



FLORIDA DEPARTMENT OF STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

August 27, 2012

The Honorable Susan Gill
Supervisor of Elections, Citrus County
120 Apopka Ave.
Inverness, FL 34450-4238

RE: DE 12-10 Absentee Ballots - Public Record
Requests—§ 101.62(3), Florida Statutes.

Dear Supervisor Gill,

As Citrus County Supervisor of Elections, you have asked for guidance regarding the disclosure of certain electronic mail messages ("email") generated when an elector requests an absentee ballot through your website. Because this answer will assist you in your duties and may resolve your concerns about your past actions, the Division has the authority to issue you an opinion pursuant to section 106.23(2), Florida Statutes (2012).

You state in your letter that a private citizen contacted your office and requested a list of email addresses of all persons who requested an absentee ballot. At a later date, the requestor also asked for copies of all emails which are generated as a result of an application for an absentee ballot submitted using the website maintained by your office. By telephone, you indicated that electors may request an absentee ballot by visiting your internet webpage and completing an electronic form. As part of that process, you stated that you require an email address to be disclosed for identification purposes. The information submitted via the electronic form is converted into an email message that is forwarded to your office for processing. You further advise that you have not complied with these requests because of the public records exemption found in section 101.62(3), Florida Statutes (2012). You have asked for a formal opinion before making a determination to release the confidential and exempt records.

For the purposes of this opinion, you have asked essentially the following questions:

1. Does the public records exemption under section 101.62(3), Florida Statutes (2012), that prohibits the public disclosure of information provided by an absentee ballot requestor, prohibit the disclosure of an absentee ballot requestor's electronic mail address?
2. Does the public records exemption under section 101.62(3), Florida Statutes (2012), that prohibits the public disclosure of information provided by an absentee ballot requestor,

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prohibit the disclosure of automated electronic mail messages generated as a consequence of submitting a request for an absentee ballot via your webpage?

Section 101.62(3) Florida Statutes (2012), provides:

For each request for an absentee ballot received, the supervisor shall record the date the request was made, the date the absentee ballot was delivered to the voter or the voter's designee or the date the absentee ballot was delivered to the post office or other carrier, the date the ballot was received by the supervisor, *and such other information he or she may deem necessary*. This information shall be provided in electronic format as provided by rule adopted by the division. The information shall be updated and made available no later than 8 a.m. of each day, including weekends, beginning 60 days before the primary until 15 days after the general election and shall be contemporaneously provided to the division. This information shall be confidential and exempt from the provisions of s. 119.07(1) and shall be made available to or reproduced only for the voter requesting the ballot, a canvassing board, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees or registered committees of continuous existence, for political purposes only." (Emphasis Added).

To address your first question, Florida's broad public records law requires agencies to disclose to the public all records that are not defined as confidential and exempt by Florida statute.¹ Your office is defined as an "agency," so you must disclose any document that the agency makes or receives pursuant to law or in connection with the transaction of official business of the agency, unless the information is confidential and exempt.² Generally, electronic mail addresses and other contact information submitted by the public are public records and must be disclosed.³

As Supervisor of Elections, you have the discretion to deem the information necessary that must be collected from a requestor to process ballot requests.⁴ Because state statutes do not prescribe uniform statewide requirements for absentee ballot requests, you may establish your own requirements to process ballot requests. Therefore, if the absentee ballot request is sent to you by electronic means, you have sufficient discretion to require an electronic mail address for identification purposes, or any other reasonable grounds needed to process the request. If you deem an electronic mail address necessary to process an electronic request for an absentee ballot, then the information would be confidential and exempt from the provisions of section 119.07(1), Florida Statutes (2012), under section 101.62(3), Florida Statutes (2012). For instance, overseas voters subject to the Uniformed Services and Overseas Voters Absentee Voting Act can request a blank absentee ballot by electronic mail or fax.⁵

¹ See generally, s. 119.07(1), Fla. Stat. (2012)

² § 119.011(2), Fla. Stat. (2012)

³ § 119.011(12), Fla. Stat. (2012)

⁴ § 101.62(3), Fla. Stat. (2012)

⁵ § 101.6952, Fla. Stat. (2012)

The law provides an exception to the exemption for certain statutory listed persons and entities that are entitled to access this information: a canvassing board member, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees or registered committees.⁶ Additionally, a voter is entitled to see his or her own absentee ballot request information.⁷ Otherwise, absentee ballot request information deemed necessary by the Supervisor of Elections' office cannot be publicly disclosed or made available or accessible. If the requesting party is not a person or entity listed in the statute that is authorized to copy or inspect the record, then disclosure is prohibited.

Turning to your second question, it would appear that the automated email message that is received by your staff when an absentee ballot request is made by an elector via your internet webpage is no different than any other email message sent or received by members of your staff. As stated above, your agency must disclose any document that the agency makes or receives pursuant to law or in the connection with the transaction of official business of the agency, unless the information is confidential and exempt.⁸ Generally, electronic mail messages are part of correspondence of the agency and are public records and must be disclosed.⁹ However, the information that you "deem necessary" to process an absentee ballot request is confidential and exempt from the provisions of section 119.07(1), Florida Statutes, (2012).¹⁰ Therefore, any information that you have deemed necessary to process the absentee ballot request must be redacted before disclosure of the remainder of the message.¹¹ Depending on the circumstances, it could include all of the information in the message, including any information you have asked for, received, or recorded. However, to the extent the message may contain other information, the message must be produced for inspection and copying by members of the public with any information that is confidential and exempt redacted from public view.

Your letter states that the requestor has referred you to an Attorney General's opinion, AGO 2001-16, that relates to information on the absentee ballot certificate. At the time the opinion was rendered, section 97.0585, Florida Statutes, was written in a way that it only extended to protect a registrant's signature from copying of voter registration records. In 2005, the law changed to extend the exemption to the voter's signature, which has been interpreted to mean the voter's signature as part of any voter registration or voting related record. So while AGO 2001-16 correctly offers the opinion that the information on the back of an absentee ballot certificate is publicly available, the opinion does not address subsequent changes in the law, which include redacting confidential and exempt information such as the voter's signature. Accordingly, reliance upon the Attorney General's opinion by the requestor under this set of facts is misplaced.

⁶ § 101.62(3), Fla. Stat. (2012)

⁷ *Id.*

⁸ § 119.011(2), Fla. Stat. (2012)

⁹ § 119.011(12), Fla. Stat. (2012)

¹⁰ § 101.62(3), Fla. Stat. (2012)

¹¹ § 119.07(1)(d), Fla. Stat. (2012)

SUMMARY

The public records "deemed necessary" by the Supervisor of Elections to process absentee ballot requests are confidential and exempt from public disclosure under section 101.62(3), Florida Statutes (2012), including email addresses and messages generated automatically when an elector submits an absentee ballot request via the Internet.

Sincerely,

A handwritten signature in black ink, appearing to read "John Boynton", written over a circular stamp or seal.

John Boynton
Acting Director, Division of Elections
Deputy Secretary of State for Administrative Services,
Corporations and Elections