

Suzanne Hart, Editor
The Paper Ballot Initiative Newsletter
122 Broome Ln
Easley, SC 29640
suzyhartfineart@gmail.com
845.986.3653

October 14, 2020

VIA ELECTRONIC MAIL AND HAND DELIVERY

Ms. Marci Andino, Director, State Election Commission
State Election Commission
1122 Lady Street, Suite 500
Columbia, SC 29201

Email: elections@elections.sc.gov

Re: *Public Records Request under SECTION 30-4-10, et seq.*

Dear Ms. Andino:

Under the South Carolina Freedom of Information Act, Section 30-4-10 *et seq.*, I am making a formal request for an opportunity to inspect or obtain electronic copies of the following records:

1. An electronic copy of SCSEC policy statements or correspondence with South Carolina county Elections Directors having to do with procedures for setting up equipment to save and not to delete all electronically generated Digital Ballot Images during and after the June 9th primary election, and for the upcoming November 3rd General Election.
2. An electronic copy of SCSEC instructions or directives to elections directors pertaining to the manuals and/or directions on the method for setting the electronic equipment (BMDs, DS200, DS850 & DS450) to: Save all Digital Ballot Images in addition to and instead of only retaining those images of blank, overvoted, under-voted, provisional, emergency ballots or any such ballots, torn, copied or duplicated to be retained for adjudication.
3. An electronic copy of the entire manual or relevant sections of the ES&S operating manuals that describe these settings and narratives that the voting equipment has the capacity, adequacy and redundancy of memory to process and store Digital Ballot Images. (This may be found in the ES&S guides under "Election Definition", "Export Data". No request for proprietary code

is requested, just access to inspect the manual that election directors download for instructions when configuring the election to Save All Digital Ballot Images.)

4. An electronic copy of Minutes of the South Carolina State Election Commission from March 14, 2019 through Nov 3, 2020.
5. An electronic copy of the names, occupation and positions with the State of members of the contract/selection panel for ES&S ElectionWare software suite Version 6.0.2.0.
6. An electronic copy of times of meetings, agendas and minutes of meetings between contracting and selection panel members and the South Carolina State Election Commission members, with representatives for the Election Systems and Software (ES&S) company (vendor).
7. An electronic copy of any directive, statement or correspondence from the State Election Commission to directors regarding risk-limiting (RLAs) or full audit protocols and policy as pertains to the canvass process, chain of custody of public records such as Digital Ballot Images and public transparency.
8. An electronic copy of the ES&S Requests for Proposal filed with the state filed since January 2018 with the State Election Commission website under "Procurement and Awards" either in the SCSEC site or on the SC Fiscal Accountability Authority web portal that may have been published to the SCSEC website.
9. An electronic copy of the State of South Carolina SFAA, Div. of Procurement Services Intent to Award letter of August 24, 2020 to ES&S for "Electronic Poll Books" (Electionware 6.0.2.0).
10. An electronic copy of the State of South Carolina State Fiscal Accountability Authority Division of Procurement Services Statement of Award letter dated June 10, 2019 to Election Systems and Software, LLC, for "complete turn-key solution) for \$50,888,359.00. (*There is no need to research the fixed amount for maintenance and software/licensing coverage for the life of the contract.*)(Solicitation Number: 5400016872)
11. An electronic copy of the Contract # [4400021704](#) with ES&S which would be dated September 3, 2020. This might be filed with the SFAA Procurement Services but the link is not working on the procurement page, all other links appear to be working.
12. An electronic copy of the Contract #4400024559 by the SCSFAA, Div. of Procurement Services for the Electronic Poll Book Solution, Total \$ 6,500,344.00, which Contract Period began on September 3, 2020. (The Intent to Award Letter that was available, posted Aug. 24, 2020 is now missing from the SCVotes "Procurement menu". The contract link was not working in September, and is also missing from the public record.

I am seeking knowledge about the manner in which the State Election Commission undertakes its duty to count the vote for the June 9, 2020 Primary Election and the November 3rd, 2020 General

Election. Specifically, I am seeing to understand the manner in which the ES&S DS200 and DS850 scanners interpret the ballot image files. I am also seeking to understand what ES&S presented to the State regarding this new system's capacities and capabilities for servicing South Carolina's election commissions and voters.

Further, it is my understanding that the CVR can be programmed so that the record for each cast vote links to – or at least so that it identifies the file name for – the corresponding image file. Furthermore, it is my understanding that serial numbers can be printed onto each ballot prior to scanning and referenced in the CVR so as to facilitate chain of custody record between the ballot, the ballot image and the counted vote.

I understand that this capability may not be enabled properly in every county for the upcoming General Election. It appears from reading ES&S Administrator's Guides and ES&S Requests for Proposals in South Carolina, Georgia and other states that the equipment settings functions that control the DS200 scanners have now been moved into the Election Definition Module of the ES&S ElectionWare Version 6.0.2.0., which is why I would like to inspect in particular the sections of the ES&S operating manuals that describe the settings that the new equipment has the capacity and redundant memory to process and store. I would appreciate a quick response to this question in particular.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$200. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of Digital Ballot Images and its promotion as an efficient tabulation and adjudication method in our new electronic voting system. As the Editor of the *Paper Ballot Initiative Newsletter*, I have presented at the public library as well as to the Greenville County and Spartanburg Boards of Elections on National Security issues as related to the potential for cyber-attacks on our elections. Digital Ballot Images can facilitate efficient and transparent counting of the Nov. 3, 2020 General Election as well as helping election directors and boards to search for records and conduct faster and better adjudication of this upcoming and future elections in South Carolina.

Digital Ballot Images are clearly within the ballot chain of custody and intrinsic to the functioning of the scanners, as the scanner digitizes every type of ballot that is fed into it. There can be no legal differentiation between why one record may be kept and another deleted from the chain of custody. A setting to only save some ballot images would mean that other records are deleted. All digital ballot images are public record.

Retaining all digital ballot images is a function that the ES&S Scanners are certified to perform by the United States Election Assistance Commission and is a feature promoted by the vendor in RFPs. (Please contact me for publicly available sources directly sent by ES&S in RFPs in other states.)

Accordingly, I respectfully request that for the November 3, 2020 election, the ES&S 200 scanners as well as the DS850 or DS450 scanners, if any are in use, be enabled to print serial numbers on

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ballots prior to scanning and for the CVR to link to (or at least reference the file name) the corresponding image file.

Thank you for your public service. Please don't hesitate to call me if you have any questions.

Sincerely,

Suzanne Hart

Suzanne Hart

Cell: 845 986-3653
Email: suzyhartfineart@gmail.com
122 Broome Ln
Easley, SC 29640

CC: David Rasberry (via E-Mail)
T. Egan (via E-Mail)