

December 19, 2011

RE: CORA request – September 30, 2011

REF: Request, 9/30/2011. Objections and request to meet, 12/8/2011. Denial, 12/9/2011.

Dear Ms. Hall:

December 7th, in response to the attached September 30th CORA request, staff provided to us a DVD which it represented as responsive to our CORA request. The county represents that it has provided “ ... the images and the cast vote records corresponding to the ballot images ...”.

December 8th we reported to you our preliminary analysis of the DVD, registered our objection to the content, and requested a meeting with you to address the differences. December 9th your attorney denied our request.

We have examined the DVD more carefully and verified that the records produced are not responsive to our CORA request. It is our understanding that the County has not complied with C.R.S. 24-72, and want to know what you propose to do about this non-compliance with the law.

As you can readily verify, our CORA request is for “Boulder County’s scanned-ballot-image files and the corresponding cast- vote-record files for this November’s election.” A scanned-ballot-image file is created for each live ballot that is scanned into the HART system – one scanned image file per ballot. And, one cast-vote-record is created for each live ballot as the final result of automatic and manual (resolution) interpretation of the votes on each ballot – one cast vote record per ballot.

No scanned-ballot-image files are recorded on the DVD. Instead, the DVD contains four PDF files (Batch_051, Batch_216, Batch_277, and Batch_431) each ostensibly containing scans of 150 live ballots.

1. These scans are not copies of the election records (files) produced by the HART system.
2. It appears that the scans provided are not even true scans of live ballots.
 - The heading of each ballot has been redacted. Data in the header is critical; it identifies (i) the election, (ii) the precinct, and (iii) the ballot style.
 - The left and right edges of the ballot have been redacted. Data in the edges identifies (i) the serial number of the ballot, and (ii) key election and ballot information.
3. Despite the fact that nearly one in three ballots cast were for the City of Boulder contests, there are no City of Boulder ballots included in the 450 scans.
4. There are no multi-page ballots in the scans on the DVD.
5. Meta-data, such as the HART filenames, is not included in the data on the DVD.
6. An opportunity for concealment of problems is created when staff, not the requestor, selects the batches produced for inspection.

No cast-vote-records are recorded on the DVD. Instead, the DVD contains eight PDF files (p178_mb_050, p179_mb_051, p221_mb_215, p222_mb_216, p259_mb_115, p260_mb_277, p314_mb_432, and p315_mb_431) each ostensibly containing a report of election-wide vote totals. Half of these files report the vote totals before and half of the files report the vote totals after the votes in a corresponding batch of ballots was counted. By calculating the difference between the before and the after votes for each contestant one is supposed to be able to determine the number of votes for each contestant in the corresponding batch of ballots.

- These eight reports are not cast-vote-records.
- These eight reports do not show the content of even one cast-vote-record.
- These eight reports do not in any way contain the information needed to verify that the votes on individual ballots were correctly interpreted.
- These eight reports are unusable for the purpose that they are intended. They are not in an industry standard format (such as XML, CSV, or XLS) suitable to data that are intended to serve in computations. The choice of PDF

reports for these data is unreasonable. It would require hand transcription of 1 ¼ million bytes to recover the data needed to calculate the votes per contestant in the batches.

- The reports are summaries, and do not report precinct and ballot-style.

In addition, there has been an unreasonable delay in the production of the records sought in the CORA request. Nearly three months have been passed since the CORA request was filed, and six weeks have passed since Election Day. The requested records have not yet been produced. Should we eventually identify errors sufficient to overturn a contest result, this delay will have deprived an interested party of its rights to request a recount 1-10.5-106 C.R.S. or challenge the election 1-10.5-109 C.R.S.

We have been politely patient, but we now believe that further patience on our part will result in our never inspecting the records we requested. We believe that you are obliged to recite specific statutes authorizing you to withhold records in response to an open records request. Please fully respond to the following questions:

1. On what legal authority have you relied to withhold from inspection the actual scanned-ballot-image files that we are requesting?
2. For precisely what reason has the following data been redacted from the “scans” that were produced: data in the header which identifies (i) the election, (ii) the precinct, and (iii) the ballot style?
3. For precisely what reason has the following data been redacted from the “scans” that were produced: the left and right edges of the ballot which contain (i) the serial number of the ballot, and (ii) key election and ballot information.
4. On what legal authority have you relied to withhold from inspection the actual cast-vote-record files that we are requesting?
5. For precisely what reason was the vote total data provided in a non-industry-standard file format?
6. What is the explanation for why the 450 “ballot images” include no City of Boulder ballots?
7. Were these ballots delivered by the Post Office? If so, (a) were they separated from Boulder ballots after they arrived in the incoming mail, (b) what is the purpose of this separation, and (c) where is this process described?
8. Who is accountable for each of the above decisions?

The records requested in our September 30, 2011 CORA have not been produced. As custodian, you are obliged under 24-72 C.R.S. to produce these records, or to recite statutory reasons authorizing you to withhold these records.

As custodian of these records, you are required to comply with the law. We expect timely responses to our questions.

Al Kolwicz

Colorado Voter Group

<http://www.ColoradoVoterGroup.org>

2867 Tincup Circle

Boulder, CO 80305

303-494-1540

AlKolwicz@qwest.net

From: Bailey, Shelley [mailto:sbailey@bouldercounty.org]

Sent: Friday, December 09, 2011 8:52 AM

To: AlKolwicz

Cc: Hall, Hillary

Subject: CORA Request

Dear Mr. Kolwicz,

We have provided the inspection, the images and the cast vote records corresponding to the ballot images you received – while staying within your budget. Additionally, we have communicated the cost to provide additional inspection of more ballot images. No request or payment has been received for additional inspection.

Therefore, based on the request and associated budget, we have fulfilled your CORA request.

Sincerely,

Shelley Bailey

Assistant County Attorney

From: Al Kolwicz [mailto:alkolwicz@qwest.net]

Sent: Thursday, December 08, 2011 6:04 AM

To: Hillary Hall (hhall@co.boulder.co.us); Shelley Bailey (sbailey@co.boulder.co.us)

Cc: 'Colorado Voter Group'; 'jfryar@times-call.com'; 'Judd Choate'; 'Richard Coolidge'; 'Burnett, Sara'

Subject: CORA Status - Ballot image files and Cast vote record files

Dear Ms. Hall and Ms. Bailey:

Thank you for your efforts to produce the records that we requested in our September 30, 2011 Colorado Open Records request.

Yesterday, I received from you: (i) four digital files each containing one batch of anonymous-ballot-scans, and (ii) eight digital files containing before-and-after batch-sub-total reports.

We appreciate that you have broken new ground by producing these records. We applaud your good-will effort to comply with election transparency laws and protect vote/ballot anonymity.

As we have discussed, however, the records that you have produced, while helpful, are not the records requested in our CORA.

We would like to meet with you, and any technical staff and/or vendors that you may wish to include, to more precisely discuss our request and the ways that you can fully respond to our request for the records we have requested:

1. **Scanned ballot image files** – It is our understanding that during the initial stage of automated vote interpretation and counting, batches of paper ballots are scanned and digitally recorded. Further, it is our understanding that the HART system has the capability to record/export each ballot scan as a separate file in a choice of several industry standard formats, PDF being one of these formats. It is the exports/copies of these production files that we requested. Individual image files, we assume, contain meta-data that are missing from the images you have provided to us. This metadata would include the individual file-name, date created and modified, and other data. It is the export/copy of these individual PDF files, including meta-data, that we seek.
2. **Cast vote record files** – Various HART documents specify that a cast vote record containing the votes from an individual ballot is written to the MBB in preparation for counting and archiving. This record, we understand, documents the results of automated and manual (resolution board) interpretation of the votes on each individual ballot. This record is the only way to know how the votes on an individual ballot were finally interpreted for counting. It is the set of cast vote records corresponding to the individual ballots that we seek.

We ask again to meet with you to find a way that our request for records can be honored. We are very concerned that the records may be destroyed if the election is archived.

When can we plan to meet with you?

Al

Al Kolwicz

Colorado Voter Group

<http://www.ColoradoVoterGroup.org>

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Boulder, CO 80305

303-494-1540

AlKolwicz@qwest.net

From: coloradovoter@googlegroups.com [mailto:coloradovoter@googlegroups.com] **On Behalf Of** Al Kolwicz
Sent: Friday, September 30, 2011 5:35 AM
To: Hillary Hall
Cc: Colorado Voter Group
Subject: [Colorado Voter].3645 Colorado Open Records Request

Dear Ms. Hall,

This is a request under the Colorado Open Records Act.

The Colorado Court of Appeals (No. 10CA1111) has determined that electronic images of voted ballots should be open for public inspection.

We wish to inspect, as soon as mutually agreeable after the Canvass is complete, Boulder County's scanned-ballot-image files and the corresponding cast- vote-record files for this November's election.

We have been assured, by Ms. Cegielski when she was working for the Colorado Department of State, that the HART system has the capability to preserve the scanned ballot images in PDF files. Our needs could be met with other industry standard forms of the data, such as TIFF, and are open to discuss this with you.

We are submitting this request now so that you can do what is needed to ensure that the requested data are captured, and so you can confirm that you will make them available to us for inspection and approximately when.

We request that any costs in excess of \$100.00 be approved by me in advance.

I am out of town. Please accept this e-mail as our official CORA request.

Thank you very much for your help.

Al Kolwicz

Colorado Voter Group

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