

August 3, 2023

RE: Public record request seeking the following documents for the 2018, 2020, and 2022 elections: EL45A, aka Election Summary with Group Detail; EL30A, aka The Precinct Summary Report with Group Detail; EL52, aka Numbered Key Canvass; EL68, aka Results Corrections Log; EL68A, aka System Log; Machine Log Reports as a CSV file; Electionware Audit Log - Admin Audit Events Report & Election Audit Events Report

This document is in response to a recent public record request received by many jurisdictions throughout the United States from Christopher Gleason on behalf of the Justice Society requesting the above referenced documentation.

Disclaimer

Please be advised that when receiving a public record request a jurisdiction should contact its local or state attorney to determine what, if any, information being requested is required to be disclosed pursuant to applicable law. Election Systems & Software, LLC (“ES&S”) is unable to provide the jurisdiction with any legal advice or other guidance as to which records are required to be provided under applicable law. The jurisdiction’s state or local attorney will have to make this determination for the jurisdiction.

Most public records laws only require the jurisdiction to produce those records which are responsive to the public records request, and which are in the possession of the jurisdiction at the time of the request. The public records laws also generally only require the release of those documents which have been created by the jurisdiction. The log reports being requested are not normally generated by jurisdictions in the normal course of conducting elections.

The jurisdiction will need to determine what records it has in its possession that may be responsive to the request and work with its attorney to determine what information must be disclosed or if any such information is subject to an exemption from disclosure as set forth under applicable law. Once this determination has been made, ES&S will review such information to determine if it contains any ES&S proprietary and confidential information which may be exempt from disclosure under applicable law.

Results Reports

ES&S would not object to the release of the following reports: Election Summary with Group Detail, the Precinct Summary Report with Group Detail, the Numbered Key Canvass Report, and Results Corrections Log. If the jurisdiction did not create these reports previously, and the jurisdiction’s attorney advises the jurisdiction to create these reports following the receipt of public record request, these reports could be accessed from Electionware or ERM. To generate these reports the jurisdiction would have had to have retained the election data for the particular election and have access to Electionware or ERM software used during that election. For ERM

these reports are available under the reports menu, and in Electionware these reports are available under the results module reporting in elections results workflow.

Log Reports

Notwithstanding the forgoing, ES&S would object to the release of the System Log Reports, Machine Log Reports, Electionware Audit Logs (hereinafter “Logs”).

The Logs should be withheld as the logs contain information which, if disclosed, would give an advantage to competitors or bidders. ES&S’s Logs are proprietary information and if released may give advantage to a competitor or bidder.

Additionally, the Logs should be withheld as the Logs contain trade secrets and proprietary commercial and financial information. The Logs contain proprietary, confidential and trade secret information which derive potential independent economic value. The Logs are not readily ascertainable by proper means by competitors who could obtain economic value from their disclosure and are subject of reasonable efforts to maintain their secrecy. Thus, as your attorney should confirm, the Logs should be exempt from disclosure under the state exemption for proprietary confidential and trade secret information.

The Logs should additionally be protected from disclosure as the Logs contain sensitive information that if publicized could provide a roadmap to bad actors to attempt to compromise your ES&S voting system. The disclosure of the Logs could create a security risk to ES&S and to the jurisdiction. Pursuant to 42 U.S.C. §5195c(e), the United States Department of Homeland Security has designated election systems as part of the United States’ critical infrastructure, and the disclosure of the information would create a security risk to the critical infrastructure. As such, the Logs should be protected from disclosure as the Logs contain administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize the jurisdiction’s security. The Logs also contain security measures and techniques which, if disclosed, would create a risk to the electronic data or software. Thus, the Logs should be exempt from disclosure under the state exemption that protects software, information security, network or computer hardware and/or critical infrastructure.

ES&S would additionally refer the jurisdiction and its attorney to the jurisdiction’s current contract with ES&S. Generally most contracts with ES&S state that a customer shall not cause any action with respect to the ES&S Documentation which would “cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the ES&S Software or Documentation, in whole or in part, to any third party without ES&S’s prior written consent.” The Logs are part of the Documentation which is licensed to the Jurisdiction to which ES&S would not consent to their disclosure.

ES&S would request that ES&S’s proprietary, confidential and trade secret Logs be withheld from disclosure not only to protect the proprietary, confidential and trade secret nature of the documents, but also to protect the security of the Jurisdiction’s critical infrastructure. In the

event the jurisdiction determines that the Logs should not be withheld, ES&S requests the jurisdiction provide ES&S a sufficient opportunity to redact proprietary, confidential and trade secret information from any documents provided.

WE'RE HERE TO HELP

If you have any technical questions, please call Technical Support at the following:

Contact an ES&S Support Representative
Telephone: 877-377-8683 (U.S. and Canada)
Email: technicalsupport@essvote.com

Support representatives are available Monday through Friday from 7:00 a.m. to 7:00 p.m. Central Time. ES&S support services are subject to the prices, terms, and conditions at the time of service.