

West Michigan News Co

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To: SAMPLE

Re: Appeal of FOIA denial regarding the ballots from the 2008 General Election

Your FOIA coordinator has denied our Freedom of Information Act request to see and photograph the ballots from the 2008 General Election. This letter constitutes an appeal¹ of this FOIA denial to the legislative body of your jurisdiction.

While your FOIA coordinator may have consulted officials from the State and/or may have consulted legal counsel for advice, the responsibility for deciding this appeal, supporting or rejecting our FOIA request, legally falls on your shoulders. You must take action under your oath of office to uphold the Constitution by voting for or against our FOIA request. We therefore appeal the denial and urge you to grant our request to examine and photograph the ballots.

There are two ways of thinking about our appeal. First there is the legal decision you must make. You are obligated to accept or deny our FOIA request in strict compliance with the law. You must make this decision yourself, under the obligations you accepted when you took your oath of office. Second, you must uphold the Constitutions of the United States and Michigan, and stand for the integrity of our vote counting process. If we cannot count votes in full public view, we have no verified elections, and the right to vote is rendered meaningless.

Under the law, you can reject a FOIA request only if you can determine that MCL 15.243(d) of FOIA applies, namely that the ballots we seek to examine are "...records or information specifically described and exempted from disclosure **by statute**." You may have seen a claim that an administrative code (R168.790) entitled "Counting center; receiving, tabulating, and certifying ballots" is a "statute." But it is not—it is an administrative rule, R 168.790 Rule 20, created in 1979, 30 years ago. The rule was designed to handle the operation of a "computer center receiving board" when some jurisdictions used punch card ballots which were centrally counted in county or regional centers using punch card counting machines. Furthermore, this rule only applied to the counting center or receiving board, not to the local voting jurisdiction or clerk. It is not a statute under FOIA, and the rule became obsolete when all jurisdictions changed to optical scan vote tabulation in each precinct.

The Bureau of Elections has cited obsolescence as a factor even when refusing to apply actual statutes. When we asked to look at the ballots as challengers under MCL 168.733 (g) which states that "*A challenger may do 1 or more of the following:...(g) Examine without handling each ballot as it is being counted...*" we were told that that law is "obsolete" by the State Director of Elections. In at least one instance a local clerk called law enforcement to enforce this arbitrary decree. Mr. Brad Whitman of the Michigan Bureau of Elections stated that only the State Board of Election Canvassers could give access to local ballots. He cited no federal or state laws that would make this the case. As public officials, you are well aware that you must act according to the law, not a statement from an individual who has no authority and no interest in your decision.

In Allegan County, for the November 2008 general election, we have not been able to examine the ballots as they were counted, we have not been able to have a valid recount and now we are not being allowed to examine the ballots before they are destroyed. We are part of a growing number of citizens who believe that election fraud has occurred. Why else would there be such an effort to hide the ballots other than to cover up mischief? Will you be a party to this cover-up?

Over half the precincts in Allegan County could not be counted during the recount for the position of Circuit Court Judge. The citizens of Allegan County and the voters in your community are asking if this was a fair election. Please remember your oath of office to represent those citizens. Vote to allow us to come in and photograph the ballots so that we can conduct an audit and publish the verified results. We believe in our Constitution and its statement that everyone should have equal protection under our laws.

This matter must be put to a vote, and I will publish your decision. Your FOIA coordinator has not lawfully rejected my request based upon the exact exceptions listed in both the Federal and Michigan Freedom of Information Acts. Copies of those exemptions are attached for you to read.

I request that you provide me with notice of when our FOIA appeal will be considered by your Council. If at all possible, I would like to be in attendance so I can answer any questions you have.

I remain yours
Respectfully,

Pat Foster, Editor

Encl: Federal & State Exemptions under FOIA and Copy of Denial Letter

FREEDOM OF INFORMATION ACT

Act 442, 1976; Eff. Apr. 13, 1977

15.240 Options by requesting person; appeal; orders; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.

Sec. 10. (1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

- (a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.
- (b) Commence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

- (a) Reverse the disclosure denial.
- (b) Issue a written notice to the requesting person upholding the disclosure denial.
- (c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.
- (d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing an action in circuit court under subsection (1)(b).