releasing serial numbers of voting machines does not pose any threat to the electoral process. As a long-time strong advocate for election security, I am well aware of what type of information might jeopardize voting equipment security. Serial numbers are found on the *outside* of equipment like a car license plate. Serial numbers of voting machines are routinely made available to the public. For these reasons and because the response was past due, I request a review and hope this matter can be timely resolved.

The chain of correspondence follows.

Thank you.

Respectfully,

Jean Kaczmarek

Exhibit 5



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 5, 2018

Via electronic mail
Ms. Jean Kaczmarek
jeankaczmarek78@gmail.com

RE: FOIA Request for Review – 2018 PAC 53746

Dear Ms. Kaczmarek:

The Public Access Bureau has received the attached response to your Request for Review from the DuPage County Election Commission (Commission). Additional documents provided to the Public Access Counselor have been withheld. You may, but are not required to, reply in writing to the public body's response. If you choose to reply, you must submit your reply to this office within 7 working days of your receipt of this letter. 5 ILCS 140/9.5(d) (West 2016). Please send a copy of your reply to the Commission as well.

If you have questions about this matter, please contact me at (217) 524-7958 or LHarter@atg.state.il.us.

Very truly yours,

A handwritten signature in cursive script, reading "Laura S. Harter", is positioned above the typed name.

LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

Attachment

cc: *Via electronic mail*
Mr. Sean Conway
Bond, Dickson & Conway
seanconway@bond-dickson.com



BOND, DICKSON & CONWAY

400 S. Knoll Street, Unit C, Wheaton, Illinois 60187 P 630.681.1000 F 630.681.1020

July 3, 2018

VIA E-MAIL TRANSMISSION

Laura S. Harter
Assistant Attorney General
Public Access Bureau
Office of the Attorney General
500 South Second Street
Chicago, Illinois 60601
lharter@atg.state.il.us

RE: FOIA Request for Review – 2018 PAC 53746
Our File No. 97-114

Dear Ms. Harter:

Please be advised that this Firm represents the DuPage County Election Commission (the "Election Commission") in connection with this matter. In this capacity, I have been directed to respond to the Public Access Counselor's ("PAC") request for a response to the complaint of Ms. Jean Kaczmarek, in connection with the Election Commission's Response to her June 14, 2018 request for information under the Illinois Freedom of Information Act ("FOIA Request").

The PAC has kindly requested that the Election Commission provide the PAC a copy of the unredacted responsive information for the PAC's confidential review. The PAC has also requested that the Election Commission provide the PAC with a detailed explanation of the Election Commission's factual and legal bases of the applicability of the cited exemptions to those records.

Records Requested for Confidential Review

Enclosed herewith is a copy of the unredacted record which contains the serial number information requested by Ms. Kaczmarek. The Election Commission interpreted Ms. Kaczmarek's request for information as limited to "serial numbers of all incoming voting machines from Liberty Systems in 2018 to replace any broken machines." However, to the extent Ms. Kaczmarek's request for information extends to all the information set forth in the record responsive to her FOIA Request, the Election Commission has also enclosed this redacted record. The Election Commission has no objection to the PAC's forwarding of the redacted record to Ms. Kaczmarek. The Election Commission has additionally redacted signatures as private information pursuant to section 7(1)(b) of FOIA.

The Election Commission requests that the PAC keep confidential the serial number information so as to maintain the safety and security of elections.

The Information Requested is Exempt from Public Disclosure Pursuant to Section 7(1)(o) of FOIA.

Section 7(1)(o) provides an exemption to public disclosure of "[a]dministrative or technical information associated with automated data processing operations, including but not limited to software, operating

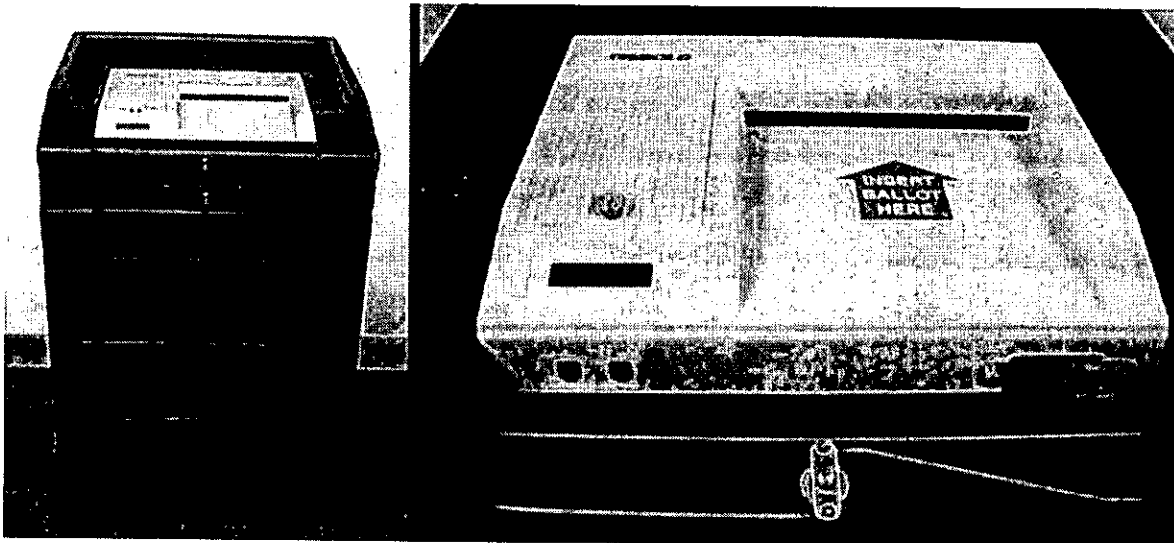
protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section." 5 ILCS 140/7(1)(o).

Here, Ms. Kaczmarek has requested that the Election Commission publicly disclose the unique identifying serial numbers of specific voting machines in the possession of the Election Commission. The serial numbers requested constitute unique administrative information associated with automated data processing Election Day voting equipment. For security and custody purposes, as advised by the U.S. Election Assistance Commission in its "Quick Start Management Guide", the Election Commission maintains an accounting of its voting machines by their unique serial numbers.

See http://archives.eac.gov/election/quick-start-management-guides/docs/securityqs.pdf/attachment_download/file at p. 6.

CONFIDENTIAL PORTIONS OF RESPONSE REDACTED

Although the serial numbers may be viewed by Election Commission Staff and Election Judges, who have an obligation to maintain the security of the voting equipment, these serial numbers are not readily visible to the general public or voters.



Laura S. Harter
July 3, 2018
Page 3

Moreover, there is absolutely no public benefit to the public disclosure of this information and this specific information has no bearing, whatsoever, on the expenditure of public funds. To the contrary, there is significant public detriment to the disclosure of this information concerning the safety and security of the electoral process.

The Information Requested is Additionally Exempt from Public Disclosure Pursuant to Section 7(1)(b) of FOIA.

Section 7(1)(b) provides an exemption to the public disclosure of "private information". 5 ILCS 140/7(1)(b). Section 2 (c-5) defines private information as "unique identifiers, including a person's social security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses" and "[p]rivate information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person." 5 ILCS 140/2 (c-5).

Here, the unique serial numbers requested constitute "unique identifiers" of the Election Commission's voting equipment and such information is therefore exempt from public disclosure.

Accordingly, the Election Commission requests that the PAC make a determination that the complaint of Ms. Kaczmarek is unfounded. Should you have any follow-up questions do not hesitate to contact me.

Very truly yours,

DUPAGE COUNTY ELECTION COMMISSION

By: /s/ Sean Conway

Sean Conway, One of its Attorneys

Exhibit 6



Daniel Edward Massoglia <dmassoglia@gmail.com>

Fwd: 2018 PAC 53746

J K <jeankaczmarek78@gmail.com>
Bcc: dmassoglia@gmail.com

Sun, Sep 30, 2018 at 1:49 PM

----- Forwarded message -----

From: J K <jeankaczmarek78@gmail.com>
Date: Mon, Jul 16, 2018 at 9:51 AM
Subject: Re: 2018 PAC 53746
To: Bryant, Hattie <HBryant@atg.state.il.us>
Cc: seanconway@bond-dickson.com <seanconway@bond-dickson.com>, Harter, Laura <LHarter@atg.state.il.us>, FickerTerrill, Cathy <cterrill@thecouncil.org>

Laura S. Harter
Assistant Attorney General
Public Access Bureau
Office of the Attorney General, [State of Illinois](#)
[500 S. Second St.](#)
[Springfield, IL 62701](#)

re: Requester's Reply to 2018 PAC 53746

Dear Asst. Atty. Gen. Harter:

Background

Election Night of the primary on Mar. 20, 2018 in DuPage County was the subject of national news. It was discovered that the ender cards fed into opti-scan paper ballot machines across the county weren't working. Ender cards are used to close out the election and to tell the opti-scan machines that Election Day is completed. Once fed, the process of tallying the votes of ballots onto paper poll tapes can begin. This year, the newly-printed ender cards were simply too thick; the ender cards inside precinct kits had not been tested or even checked by staff. Consequently, the caused widespread delays and confusion of poll workers and the millions of people waiting for results of federal, state and county races. Numerous media outlets reported on DuPage County's delay and why it happened.

Many election judges were so determined to make the thick ender cards work on Election Night, they tried repeatedly to feed them into machines prior to receiving other instructions. This determination allegedly caused damage. A reported 167 opti-scan machines were need of repair afterward - nearly two-thirds of the number of polling places in DuPage County. Later it was revealed that 57 of these machines could be repaired. The remaining 110 would be replaced by the vendor who provided the faulty ender cards, Liberty Systems.

On the May 9, 2018 board meeting, the DuPage County Election Commission voted on a settlement agreement with Liberty Systems to receive refurbished machines as compensation. There was no public discussion nor vote by the Commission prior to the preparation of the language of the agreement. It was a done deal carried out behind closed doors. Together, the long delay in posting Election Night results, the review of what caused the delay and why, and the remedies were of high public interest. Over the following six weeks, there were dozens of public comments made before the County Board and the Commission on Election Night problems, including those related to the ender cards.

The refurbished machines were reportedly delivered to the Commission in early June. I requested additional information on June 14th -- the serial numbers of these refurbished machines. Eleven days later - *four days after the FOIA deadline* - I prompted the Election Commission to respond to my request. By the end day 11, I received their denial.

The public body's response utterly fails to meet its burden under FOIA §1.2 of proving by clear and convincing evidence that serial numbers of voting machines in the possession of the public body are exempt. Ignoring settled law that FOIA exemptions are to be construed narrowly, it relies upon penumbras formed by emanations from FOIA to pretend that self-serving clauses it has

invented are necessarily implied by exemptions that actually do exist. If all of that effort to evade its obligation to disclose had been spent instead simply reading the statute they are presumed to be experts in, then they would have never denied the request in the first place.

Computer Security Exemption

The public body asserts the Computer Security Exemption, §7.1(o), and equates the serial number to software. It invents a class it calls “unique administrative information” and pretends that its new invention somehow exists in the text of the Computer Security Exemption. What a stretch! Only State statutes may create additional restrictions on disclosure of information. Other laws in Illinois, including ordinances of home rule units, may create additional *obligations* for disclosure but cannot create *exemptions* from disclosure. *Better Government Assn. v. Rosemont*, 2017 IL App (1st) 161957 (2017).

The public body asserts that because a third party advises election authorities to “maintain an accounting of its voting machines by their unique serial numbers” the record thereby becomes exempt. Granting legislative power to third parties must be a Rule 23 part of the Illinois Constitution. It is standard prudent practice in business and government to track assets by serial number. Bulldozers and bulls are tracked by serial numbers. The serial number of every motor vehicle licensed in this state is part of the title, but those title records are not exempt from inspection and copying. Indeed, local, state and federal government computers are routinely tracked and accounted for by external serial numbers, while the sensitive information *within* the computers is never compromised.

Conclusory Statements

The public body asserts, without foundation, that “there is absolutely no public benefit to the public disclosure of this information...” The public body has to be making some assumptions about what the information will be used for. But it does not know, and is barred by §3(c) from asking. It can only speculate and the answer is irrelevant anyway: a fear of manipulation or misuse of the information is not an exemption under §7 of FOIA. *Fagel v. Dept. of Transportation*, 2013 IL App (1st) 121841 (2013).

The public body then states “and this specific information has no bearing, whatsoever, on the expenditure of public funds.” Of course non-exempt public records are not limited to only those involving the expenditure of public funds. To the contrary, §2.5 explicitly declares “All records relating to the obligation, receipt, and use of public funds ... are public records subject to inspection and copying by the public.” These serial numbers are on equipment received in kind, in lieu of cash, in settlement of a claim by the public body against the supplier. They are tied to constructive receipts of public funds.

The prize for nuclear hysteria goes to the public body’s next emotional panic about those innocent serial numbers: “there is significant public detriment to the disclosure of this information concerning the safety and security of the electoral process.” (I think we heard that about Y2K too.) Again, the public body does not provide clear and convincing evidence to support that conclusion, nor any evidence at all.

Anthropomorphosis

The public body concludes that §2(c-5) elevates the serial numbers from mere facts to become entities enjoying human rights under the Private Information Exemption, §7.1(b). That section §2(c-5) applies to “persons” and “persons” is statutorily defined in §2(b) in a listing that does not include “facts,” “voting machine serial numbers,” or “plastic earth-killing soda straws.” Once again, the public body is trying to put words into the General Assembly’s mouth by expanding the explicit list. The Public Access Counselor surely has not forgotten the elementary *expressio unius est exclusio alteris* rule of statutory construction, even if the public body’s outside counsel has.

The voting machine serial number is required in certain public records

Ignorance of the law is no excuse, and the public body – an election commission – and any law firm holding itself out as competent to advise an election commission should be especially knowledgeable about the contents of the Election Code, 10 ILCS 5.

The Election Code provides that the voting machine serial number is required to be listed in certain public records. See 10 ILCS 5/24-13 (serial number is part of the report on pre-election testing of equipment), §24-15 (return sheets prepared at the polling place must list the serial numbers of each voting machine), §24-16 (ditto), §24-17 (serial number must appear on face of sealed envelope containing keys to the machine). In fact, serial numbers of voting machines can be made available to dozens of people during an election period, including outside poll watchers, as a matter of tracking and accountability. I have obtained serial numbers of voting machines from other government bodies.

The statutes contradict the public body’s unfounded and fanciful assertions that the serial numbers of voting machines are exempt from inspection and copying.

We all recognize that outside counsels to public bodies benefit financially from routinely denying every FOIA request and then billing for writing the denial letter. In the words of a recent governor, it is an opportunity that is "[fabulously] golden" when a request for review is filed subsequently, because the fee generation clock starts ticking again while the response is being prepared for the PAC. As a taxpayer having to pay for that, I resent having to pay for such a weak work product in this instance. If that was all they could come up with, they wasted everyone's time and money, although their cash register still rang. Anyone operating in good faith would provide those records *instantly* and I hope the PAC will use its informal procedures to make that happen sooner than waiting until a decision letter is being prepared. Public trust in the 2018 General Election in DuPage County is at stake.

Respectfully,

Jean Kaczmarek

78 Forest Ave.
Glen Ellyn, IL 60137



On Thu, Jul 5, 2018 at 4:20 PM, Bryant, Hattie <HBryant@atg.state.il.us> wrote:

Please disregard the previous email sent today.

Please find the attached correspondence from AAG Harter.

Please contact us if you have any questions. Thank you.

Hattie Bryant
Office Assistant
Public Access Bureau
[500 South Second Street](#)
Springfield, IL 62706
(217) 785-7377

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Exhibit 7

DANIEL MASSOGLIA

ATTORNEY AT LAW

P: (336) 575-6968
E: DMASSOGLIA@GMAIL.COM

2865 W. LYNDAL ST. # 1
CHICAGO, IL 60647

September 4, 2018

DuPage County Election Commission
c/o Sean Conway, Esq.
Bond, Dickson, & Conway
400 S. Knoll St
Unit C
Wheaton, IL 60187-4557

Sent via email to seanconway@bond-dickson.com.

Re: Demand for Production on Denial of June 14, 2018 FOIA Request

Dear Commission,

Good afternoon. This letter is a demand for production of records responsive to Jean Kaczmarek's June 14, 2018 Freedom of Information Act request for "copies of documents containing serial numbers of all incoming opti-scan voting machines from Liberty Systems in 2018 to replace any broken machines."

If relevant documents containing serial numbers are not produced within two weeks of receipt of this letter, Ms. Kaczmarek will file suit, including seeking a civil penalty for willful and intentional, and bad faith violation of FOIA and upon successful conclusion will petition for reasonable attorney's fees and costs.

The purpose of FOIA is to "open governmental records to the light of public scrutiny." *Hites v. Waubensee Community College*, 2016 IL App (2d) 150836, ¶ 53, *as modified on denial of reh'g* (July 13, 2016), *appeal denied sub nom. Hites v. Waubensee Community College*, 65 N.E.3d 840 (Ill. 2016) (citation omitted). Records in the possession of a public body are presumed to be open to the public, and a public body asserting that

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CHICAGO, IL 60647

a record is exempt from disclosure has the burden of proving this by clear and convincing evidence. 5 ILCS 140/1.2; *Better Government Association v. Zaruba*, 2014 IL App (2d) 140071, ¶ 19 (“Under FOIA, public records are assumed to be open and accessible.”) Statutory exemptions to disclosure are to be interpreted narrowly so as not to defeat FOIA's purpose of maximizing government accountability and transparency. *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 416 (2006).

DCEC's response to Ms. Kaczmarek's efforts to obtain these records will fail under court scrutiny for three reasons. First, DCEC will not be able to overcome the FOIA's strong statutory preference for the disclosure of public records and prove that exemptions apply by clear and convincing evidence. 5 ICLS 140/1.2. Second, and more specifically, DCEC's assertion of the FOIA's section 7(1)(o) security exemption that disclosure of bulk serial numbers – not passwords, procedures, or programming instructions – is harmful to security will find no factual support among election security experts. Third and finally, DCEC's attempt to assert 7(1)(b) will fail as the statute's text and relevant precedent indicates that 7(1)(b) only applies to information uniquely identifying and implicating the privacy of *persons*, not election equipment.

DCEC has not, and cannot, prove by clear and convincing evidence that withheld information is exempt under the Act.

FOIA is a statute that privileges disclosure, subject to narrow exemptions, and requires that public body prove by clear and convincing evidence that a record is

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exempt from disclosure – DCEC’s conclusory and unsupported declarations about the security risk posed by releasing voting machine serial numbers do not meet this burden, and time-consuming and costly expert discovery will bear this point out.

Although public bodies denying requests must provide under section 9(a) a “detailed factual basis” for their actions, 5 ILCS 140/9(a), both DCEC’s Denial and its Response to the Request for Review offer no such factual basis. (DCEC’s largely irrelevant quotation of an Election Assistance Commission guide does not constitute a “detailed factual basis”).

As University of Pennsylvania Professor and election security expert Matt Blaze noted to me in an August 26, 2018 email, “I certainly can’t think of any reason [a serial number] would be sensitive, and every reason it should be public.” Releasing records now will save time and cost for the Commission.

Ms. Kazcmarek’s request is precisely the sort that FOIA envisions and encourages. As the *Hites* court noted, “[t]he legislature adopted FOIA to provide the public with access to public records, in order to promote transparency and accountability in government.” *Hites*, 2016 IL App (2d) ¶ 53, citing 5 ILCS 140/1.

DuPage County’s recent issues with voting machines have made national news—and accountability to ensure that current machines are in top condition is both a civic and statutory imperative.

DANIEL MASSOGLIA

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There is no factual basis for DCEC's Assertion of Exemption 7(1)(o).

DCEC's Response to Ms. Kaczmarek's FOIA request and Request for Public Access Counselor review glosses over an essential portion of one of its asserted exemptions, 7(1)(o), by failing to provide any factual reason why the disclosure of serial numbers would jeopardize the security of the voting system. Instead, DCEC relies on the sensitivity of elections in general to insinuate that providing any information about their operation is a security threat. Presented with the issue in court or in deposition, however, DCEC or its experts would be hard-pressed to identify a situation where the public disclosure of serial numbers – already visible to election watchers and poll workers – could have any tangible impact on the security of an election whatsoever.

DCEC's Response to my client's PAC Request for Review quotes a Quickstart Guide provided by the Election Assistance Commission which says "the Election Commission maintains an accounting of its voting machines by their unique serial numbers." The purpose of this quote is unclear. There is no explanation of why any *confidentiality* of those serial numbers is necessary for an election worker to keep an account of active machines, nor how making those numbers available would impact the security of an election in any way. Again, security expert Matt Blaze's words are relevant: "I can't think of any reason that would be sensitive."

In short, DCEC has not explained why disclosing voting machine serial numbers would "jeopardize the security of the system or its data." 5 ILCS 140/7(o). It has not asserted, and cannot assert, for example, that publishing serial numbers would allow

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manipulation of votes individually or in groups. Instead, it has taken a numbering system that applies universally to machines of the same make and model and used it as a talisman to prevent legally guaranteed public scrutiny.

Sections 2(c-5) and 7(1)(b) of FOIA do not apply to non-human linked machine identifiers because of the plain language of the statute and of the certainty of absurd results from such an application of the text.

DCEC's inapposite, if novel, use of sections 2(c-5) and 7(1)(b) to argue that voting machine serial numbers constitute private information exempt from disclosure is a similarly fruitless route for the public body because: 1) section 2(c-5) and 7(1)(b)'s text refer to identifying information about *persons or families*, not election machines; 2) applying DCEC's rationale more broadly would produce absurd results; and 3) my client's request does not seek unique information but rather a de-identified list of 118 numbers.

Although amendments to the FOIA have changed the numbering and statutory scheme, a court would find that the plain language of section 2(c-5) indicates that section 7(1)(b) is intended to refer to information about persons, primarily because both sentences of the section 2(c-5) include the word "person" as a modifier for the lists of information that is considered private. Privacy interests, both at common law and in modern jurisprudence, relate to people, not groups of machines.

Additionally, private information in FOIA jurisprudence is limited to information about individuals. No appellate cases exist in which DCEC's

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counterintuitive interpretation of the law is applied, and, indeed, uniformly, when the phrase “private information” is taken for consideration in FOIA precedent, it refers to information about individuals. See, e.g., *Stern v. Wheaton-Warrenville Community Unit School District 200*, 384 Ill. App. 3d 615 (2nd Dist. 2008), *aff’d in part, vacated in part*, 233 Ill. 2d 396 (2009); *Chicago Alliance for Neighborhood Safety v. City of Chicago*, 348 Ill. App. 3d 188 (1st Dist. 2004); *Chicago Journeymen Plumbers' Local Union 130, U.A. v. Department of Public Health*, 327 Ill.App.3d 192 (1st Dist. 2001); *Gibson v. Illinois State Board of Education*, 289 Ill. App. 3d 12, 14, 683 N.E.2d 894, 895 (1st Dist. 1997), *as modified on denial of reh'g* (June 30, 1997); *Southern Illinoisan*, 218 Ill. 2d 390 (2006). DCEC does not have a privacy interest in the numbers on its machines, which are not “private information” but public records that should be disclosed.

The consequences of an expansion of the 7(1)(b) exemption would be manifestly absurd, and a court would note well that “[c]ommon sense must play a role in the construction of statutes” *People v. Burpo*, 164 Ill.2d 261, 267 (1995). For example, no longer would citizens be able to request information about real estate lots owned by a city – these parcels have unique identifiers. Budget items? Unique identifiers. Requests for new garbage cans? The list goes on and on.

And even if a court did not find sections 2(c-5) and 7(1)(b) to be unambiguous in referring to information about persons, the Commission would be unable to prove by clear and convincing evidence that amendments to FOIA intended to bring under the “private information” umbrella machine identifiers like serial numbers.

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Finally, and separately, even if DCEC was able to prove that its vast expansion of sections 2(c-5) and 7(1)(b) is correct under the FOIA, my client's request would still be non-exempt. Due in part to physical security around voting machines, the produced information is in essence a de-identified list—producing the 118 serial numbers in bulk would not then mean one would be able to tangibly associate a serial number with a specific voting machine, rendering the identifiers non-unique.

Conclusion

Contrary to DCEC's offhanded attempt in its Response to the Request for Review to assert that there is "absolutely no public benefit to the public disclosure of this information and this specific information has no bearing, whatsoever, on the expenditure of public funds," sought records are in fact of great public interest. Serial numbers are necessary for the public to assess and vet the durability and security of the machines at issue, which were obtained as part of a settlement agreement. Further, the release of serial numbers will, upon cross-referencing of released records with serial numbers statewide, inform the public on the appropriateness of the transaction that, following the widely publicized 2016 voting machine debacle in the County, provided for the replacement of certain voting machines without assurances that such a settlement was advantageous to the County and not, for example, simply a transfer of cast-off and out-of-warranty machines by Liberty Systems.

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Please make your response to this letter within two weeks of receipt to Daniel Massoglia, attorney for Jean Kaczmarek, via email at dmassoglia@gmail.com. I am hopeful the Commission will make the right choice and avoid a lengthy and expensive exercise in litigating a foregone conclusion.

Thank you,

Daniel Massoglia