



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

November 18, 2013

Ms. Penelope Townsley
Supervisor of Elections
Miami-Dade County
2700 NW 87th Avenue
Miami, Florida 33172-1607

RE: DE 13-08 Absentee Ballots – Public
Records – § 101.62(3), Florida Statutes.

Dear Supervisor Townsley,

As the Miami-Dade County Supervisor of Elections, you have asked for guidance regarding the disclosure of Internet protocol (IP) addresses which are necessary for the online submittal of absentee ballot requests. 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 (2013).

You state in your letter that when a voter requests an absentee ballot, the voter's Internet protocol (IP) address is recorded in your computer system. You also state that your office has received several requests for IP address information. You have asked for a formal opinion to essentially answer the following three questions:

1. Are IP addresses in this context confidential and exempt from public disclosure to the general public?
2. Are IP addresses in this context confidential and exempt from public disclosure to individuals and entities entitled to the absentee ballot information under section 101.62(3), Florida Statutes?
3. Should IP addresses be treated in the same manner as e-mail addresses under *Division of Elections Opinion 12-10* (August 27, 2012)?

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At the outset, 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, information submitted to you by the public is public record and must be disclosed.³

However, section 101.62, Florida Statutes, provides as follows:

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 for political purposes only.

§ 101.62(3), Fla. Stat. (2013) (emphasis added).

Section 101.62(3) mandates that the supervisor record certain information in connection with the processing of a request for an absentee ballot. The statute further provides that the supervisor may deem it "necessary" to record certain information not enumerated in the statute. As Supervisor of Elections, you have the discretion to deem which information is "necessary" for you to record when you receive it from a requestor of an absentee ballot.⁴ The recording may be automatically accomplished, as in the case of the IP addresses recorded when the voter requests an absentee ballot through the online submittal you describe in your letter. Therefore, the answer to your first question is that if you determine that the automatically recorded IP address information is "necessary" under section 101.62(3), then the IP addresses are public records that are confidential and exempt from the provisions of section 119.07(1), Florida Statutes (2013).

Turning to your second question, the law provides an exception to the exemption for certain persons and entities that are entitled to access information, even if it is information that you deem "necessary" under section 101.62(3). The list of those excepted includes a canvassing

¹ See generally § 119.07(1), Fla. Stat. (2013).

² § 119.011(2), Fla. Stat. (2013).

³ § 119.011(12), Fla. Stat. (2013).

⁴ See § 101.62(3), Fla. Stat. (2013).

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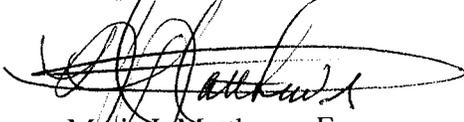
board member, an election official, a political party or official thereof, a candidate who has filed qualification papers and is opposed in an upcoming election, and registered political committees for political purposes only.⁵ Additionally, a voter is entitled to see his or her own absentee ballot request information.⁶ Therefore, if one of these individuals or entities requests IP address information, the information is subject to disclosure under the exception in section 101.62(3).

To address your third question, you have asked whether the IP addresses should be treated in the same manner as e-mail addresses under the Division's previous advisory opinion, *Division of Elections Opinion 12-10* (August 27, 2012). In that opinion, the Division stated that e-mail addresses and messages generated automatically when an elector submits an absentee ballot request through the Internet, if deemed "necessary" by the Supervisor of Elections, are confidential and exempt from public disclosure. If you, as supervisor, deem it "necessary" to record IP address information when processing an absentee ballot request pursuant to section 101.62(3), then that information is likewise confidential and not subject to disclosure unless one of the entities excepted by the statute is requesting the information.

SUMMARY

When the Supervisor of Elections deems it "necessary" to record information when processing an absentee ballot request pursuant to section 101.62(3), Florida Statutes (2013), that information is confidential and exempt from the public records disclosure requirements in section 119.07(1), Florida Statutes (2013). Such "necessary" information may include IP addresses that are automatically recorded when a voter submits an absentee ballot request through an online system.

Respectfully,

A handwritten signature in black ink, appearing to read 'Maria I. Matthews', written over a horizontal line.

Maria I. Matthews, Esq.
Director, Division of Elections

⁵ § 101.62(3), Fla. Stat (2013).

⁶ *Id.*