

The Responsibilities of Election Officials Regarding Access to Records and Equipment

Election officials facing requests for access to election records and equipment should respond in a way that complies with the law while protecting election security.

Election officials are confronting an extraordinary uptick in requests for access to sensitive election records and equipment.¹ This trend is fueled by the spread of the lie of a “stolen” 2020 election. Requests for public records have flooded election offices, and both legislators and private litigants have attempted to use the subpoena process to obtain access.² In rarer instances, rogue sheriffs have tried to seize equipment from election offices.³

This resource provides guidance to election officials who face requests for access to election records and equipment in their custody.

State laws providing access to public records are important for transparency, and election officials have a responsibility to fulfill requests. But some demands may go beyond what individuals are legally entitled to. Copying or providing access to election software and hardware, routers, and other associated equipment may pose security risks, and individuals may not have the legal right to access certain sensitive or confidential information, whether through a records request or civil subpoena. Police and sheriffs, meanwhile, typically have very limited legal power to seize equipment from election offices without a warrant.

When someone such as a lawyer, a judge, or a law enforcement official purports to have authority but makes what seems like a potentially illegitimate request for access or information, election officials may wonder what their options are. Some of the requests may be legitimate, but others may not be, and if accommodated, they may undermine the security of a jurisdiction’s election equipment.

When asked for sensitive records or equipment, election officials can and should respond in a way that complies with the law, protects staffers’ safety, and guards the security of our election systems. Three common scenarios and recommended plans of action are outlined below.

In all cases, election officials should consult with a competent attorney, including an attorney in their city or county legal department, as soon as possible. Where appropriate, they should also consult with their state’s association of local election officials, the office of their state’s chief election official, and other trusted and experienced election officials in their state. These officials may have advice on efficiently fielding similar requests, and sharing this information may help other officials facing similar situations. In particular, sham or rogue law enforcement activity is not common, and anyone engaging in this behavior may also be targeting other election officials.⁴

How to address records requests that seek access to sensitive election information

Some elections offices have received public records requests that target sensitive voting equipment and information, including requests for manuals containing security protocols⁵ and for voting machine serial numbers.⁶ Several offices have also received requests for “cast vote records,” which are electronic reports from certain voting machines detailing how ballots were tabulated.⁷ At least one group has requested access to physical ballots.⁸ Some requests have demanded that officials preserve records and included vague language suggesting that the requestor is considering filing a lawsuit founded on baseless election fraud claims.⁹

What if the request demands sensitive election materials?

Sensitive materials, such as physical ballots or software, are often exempt from public records disclosure requirements.¹⁰ The laws of each state vary as to whether records such as cast vote records and ballot images can be made publicly available, and under what conditions.¹¹

What if the request demands physical access to election materials or equipment?

Under federal law, all state and local election officers have a duty to “retain and preserve . . . all record and papers . . . relating to any application, registration, payment of poll tax, or other act requisite to voting” for 22 months after federal elections. The Department of Justice has advised that this means the items must remain under election officials’ supervision,¹² thereby limiting conditions under which access may be provided to others. Similarly, state laws may impose supervision requirements.¹³

What if the request is for election officials to create a new record?

Public records laws generally do not create obligations to create *new* records. However, election officials may be required to produce automated reports from electronic records in databases. For example, they might have to produce an electronic list of absentee voters even if they do not have a hard copy list. Election officials should consult with an attorney in their jurisdiction’s legal department to determine if a request is one for the creation of new rather than preexisting records.

What if the request demands an immediate response?

Requests may demand that an election office respond right away. But state laws give election offices time to respond to records requests, so officials can determine if any exemptions apply. Most state laws prescribe a particular timeline to respond.¹⁴ In some states, agencies can impose a reasonable fee for responding to requests — a process that may extend the timeline to respond.¹⁵

Do election officials have to preserve the requested records for the court if the request includes a threat to sue?

Election offices are required to preserve election records for certain periods of time under federal and state law.¹⁶ A threat to sue based on vague and unsubstantiated allegations may not necessarily create a new duty to preserve records. Nevertheless, election officials should consult with an attorney in their jurisdiction's legal department to determine if a particular threat to sue creates a new duty to preserve records.

How to address a subpoena for sensitive equipment or records

An attorney representing a party in a case may attempt to issue a subpoena in an effort to obtain sensitive records or equipment.¹⁷ If a state legislator or another state official who has the authority to issue a subpoena during an investigation attempts to issue a subpoena seeking ballots or other sensitive material, they may be trying to order clerks to appear before select committees with the requested material.¹⁸ Handing over these materials may compromise their security¹⁹ or violate an election official's legal duties to retain custody over records.²⁰

Who can issue a subpoena?

To be enforceable, a subpoena must be properly issued — either by the clerk of a court or, in some states, by an attorney of record in a particular action — and appropriately served.²¹ A subpoena is typically served by a sheriff, a deputy sheriff, or any other person who is at least 18 years old.²²

A subpoena specifies the time, date, and location for an individual to appear in court or to provide the requested information.²³ It also will likely include language such as “you are commanded to report.” In some instances, the subpoena will specify a penalty for noncompliance.²⁴ If the subpoena is filed with a court, it should include the full name of such court in the title.²⁵ If the subpoena is not filed with a court, it may require the parties to consent.²⁶ In any case, it should include identifying information for the individual or attorney who signed the document.

What if the subpoena asks for sensitive information that implicates election or personal security?

There may be a legal reason that permits an election official to avoid testifying or providing records.²⁷ Some objections may include that the requested records are confidential or sensitive, the scope of the request is improper, or it would be an undue burden to produce the requested records. Should these objections apply, an attorney can object to the subpoena on the election official's behalf, or they can move to condition or modify the subpoena's scope.²⁸ The time for objecting to a subpoena will vary depending on the type of subpoena served in a particular state.²⁹

How to address law enforcement requests for access

Where appropriate, law enforcement officials should support election officials and workers as they carry out their duties. For this reason, legitimate investigations into potential election crimes are typically performed at the request of, and in collaboration with, election officials.³⁰

There have been some isolated instances of improper requests for access to election equipment by those claiming to be law enforcement.³¹ Someone claiming to be law enforcement may ask to enter sensitive areas that the public is not permitted to enter unsupervised, such as areas where equipment or ballots are stored. Someone may also request to remove or copy sensitive records or equipment or ask for passwords, keycard swipes, or other methods of accessing sensitive records or equipment.

For this reason, it is important to be aware of the key indicators of a legitimate investigation. When law enforcement is properly called upon to assist in investigating breaches of sensitive materials, it abides by the same rules it must follow in other criminal investigations, such as obtaining a warrant to access sensitive areas or seize any items³² or obtaining judicial approval for certain types of subpoenas.³³

In all cases, election officials can take notes about the officer's name and badge number, as well as what the officer is requesting.

What can an election official do if a law enforcement officer seeks to question them?

The election official does not have to answer the law enforcement officer's questions right away and without an attorney present. Even if the officer mentions they will obtain a subpoena, this does not mean they will succeed in getting one from the court. If possible, the election official can ask another staff member to join the conversation. They can also let the officer know that they would like to consult an attorney.

What can an election official do if a law enforcement officer seeks to access sensitive materials?

1. If the election official is not familiar with the person claiming to be law enforcement, they can calmly ask to see a badge or other identification and ask what office the individual is representing to ensure that they are a law enforcement officer.

An election official who believes someone is impersonating law enforcement should not do anything that makes them feel physically unsafe. The official can calmly state that they are calling local law enforcement. Impersonating a law enforcement officer is typically a serious crime.³⁴

2. The election official can ask if the officer has a warrant. If the answer is yes, the official can ask to see it.

If the officer does not have a warrant signed by a judge or other independent official, the election official can calmly state that they do not provide the permission being requested.

If true in their state, the official can explain that state law or guidance governing the custody of election materials prevents them from providing access or turning over materials absent a warrant. They can state that they would like to first consult with an attorney and the chief election office for the state.

If the officer uses force, the election official should not interfere or resist.

3. If the officer does have a warrant signed by a judge, the election official must provide the access described in the warrant.

A judicial warrant means that the request is legitimate and must be honored without delay. It will typically detail what materials are covered by it and must be provided.³⁵ The election official only needs to provide access to what is specifically described in the warrant. They do not have to answer any questions by officers on the spot, such as questions about passwords.³⁶

The election official can take notes about what the officer asks to access that is not described in the warrant.

The official can let the officer know that they would like to consult an attorney. They should be able to do this so long as they are not interfering with the officer.

4. A warrant can typically be challenged later, but an election official cannot interfere with an officer in the moments they execute a warrant.

In most states, there are legal procedures for challenging the legality of a warrant, such as appealing the warrant or moving to object to the warrant.³⁷ However, an election official should not interfere with an officer executing a warrant in real time. If an election official believes the warrant should not have been issued, an attorney can help them use the legal procedures available in their state.

Where to get assistance

In all of these cases, election officials should consult with a competent attorney as soon as possible. Other trusted election officials may also be a resource for them and other election officials that may be facing similar requests:

- Their county/city attorney
- Their state’s [local election official association](#)
- Their state’s [chief election official](#)
- Trusted local election officials in their state
- Pro bono legal assistance ([Election Official Legal Defense Network](#)), when permitted by state law

¹ See Amy Gardner and Patrick Marley, “Trump backers flood election offices with requests as 2022 vote nears,” *Washington Post*, September 11, 2022, <https://www.washingtonpost.com/nation/2022/09/11/trump-election-deniers-voting/>; see also Michael Wines, “Election Workers Face an Obstacle Course to Reach the Midterms,” *New York Times*, October 6, 2022, <https://www.nytimes.com/2022/10/06/us/election-workers-midterms-polls.html>.

² John Agar, “Kent County clerk objects to MyPillow founder’s demand for 2020 election records,” *MLive.com*, October 5, 2022, <https://www.mlive.com/news/grand-rapids/2022/10/kent-county-clerk-objects-to-mypillow-founders-demand-for-2020-election-records.html>.

³ Peter Eisler and Nathan Layne, “Michigan sheriff sought to seize multiple voting machines, records show,” *Reuters*, August 30, 2022, <https://www.reuters.com/article/usa-election-michigan-investigation-idCAKBN2Q01XM>.

⁴ Sue Halpern, “The Election Denier Who Tried to Prove ‘Stop the Steal,’” *The New Yorker*, September 7, 2022, <https://www.newyorker.com/news/american-chronicles/the-election-official-who-tried-to-prove-stop-the-steal> (describing breaches of elections software in both Mesa County and Elbert County, Colorado, involving the same unauthorized persons).

⁵ Nathan Layne, “Pro-Trump activists swamp election officials with sprawling records requests,” *Reuters*, August 3, 2022, <https://www.reuters.com/world/us/pro-trump-activists-swamp-election-officials-with-sprawling-records-requests-2022-08-03/>.

⁶ Luis Fieldman, “Mass. Officials receive records requests blitz fueled by 2020 election conspiracies,” *Masslive.com*, September 29, 2022, <https://www.masslive.com/news/2022/09/conspiracy-based-records-requests-on-the-2020-election-inundate-officials-ahead-of-2022.html>.

⁷ Kelly Weill, “Stop the Steal Fans Are Burying Election Workers in Record Requests,” *Daily Beast*, September 1, 2022, <https://www.thedailybeast.com/stop-the-steal-fans-are-burying-election-workers-in-record-requests?ref=scroll>.

⁸ Petition for Declaratory and Injunctive Relief, *Garland Favorito et al. v. Mary Carole Cooney et al.*, Ga. Super. Ct., Fulton Cnty. (2020).

⁹ Kelly Weill, “Stop the Steal Fans Are Burying Election Workers in Record Requests,” *Daily Beast*, September 1, 2022, <https://www.thedailybeast.com/stop-the-steal-fans-are-burying-election-workers-in-record-requests?ref=scroll>.

¹⁰ E.g., N.C. GEN. STAT. ANN. § 163-165.1(e) (prohibiting the release of voted ballots, as well as paper and electronic records of voted ballots, to anyone but election officials); Fla. Rev. Stat. § 119.0725(2) (exempting information relating to critical infrastructure, network schematics, and hardware and software configurations from public records disclosure requirements).

¹¹ Compare COLO. REV. STAT. § 24-72-205.5 (providing that ballots, which include digital images or electronic representation of votes cast, are subject to inspection under specific conditions) with ARIZ. REV. STAT. § 16-625 (mandating that electronic data or digital images from ballots be treated with measures “at least as protective as those prescribed for paper ballots”).

¹² 52 U.S.C. § 20701; U.S. Dep’t of Just., Letter from Principal Deputy Assistant Attorney General Pamela Karlan, May 5, 2021, <https://www.justice.gov/crt/case-document/file/1424586/download> (emphasizing that the Department of Justice interprets the Civil Rights Act to require that “covered election documentation be retained either physically by election officials themselves, or under their direct administrative supervision”).

¹³ E.g., COLO. REV. STAT. § 24-72-205.5 (exempting public inspection of ballots during certain periods after an election and providing that they must remain in the election officials’ custody during other periods).

¹⁴ See, e.g., GA. CODE ANN. § 50-18-71(b)(1)(A) (providing that agencies shall produce responsive records “within a reasonable amount of time not to exceed three business days” of receipt of a request); COLO. REV. STAT. ANN. § 24-72-203(3)(a)–(b) (requiring responsive documents that are “not readily available” be made available within three working days, or seven working days if extenuating circumstances exist); see also FLA. STAT. ANN. § 119.07(1)(c) (stating that the custodian of public records or their designee is required to acknowledge requests for records “promptly” and to “respond to such requests in good faith”); IND. CODE § 5-14-3-3(b) (stating that an agency is required to produce records or permit the requester to make copies within a “reasonable time”).

¹⁵ See, e.g., GA. CODE ANN. § 50-18-71(c)(1)–(2), (d).

¹⁶ See, e.g., 52 U.S.C.A. § 20701.

¹⁷ In September 2022, Mike Lindell issued third-party subpoenas to five Michigan county clerks, including Kent County Clerk Lisa Posthumus Lyons, demanding “forensic copies” of the electronic data storage drives for all voting machines and servers, as well as other records from the 2020 presidential election (including security keys and passwords to the county’s election system). John Agar, “Kent County clerk objects to MyPillow founder’s demand for 2020 election records,” MLive.com, October 5, 2022, <https://www.mlive.com/news/grand-rapids/2022/10/kent-county-clerk-objects-to-mypillow-founders-demand-for-2020-election-records.html>. Lyons asked a federal judge to quash the subpoena on the grounds that it imposes an undue burden on the integrity of the election process and the county. See *In re Subpoena of Kent County Clerk*, 22-mc-107, ECF No. 1-1, PageID.3 (W.D. Wis., October 4, 2022).

¹⁸ In August 2021, the leader of the Wisconsin assembly’s elections committed issued subpoenas to Brown and Milwaukee counties, seeking access to election materials, including all ballots and voting equipment — ranging from tabulation machines to servers — related to the 2020 presidential election. Todd Richmond, “Republican issues subpoenas for Wisconsin election info.,” AP News (Aug. 6, 2021), <https://apnews.com/article/joe-biden-elections-wisconsin-election-2020-subpoenas-3952211bd482a785d3a8f9e9cc4d7c86>. Both counties rejected the subpoenas, stating in separate letters that the subpoenas were invalid because they were not signed by Assembly Speaker Robin Vos or the assembly’s chief clerk, as required by law. Scott Bauer, “Wisconsin counties reject subpoena for ballots, other data,” AP News (Sept. 3, 2021), <https://apnews.com/article/elections-election-recounts-election-2020-subpoenas-372c93cfae67a4cf30b14bc22798150a>.

¹⁹ Election Management Guidelines, U.S. Election Assistance Comm’n, https://www.eac.gov/sites/default/files/eac_assets/1/6/260.pdf.

²⁰ 52 U.S.C. § 20701; U.S. Dep’t of Just., Letter from Principal Deputy Assistant Attorney General Pamela Karlan, May 5, 2021, <https://www.justice.gov/crt/case-document/file/1424586/download> (emphasizing that the Department of Justice interprets the Civil Rights Act to require that “covered election documentation be retained either physically by election officials themselves, or under their direct administrative supervision”).

²¹ See, e.g., FLA. R. CIV. P. 1.410; GA. CODE ANN. §§ 9-11-45(a)(1)(A)–(B), 24-13-21(c)–(d), 24-13-22; see also PA. R. CIV. P. 234.2(a) (permitting the prothonotary for the court to issue subpoenas upon a party’s request).

²² See, e.g., FLA. R. CIV. P. 1.410(d); GA. STAT. ANN. § 24-13-24.

²³ See, e.g., FLA. R. CIV. P. 1.410(b)(1); GA. STAT. ANN. § 24-13-21(b).

²⁴ Florida law, like many jurisdictions, provides that a failure to obey a subpoena, without adequate notice, may be deemed a contempt of the court from which the subpoena issued. FLA. R. CIV. P. 1.410(f).

²⁵ See, e.g., *id.* § 1.410(b).

²⁶ See, e.g., GA. CODE ANN. §§ 9-11-45(a)(1)(A)–(B).

²⁷ See, e.g., FLA. R. CIV. P. 1.410(c) (providing that a subpoena may be objected to if it is “unreasonable and oppressive,” including electronically stored information that is “not reasonably accessible because of undue costs or burden”).

²⁸ See, e.g., GA. STAT. ANN. §§ 9-11-45(a)(1)(C), 24-13-23(b)(1); FLA. R. CIV. P. 1.410(c) (“On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought or the form requested is not reasonably accessible because of undue costs or burden.”).

²⁹ In Florida, for example, a recipient must serve written objections to a document subpoena for deposition within 10 days after service of the subpoena or before the time of compliance if the time is less than 10 days after service. Fla. R. Civ. P. 1.410(e)(1). A recipient must serve objections to a document subpoena without deposition any time before the deadline to produce the requested material. *Id.* § 1.351(c).

³⁰ AG Nessel Announces Referral of Tabulator Investigation, State of Michigan, August 08, 2022, <https://www.michigan.gov/ag/news/press-releases/2022/08/08/ag-nessel-announces-referral-of-tabulator-investigation>; see also Justin Wingerter, “Colorado secretary of state sues to stop Mesa County clerk from overseeing elections,” *Denver Post*, August 30, 2021, <https://www.denverpost.com/2021/08/30/tina-peters-mesa-county-jena-griswold/>.

³¹ Peter Eisler and Nathan Layne, “Michigan sheriff sought to seize multiple voting machines, records show,” Reuters, August 30, 2022, <https://www.reuters.com/article/usa-election-michigan-investigation-idCAKBN2Q01XM>. Michigan example.

³² Law enforcement obtained warrants to access and further examine voting equipment and election materials regarding voting system breaches in Michigan. Nathan Layne and Peter Eisler, “Exclusive: Michigan widens probe into voting system breaches by Trump allies,” Reuters, June 7, 2022, <https://www.reuters.com/world/us/exclusive-michigan-widens-probe-into-voting-system-breaches-by-trump-allies-2022-06-06/>.

³³ Fulton County District Attorney Fani Willis obtained judicial approval for witness subpoenas. Tamar Hallerman, “Fulton grand jury subpoenas Giuliani, Graham, Trump campaign lawyers,” *Atlanta Journal-Constitution*, July 5, 2022, <https://www.ajc.com/politics/fulton-grand-jury-subpoenas-giuliani-graham-trump-confidantes/POUNSTTUXZDGDB3D5LKA7TIQQM/>.

³⁴ 18 U.S.C.A. § 912.

³⁵ “[T]he warrant itself must describe with particularity the items to be seized.” (emphasis added) Particularity Requirement, Legal Information Institute – Cornell Law School, accessed Oct. 13, 2022, <https://www.law.cornell.edu/constitution-conan/amendment-4/particularity-requirement>.

³⁶ U.S. CONST. amend. V.

³⁷ CAL. PENAL CODE §1538.5(a)(1).