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DOCUMENT TRANSMITTAL PAGE

DATE: 8/8/2003

TO: Jim March

FAX NO.: 707-221-7152

FROM: Jeanine Nadel

SUBJECT: Registrar of Voters Public Records Act Request

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COMMENTS:

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RICHARD E. WINNIE
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August 8, 2003

Jim March
Address Refused

Re: Alameda County Registrar of Voters Public Records Request

Dear Mr. March:

We have had an opportunity to review your correspondence dated 7/29/03 in which you have requested certain information pursuant to the Public Records Act. Please be advised that the County will not provide the information you have requested on the grounds that the information sought is not subject to the PRA. In addition, there are many exemptions to the PRA that are applicable to your request.

First of all, your request for physical locations of all computers, names of employees, contact persons, and inspection of equipment is not the type of information that is discoverable through a PRA request. (See Government Code §6252 (f))

Second, you should be advised that the County will not allow access or disclose any information regarding the Diebold Elections System as any information relating to that system is exempted from the PRA. Government Code § 6253.9(f) states: "Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained." The system provided by Diebold Election Systems, Inc. ("DESI") is a proprietary system that is recognized as such in the contract between the County and DESI and the County is obligated to maintain its confidentiality.

Government Code § 6254(k) exempts from disclosure any records that are privileged under the Evidence Code or otherwise protected from disclosure by federal or state law. There are several privileges under the Evidence Code that apply here. Specifically, the requested information is privileged under Section 1060 of the Evidence Code, which pertains to trade secrets. Again, the contract with the County acknowledges that the system provided by DESI is confidential and proprietary and is a trade secret protected under law. The County contends that the official information privilege in Section 1040 of the Evidence Code is applicable because the information requested was acquired by the County in confidence and the County is required to maintain its confidentiality. Any copying and disclosing of such information would violate the license agreements.

In addition, there are other potential exemptions that may apply in this instance including

Jim March
August 8, 2003

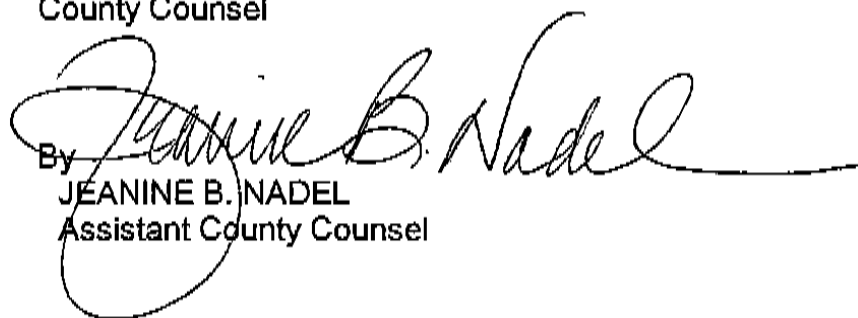
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Section 6254.4 concerning voter registration information, Section 6253.6 concerning bilingual ballot requests, Section 6254.9 concerning "[c]omputer software developed by a state or local agency" which is deemed "not itself a public record," Section 6254(c) to the extent information about individual voters and how they voted is disclosed, and the privilege set forth in Section 1050 of the Evidence Code concerning information as to how a person voted.

Finally, this response is made in accordance with the provisions set forth in Government Code §6255.

Very truly yours,

RICHARD E. WINNIE
County Counsel

By 
JEANINE B. NADEL
Assistant County Counsel

cc: Bradley J. Clark
Nancy Fenton