



Clerks' Association Northern
& Southern District
Meetings | Fall 2021

Statewide VLM Project Update & Public Records Requests

Presented by:
Angie Nussmeyer
Co-Director, IED

2022 Election Administrator's December Conference Details

- SIGN-UP OPEN
 - Must sign-up online & invoice sent to county contact
- DATES
 - December 13, 2021
 - Registration opens not later than noon & ends at 7PM
 - First day of conference: 2P to 5P
 - December 14, 2021
 - Registration continues
 - Second day of conference: 9A to 5P
 - December 15, 2021
 - Third day of conference: 9A to 2P
- LOCATION
 - Westin Hotel in downtown Indianapolis
 - Room block at \$99 per night per room

Acronyms

- Card 1 = postcard sent to all active voters in SVRS
- Card 2 = mailing sent to voters where card 1 was returned as undeliverable on or before July 13
- SAMC = statewide address confirmation mailing notice (formerly NCOA mailer)
- UAA = Undeliverable As Addressed
- VLM = voter list maintenance
- VR = voter registration
- VRC = voter response card (detachable card on the second mailer of statewide VLM effort)

Pre-8/27 Mailings

- For card 1, card 2 & returned VRCs received by Aug. 27 deadline:
 - Originals are to be shipped not later than Sept. 17
 - Cards shipped to point of contact identified by county
 - Counties should have received this shipment; if not, contact Civix HelpDesk (888-468-8771 or INSVRSHelpDesk@gocivix.com)
- Cards in this shipment should already be scanned and available in SVRS
 - In few cases, a gap between uploading images to SVRS and receiving early shipments of scanned cards made it appear not all cards were scanned into SVRS
 - See next slide for exception for UAA card 1 after 7/13/21

Pre-8/27 Mailings

- UAA Card 1
 - If UAA Card 1 was received on or before July 13, 2021, card is scanned & available in voter's documents in SVRS module
 - If UAA Card 1 was received on or after July 14, 2021, card is NOT scanned & image is not loaded in SVRS
 - County may send a SAMC to these individuals, if voter's registration has not otherwise been updated since July 14, 2021
 - Do NOT move VR record to "inactive" on the basis of a returned UAA Card 1 alone; MUST give voter 30-days to respond to SAMC unless SAMC is returned as undeliverable as defined in IC 3-5-2-49.7

Pre-8/27 Mailings

- Counties can move voters to “inactive” status if card 2 is returned as undeliverable as defined by IC 3-5-2-49.7 or if card 2 not received by 8/27/21
 - Pre-8/27 data & records, if applicable, were loaded into SVRS VLM Inactive Hopper by second week of September
 - Be aware of “freeze” deadlines!
 - Counties with 2021 special election
 - Freeze to move to “inactive” begins Oct. 5; work may continue on Nov. 3, 2021
 - Counties without 2021 special election
 - Freeze to move to “inactive” begins Feb. 3, 2022; work may continue on May 4, 2022

IED Outreach & Post-8/27 VRCs

- IED Outreach
 - For records received on or before 8/27, IED is sending letters with state's VR form to voters who:
 - Marked oval 2 on VRC (canceling IN registration)
 - Ended up in the VLM Exceptions Hopper
 - Letters mailed on or around 9/7
- VRCs received after 8/27 will be shipped to counties on:
 - Oct. 15
 - Nov. 9
 - Nov. 17
 - Dec. 22
 - Final shipment will also include "returned as undeliverable" (or UAA) card 1's & card 2's
 - Cards will be sorted by type

Post-8/27 VRCs

- **If voter signed VRC**, counties may process VRCs as a registration document:
 - Oval 1 (confirming registration): move voter's status to "active"
 - Oval 2 (cancelling registration): move voter's status to "cancelled" at voter's written request
 - Oval 3 (move within county): update registration IF voter also answered "yes" to age & citizenship questions
 - If a voter answered "no" to age or citizenship question (or "no" on both), registration request is rejected
 - If a voter did not answer age or citizenship question (or did not answer both), then registration is marked as incomplete
 - Name Change: update voter's registration with requested name change
- Except for VRCs with oval 1 marked, VRCs must be scanned & added to voter's documents in SVRS module

IED will issue a memo with more details before Oct. 15th VRC shipment

Post-8/27 Card 1 & Card 2 Returns

- Card 1 Returns

- If card 1 was received on or after July 14, IED did NOT send a card 2 to voter
- Counties may:
 - Confirm the reason for the return comports with IC 3-5-2-49.7;
 - Confirm voter has not taken action on their registration record between July 14 & date you reviewed the doc for processing;
 - Send a SAMC, which is generated in SVRS; and
 - Scan/upload to voter's documents in SVRS module.

- Card 2 Returns

- Individuals should be in "inactive" status, unless voter has taken action on their registration record
- No action for county to take, unless county wants to scan/upload to voter's documents in SVRS module

Record Retention

- Returned Card 1 & Card 2 AND VRCs not signed by voter:
 - Maintained as election materials for period of 22-months
 - May destroy after retention period ends following standard procedures (see purple *2020 VR Guidebook*)

IED memo dated 8/27/21 was circulated to county VR officials, which provides more detail on record retention of statewide VLM materials

Record Retention

- VRC:
 - Oval 1 marked to confirm registration address & voter signed?
 - Attach VRC to voter's current paper registration (or file VRC if no paper record exists)
 - Oval 2 marked to request cancellation & voter signed?
 - Attach VRC to voter's current paper registration (or file VRC if no paper record exists)
 - Paper record stored until Nov. 2024, then eligible for destruction
 - Oval 3 marked to update registration within county & voter signed?
 - VRC replaces previous paper registration & must be maintained until voter cancels registration at that address
 - "Old" paper record of voter's previous registration address, if it exists, may be destroyed after Nov. 2024
 - NOTE: voter must also answer "yes" to age & citizenship questions to update registration
 - VRC contains a name change only & voter signed?
 - Attach VRC to voter's paper record or file it, if no paper VR doc exists for the voter
 - VRC & paper VR record may be destroyed only if voter cancels registration at the address noted on the forms
 - County would maintain "canceled" paper record for 24-month period starting at the next federal general election

VLM Inactive to Cancelled

- When a voter's registration is moved to "inactive" status, the voter...
 - continues to be a registered voter & may vote in elections, if otherwise qualified
 - must vote or otherwise update their registration in any election between date registration moved to "inactive" through TWO federal election cycles
 - Voter moved to inactive status in August 2021 can move registration back to "active" if voter:
 - votes in Special 2021 election OR May 2022 OR Nov 2022 OR May 2023 OR Nov 2023 OR May 2024 OR Nov 2024 & continues to reside at that registration address; OR
 - Updates their registration at any point in process, whether using VR forms or fail-safes
 - If voter does not fall into these categories, registration may be moved to "canceled" after Nov. 2024
 - For records moved to "inactive" as a result of 2019 VLM project, the move to "canceled" would come after Nov. 2022 (or 2nd federal election)



QUESTIONS





Public Records Requests

IVRA Conference | Aug. 25, 2021

Presented by:

Angie Nussmeyer, IED Co-Director

Matthew Kochevar, IED Co-General Counsel



Acronyms

- ABS = Absentee
- APRA = IN Access to Public Records Act
- CEB = County Election Board
- EO = Elected Official
- LEO = Law Enforcement Official
- PAC = Public Access Counselor

NOTE: This presentation provides a broad overview of the state's public access laws. Persons should review the Access to Public Records Act with their personal attorney or county attorney to be fully and properly advised. Individuals can also request formal or information opinions from the State Public Access Counselor at in.gov/PAC.



Access to Public Records Act (APRA)

- Any person may inspect & copy the public records of any public agency during regular business hours with exception
- Request for inspection or copying must:
 - Identify with reasonable particularity the record being requested; and
 - Be, at the discretion of the agency, in writing or in a form provided by the agency
- Agency must provide, within a reasonable amount of time, the public record or response denying the request with statutory support



Access to Public Records Act (APRA)

- Agency is not required to create a record or list, if record or list does not exist or otherwise required to be published
- Records in electronic format shall be provided at the option of the requestor, though agency is not required to change format of the record if it is not already in electronic format
- If record contains disclosable & non-disclosable information, then disclosable portions are to be provided



Fees for Public Records

- Fees may not be charged to:
 - Inspect a public record
 - Provide an electronic record by email (with some exceptions)
- Otherwise, fees may be charged pursuant to IC 5-4-3-8
 - State Board of Accounts or State PAC may be able to advise on your county's fee policy for public records & where to deposit those funds



Acknowledge the Request

- Method of delivery
 - By Hand
 - Provide initial response within 24-hours of receiving request
 - By email, fax, mail
 - Provide initial response within 7-days of receiving request
- Acknowledging request does NOT require documents to be provided with the initial response
 - If records are not easily accessible, let requestor know you'll respond within a "reasonable amount of time"

EXAMPLE 1

NOTE: These examples are provided for instructional purposes only; counties receiving public records requests must make their own determination on the proper response with the county attorney or others advising the official responding to the request to be fully and properly advised.

August 1, 2020

VIA EMAIL

Ms. Hendricks:

Pursuant to the Indiana Access to Public Records Act, I am requesting from the Cardinal County Clerk's Office copies of:

- (1) the individual voter registration records of Jane Doe and William Smith;
- (2) candidate filing documents from the May 2020 primary election for William (Bill) Smith; and
- (3) Passwords used by staff to access the statewide voter registration system.

Please let me know when those records will be available, and any costs associated to fulfill this request. However, I would ask that any records be provided to me in electronic format, when possible.

Sincerely,

Joe Roberts

August 4, 2020
VIA EMAIL

Dear Mr. Roberts:

Thank you for your email dated August 1, 2020, which was received by the Cardinal County Clerk's office on August 3, 2020, requesting the following information:

“(1) the individual voter registration records of Jane Doe and William Smith;
(2) candidate filing documents from the May 2020 primary election for William (Bill) Smith; and
(3) Passwords used by staff to access the statewide voter registration system.”

Our office is currently reviewing its files for records responsive to your request. We will respond within a reasonable amount of time

Sincerely,

SAMPLE INITIAL RESPONSE TO #1

← Acknowledges the request and the date it was received by the office to help calculate the response time.

← Recites the voter's request, verbatim

← Informs the requestor that you are working on the request and will fulfill in a reasonable amount of time



Voter Registration Records

- All individual voter registration records are public information, except:
 - Records concerning declinations to register
 - Records that include the identity of the VR agency where person registered to vote
 - Any registration of a person enrolled in the Attorney General's address confidentiality program
 - Voter enrolled in this program must bring the information to your office
 - SVRS has integrated a checkbox on the record to suppress it from reports
- Reminder: full 9-digit SSN should be redacted to the last four digits



County Voter Registration File

- County's voter registration file IS public record, unless...
 - CEB must adopt a uniform, non-discriminatory policy to give all of the voter file upon request or not at all
 - State Public Access Counselor opinions:
 - O'Brien v. St. Joseph Cnty. Bd. of Voter Reg., 19-FC-18
 - Welsh v. Marion Cnty. Bd. of Voter Reg., 14-FC-247
 - Policy should be in written form in the CEB minutes
- Person requesting county voter file must fill out VRG-24 form first
- Any associated fee must be uniform and nondiscriminatory



Statewide VR File

- Requests must be handled by IED
- IED can only make available a restricted version of the complete statewide VR file, free of charge, to the public
 - Requestor completes the IEC-3 form
 - IEC-3 form is mailed or hand-delivered
 - Copy of data is mailed to the requestor
- Only certain entities (“subscribers”) are entitled to the unrestricted statewide VR file after paying a \$5000 annual fee



SVRS Reports

- Reports in SVRS are public record, generally
 - Reports in the “security” category are not public record (IC 5-14-3-4(b)(10))
 - Reports related to provisional ballots are not public record, until after the recount or contest deadline has passed (IC 3-11.7-6-3)
 - If portions can be redacted, then the disclosable portions of the report would be public record
- Requestor must file VRG-24
 - See PAC Opinion in appendix of *2020 VR Guidebook* for more information



Election Materials

- Absentee Applications
 - Most are public records
 - ABS-Attorney General apps are CONFIDENTIAL
 - Required by state law to make a copy or scan of all ABS apps before attaching app to ABS envelope
 - NOTE: ABS-AG apps would NOT be scanned/copied
- Voted Ballots
 - NOT public record, unless requested under court order
 - Exception: after 22-months, voted ballots are to be destroyed OR can be given to a university



Election Materials

- Provisional Affidavits (PRE-4/PRO-2) & Records
 - Until recount/contest action deadline passes:
 - Ensure PRE-4/PRO-2 remain confidential
 - Redact names of provisional ballot voters from reports
 - Do NOT use names of provisional voters during provisional ballot hearing
 - Voted provisional ballots become “regular” ballots & are maintained accordingly
 - Non-voted provisional ballots **MUST** remain sealed in the provisional ballot envelope & stored with election materials



Election Materials

- Campaign Finance
 - All filings are public records
 - CEB notices to committees are public record
 - For example, delinquency notices for late filers required under statute
- County Election Board Minutes
 - Must be kept in perpetuity



Election Security Information

- Voting System Security Protocol
 - CEBs can choose to adopt a voting system security protocol as an alternative to the measures outlined in state law
 - If adopted, this resolution is confidential
- VSTOP Inventory of Voting Equipment
 - VSTOP database with voting systems & ePollbooks is confidential



Election Security Information

- Other Security-Related Items that are NOT Disclosable:
 - Administrative or technical information that would jeopardize a record keeping system, voting system, voter registration system, or security system
 - Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it
 - A record or a part of a record, the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to terrorist attack. A record described under this subdivision includes the following:
 - (J) Infrastructure records that disclose the configuration of critical systems such as voting system and voter registration system critical infrastructure, and communication, electrical, ventilation, water, and wastewater systems.



EO & LEO Address Confidentiality

- Certain elected officials & law enforcement may apply to have their home address restricted on a public property database website maintained by local government
 - Available to public over the Internet;
 - Does not require registration, subscription or creation of a user name/password to search the site; and
 - Connects the EO/LEO home address to their name so that a search of the website for the person's name discloses their address.
- If EO/LEO becomes a candidate for public office, then their address cannot be published on the public notice of election should the EO/LEO have their address suppressed on the property database described above



Exceptions to the APRA

- Work with county attorney to determine if:
 - Request is reasonably particular
 - State PAC Opinion on communications:
 - *Lewbel v. City of Carmel*, 18-FC-63
- Materials gathered by agency are non-disclosable under APRA, such as:
 - Deliberative material
 - Administrative or technical information that would jeopardize a voting system, voter registration system or security system
 - A record or part of a record where the public disclosure of which would have a reasonable likelihood of threatening public safety by exposing a vulnerability to a terrorist attack, including infrastructure records that disclose the configuration of critical systems such as voting system and voter registration system critical infrastructure



Party Chair Exemptions

- County VR officials shall provide the following to a county party chair, upon request:
 - Report containing info regarding all registration apps, excluding confidential info, executed from the:
 - start of the registration period through 65-days before the election & sent not later than 60-days before election
 - From 65-days before the election & ending 29-days before the election & forwarded daily and within 48-hours of data being created for the report
 - Poll lists
 - In non-ePB counties, copies of the paper poll list prepared for the inspector of each precinct on election day
 - In vote center counties, vote center plan must specify how county parties are to receive reports from ePBs



Party Chair Exemptions

- County VR officials shall provide the following to a county party chair, upon request:
 - List of voters mailed VLM notices
 - Following the mailing of VLM notices & cancellation of voter's registration, a master list of precincts showing all persons whose registrations have been cancelled
 - List of deceased persons whose registrations have been cancelled
 - List of disfranchised voters whose registrations have been cancelled
 - List of all voters whose registrations have been cancelled

EXAMPLE 1

NOTE: These examples are provided for instructional purposes only; counties receiving public records requests must make their own determination on the proper response with the county attorney or others advising the official responding to the request to be fully and properly advised.

August 1, 2020

VIA EMAIL

Ms. Hendricks:

Pursuant to the Indiana Access to Public Records Act, I am requesting from the Cardinal County Clerk's Office copies of:

- (1) the individual voter registration records of Jane Doe and William Smith;
- (2) candidate filing documents from the May 2020 primary election for William (Bill) Smith; and
- (3) Passwords used by staff to access the statewide voter registration system.

Please let me know when those records will be available, and any costs associated to fulfill this request. However, I would ask that any records be provided to me in electronic format, when possible.

Sincerely,

Joe Roberts

September 1, 2020

VIA EMAIL

Dear Mr. Roberts:

The Cardinal County Clerk's Office is following up on its initial response to your records request dated August 1, 2020.

Attached please find copies of the individual voter registration records of Jane Doe and William Smith and the candidate filing documents from the May 2020 primary election for William (Bill) Smith. Our office had to redact the 9-digit Social Security Number on Ms. Doe's record pursuant to IC 3-7-30-6.

Our office is denying your request for "passwords used by staff to access the statewide voter registration system." This is not disclosable pursuant to IC 5-14-3-4(b)(10) & (11).


There is no charge for the electronic copies of the voter registration and candidate filing documents. Should you require paper copies the fee is \$0.10 per page.

Sincerely,


SAMPLE

FINAL RESPONSE TO #1


Acknowledges the initial request made by the requestor




Notes which records are being disclosed and if a portion is redacted, the state law supporting the decision



Notes which records are not being disclosed, and the state law supporting the decision



If there is a fee to collect, this is a good place to note it



September 28, 2020
VIA HAND-DELIVERY

Ms. Hendricks:

Pursuant to the Indiana Access to Public Records Act, I am requesting from the Cardinal County Clerk's Office copies of:

- (1) All communications regarding voter list maintenance activities; and
- (2) A copy of the countywide Cardinal County Voter Registration file maintained by your office.

Please let me know when those records will be available, and any costs associated to fulfill this request. However, I would ask that any records be provided to me in electronic format, when possible.

My email is JRJR111@madeup.com.

Sincerely,


Joe Roberts

EXAMPLE 2


NOTE: These examples are provided for instructional purposes only; counties receiving public records requests must make their own determination on the proper response with the county attorney or others advising the official responding to the request to be fully and properly advised.

SAMPLE INITIAL RESPONSE TO #2


Acknowledges the request and the date it was received by the office to help calculate the response time.




Recites the voter's request, verbatim



While not necessary to provide a denial in the initial response, the CEB has a clearly defined policy & sets expectations early



Informs the requestor that you are working on the rest of the request and will fulfill in a reasonable amount of time



September 29, 2020
VIA EMAIL

Dear Mr. Roberts:

Our office is in receipt of your hand-delivered letter dated September 28, 2020, which was received by the Cardinal County Clerk's office on September 28, 2020, requesting the following information:

- “(1) All communications regarding voter list maintenance activities; and
- (2) A copy of the countywide Cardinal County Voter Registration file maintained by your office.”

The Cardinal County Election Board has adopted a uniform, non-discriminatory policy to not disclose or otherwise make available its countywide voter file pursuant to IC 3-7-27-6(c). Therefore, we are denying your request under #2. A copy of the policy is attached.

Our office is currently reviewing its files for records responsive to request #1. We will respond within a reasonable amount of time

Sincerely,

December 15, 2020
VIA EMAIL

Dear Mr. Roberts:

Our office is following up on your public records request dated September 28, 2021, regarding “(1) All communications regarding voter list maintenance activities.”

Before the Cardinal County Clerk’s office reviews its records for materials responsive to this request, we would ask that you provide more particular information about the records you are requesting. According to the Indiana Public Access Counselor, requests must be reasonably particular, a requirement of APRA (IC 5-14-3-3).

When submitting a public records request for communications, the Indiana PAC has opined that request must identify the following four items:

- (1) Named Sender;
- (2) Named Recipient;
- (3) Time frame of six months or less; and
- (4) Particularized subject matter or search terms.


Lewbel v. City of Carmel, 18-FC-63, Opinion of the Public Access Counselor.

For the remaining portion of your request, we would ask that you provide more specific information.


Sincerely,

SAMPLE FINAL RESPONSE TO #2


Acknowledges the initial request made by the requestor & outstanding request to resolve



These paragraphs do not deny the request, but make it clear the request is not reasonably particular and how the person can revise or amend their request to comport with your understanding of state law & PAC opinion



Informs the requestor that you require a more specific request



EXAMPLE 3

NOTE: These examples are provided for instructional purposes only; counties receiving public records requests must make their own determination on the proper response with the county attorney or others advising the official responding to the request to be fully and properly advised.

February 1, 2021
VIA MAIL

Joe Roberts, Jr.
1234 Made Up St
Tulip Town, IN 11111

Ms. Hendricks:

Pursuant to the Indiana Access to Public Records Act, I am requesting from the Cardinal County Clerk's Office copies of:

- (1) The make and model of the voting systems used by the county;
- (2) An inventory of the individual voting system units maintained by the Cardinal County Election Board; and
- (3) All logs and passwords for the servers dedicated to your county's election systems.

Please let me know when those records will be available, and any costs associated to fulfill this request. However, I would ask that any records be provided to me in electronic format, when possible.

Sincerely,

Joe Roberts

February 18, 2021
VIA MAIL

Dear Mr. Roberts:

Our office is in receipt of your letter dated February 1, 2021, which was received by the Cardinal County Clerk's office on February 11, 2021, requesting the following information:


- “(1) The make and model of the voting systems used by the county;
- (2) An inventory of the individual voting system units maintained by the Cardinal County Election Board; and
- (3) All logs and passwords for the servers dedicated to your county's election systems.”

Our office is currently reviewing its files for records responsive to your request. We will respond within a reasonable amount of time


Sincerely,

SAMPLE INITIAL RESPONSE TO #3


Acknowledges the request and the date it was received by the office to help calculate the response time. While letter is dated February 1, the office received it on February 11, so February 18 is within 7-day response period



Recites the voter's request, verbatim



Informs the requestor that you are working on the rest of the request and will fulfill in a reasonable amount of time



March 12, 2021
VIA MAIL

Dear Mr. Roberts:

Our office is following up on your public records request dated February 1, 2021, requesting the following information:

(1) The make and model of the voting systems used by the county. *Cardinal County uses the SuperVote System, v.99999. More information about the voting system can be found on the vendor's website <www.SuperVote.madeup.com>*


(2) An inventory of the individual voting system units maintained by the Cardinal County Election Board. *We are denying this request pursuant to IC 3-11-16-6.*

(3) All logs and passwords for the servers dedicated to your county's election systems. *We are denying this request in part under IC 5-14-3-4(b)(10) as the logs contain technical information that would jeopardize our county's voting system and security system and denying the request for passwords under IC 5-14-3-4(b)(11).*


Sincerely,

SAMPLE FINAL RESPONSE TO #3


Acknowledges the initial request made by the requestor & responds to each point



In this case, the voting system make and model was not construed to be confidential, and pointing to a publicly available resource may help resolve the request



Informs the requestor on the grounds you are denying the request, which is required by APRA



Resources

- Indiana Public Access Counselor Website:
www.in.gov/PAC
- 2020 Indiana Voter Registration Guidebook:
pages 53-58
- 2020 Election Administrator's Manual:
pages 201-203

Questions?