

Secretary of State Announces Findings

FOR IMMEDIATE RELEASE
March 15, 2011

Contact: Bobbi Shearer
Elections Bureau
Secretary of State
(505) 827-3600

SANTA FE— Yesterday, the New Mexico Supreme Court held a hearing concerning a lawsuit filed in 2006 by the Republican Party against the Motor Vehicle Division of the Taxation and Revenue Department. Under the former Governor, the Taxation and Revenue Department refused to allow a public review of the drivers licenses issued to non-citizens. The purpose of the lawsuit was to determine whether non-citizens had registered and voted in New Mexico elections.

The Secretary of State's office has so far been able to match 117 voter registrations to names and dates of birth in the MVD Foreign National database – all 117 of those have Social Security numbers on their voter registrations that do not match up to their names. The records make it clear that at least 37 of those identified have voted in New Mexico elections. These are still under investigation to verify the accuracy of the information. The Secretary of State also has thousands of registrations that she intends to check against the Social Security Administration's database for further investigation.

This morning, there were critical developments in the House Voters and Elections Committee. A former legislative leader said that the founders of the Constitution would prefer we make 37 mistakes than keep one legal person from voting.

"I was saddened to hear the legislator's statement," said Duran "This culture of corruption that has given all New Mexicans a black eye is unacceptable and I will not tolerate it as the Secretary of State. I know New Mexicans will agree that even one illegal vote is one too many. For every illegal vote by a non-citizen, an honest vote is disenfranchised. I heard this from the majority of New Mexicans when I travelled around this great State during the last election."

The Secretary noted that New Mexico has always had close elections. Officials have won or lost by a handful of votes, or and have even been placed into office by a game of chance after a tie vote. "I wonder what they and their constituents feel an acceptable number of illegal votes would be?" asked Duran.

"I will continue to work to make sure every legitimate and legal vote is counted. I join Governor Martinez in saying the culture of corruption in Santa Fe is over. I know there are more Legislators who agree with me and Governor Martinez than there are legislators who believe there is an acceptable number of illegal votes." The Secretary pledges to keep the citizens of New Mexico informed as this matter moves forward.

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Exhibit A



March 16, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

Custodian of Records
Office of the Secretary of State
New Mexico State Capitol
325 Don Gaspar, Suite 300
Santa Fe, NM 87503
Facsimile: 505.827.8403

Dear Custodian of Records,

Our office faxed a version of this letter earlier this afternoon. Please disregard that letter; I have subsequently revised the sixth request.

This letter constitutes a request pursuant to the New Mexico Statute Authority Public Records Act ("Public Records Act") NMSA 1978 § 14-2-1 et. seq. The foregoing requests are limited to documents promulgated and/or received by the current administrations. I respectfully request copies of the following information in the custody or control of the Office of the Secretary of State or any agency or subdivision thereof:

1. All records pertaining to possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to, any memoranda, correspondence, including email, and/or notes that discuss voter fraud and/or irregularities and the Office of the Secretary of State's search for voter fraud in voter rolls and registrations.
2. All records that support the Office of the Secretary of State's allegations of possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to the voter registrations in question.
3. Any documents that reflect communications between the Office of the Secretary of State and any one at the Governor's Office related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
4. Any documents that reflect communications between the Office of the Secretary of State and the New Mexico Motor Vehicle Division related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
5. Any documents that reflect communication between the Office of the Secretary of State and any federal agency related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.
6. Any documents that reflect communication between any parties outside of the Office of the Secretary of State—including, but not limited to faculty at the University of New Mexico and representatives of any political party—and the Office of the Secretary of State related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.

Exhibit B

Please advise me if this request does not describe all of the documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If your agency does not maintain these public records, please forward this request to the designated custodian of the requested records, and notify me of that action, including information required by NMSA 1978, §14-2-8 (E).

If the request encompasses exempt information that the Office of the Secretary of State is unable to release, then please either separate or retain the exempt documents or redact that information from documents that are otherwise non-exempt. If documents are exempt because the documents reveal "law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime" NMSA 1978 §14-2-1 (A)(4), please specify why the information falls under this exception. See Estate of Romero ex rel. Romero v. City of Santa Fe, 2006-NMSC-028, 139 N. M. 671, 137 P.3d 611.

I request that these documents be provided no later than 15 business days from the day this request is sent. Electronic documents are preferred and may be sent to lives@aclu-nm.org. If your agency only has the capacity to produce hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at 505.243.0046 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at lives@aclu-nm.org or by phone at 505.266.5915 Ext. 1007. Thank you in advance for your assistance in this matter.

Sincerely,

Laura Schauer Ives
Managing Staff Attorney
ACLU of New Mexico



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

March 31, 2011

Laura Schauer Ives
Managing Staff attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103

Re: Records request

Ms. Schauer Ives:

On March 16, 2011 we received your request to inspect certain records. Please be advised that all records within your request "related to alleged and/or proven voter fraud involving foreign nationals" consist of information we have obtained from the New Mexico Motor Vehicle Division ("MVD"). The information indisputably qualifies as personal information protected from disclosure under both the Driver Privacy Protection Act ("DPPA") and the New Mexico Drive Privacy Protection Act ("NMDPPA"). Thus, we cannot permit inspection of these records because they are excepted from disclosure "as otherwise provided by law" pursuant to NMSA 1978, § 14-2-1(A)(12). Based upon the advisement of our legal counsel, the records are prohibited from release pursuant to state and federal driver privacy statutes, the DPPA and the NMDPPA.

The DPPA provides: "It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721(b) of this title." *See* 18 U.S.C. § 2722. The NMDPPA similarly provides that it is unlawful to disclose to any person other than another employee of the department or bureau any personal information about an individual obtained in connection with a driver's license or permit. *See* NMSA 1978, § 66-2-7.1(A). As such, the information within the records you request is personal information governed by the DPPA and the NMDPPA and shall not be obtained by nor disclosed to a third party.

With regard to your request to inspect any documents that reflect communication between the Office of the Secretary of State and the New Mexico Motor Vehicle Division, you are being provided twelve (12) emails which have been redacted. The redacted information is either exempted as otherwise provided by law as explained

above, or subject to the executive privilege recognized in State ex rel. Attorney General v. First Judicial District Court, 96 N.M. 254, 629 P.2d 330 (1981). Revelation of the information within these emails will compromise the Secretary of State's decision-making process, and thus outweighs the public's interest in disclosure.

With regard to your request to inspect any documents that reflect communication between the Office of the Secretary of State and any parties outside of the office, we are providing you a letter addressed to Assistant Attorney General, Tania Maestas.

The Secretary of State's Office does not possess any documents that reflect communications between the Office of the Secretary of State and the Governor's Office, and/or any federal agency, faculty at the University of New Mexico, nor representatives of any political party related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico.

Sincerely,

A handwritten signature in cursive script that reads "Christiana Sanchez".

Christiana Sanchez
Records Custodian

Ortiz, Kenneth, SOS

From: Baca, Lee A., TRD
Sent: Thursday, March 10, 2011 8:59 AM
To: Ortiz, Kenneth, SOS
Subject: RE: Voter file

Hi Ken.

How's everything over at SOS?

[REDACTED]

Take care.

Lee

-----Original Message-----

From: Ortiz, Kenneth, SOS
Sent: Thursday, March 10, 2011 8:42 AM
To: Baca, Lee A., TRD
Subject: Voter file

Hi Lee,

[REDACTED]

I am in committee this morning and cannot chat but can correspond via email.

[REDACTED]

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Thursday, March 10, 2011 6:50 PM
To: Ortiz, Kenneth, SOS
Cc: TRD-DBADMIN
Subject: Emalling: NO SSN.xls
Attachments: NO SSN.xls

Hi ken,



Thanks

DBA-TEAM

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Thursday, March 10, 2011 6:50 PM
To: Ortiz, Kenneth, SOS
Cc: TRD-DBADMIN
Subject: Emalling: NO SSN.xls
Attachments: NO SSN.xls

Hi ken,



Thanks

DBA-TEAM

Ortiz, Kenneth, SOS

From: Shearer, Bobbi, SOS
Sent: Monday, March 14, 2011 10:15 AM
To: Ortiz, Kenneth, SOS
Subject: RE: SOS data matching against Foreign National Data

[REDACTED]

From: Ortiz, Kenneth, SOS
Sent: Monday, March 14, 2011 10:13 AM
To: Shearer, Bobbi, SOS
Subject: FW: SOS data matching against Foreign National Data

Bobbi,

[REDACTED]

Thanks,
Ken

From: Dodda, Venkata, TRD
Sent: Monday, March 14, 2011 10:09 AM
To: Ortiz, Kenneth, SOS
Cc: Baca, Lee A., TRD; Chad, Rao, TRD
Subject: RE: SOS data matching against Foreign National Data

Hi Ken,

[REDACTED]

Please let us know if any questions.

Thanks
Venkat.

From: Ortiz, Kenneth, SOS
Sent: Monday, March 14, 2011 9:45 AM
To: Dodda, Venkata, TRD
Cc: Baca, Lee A., TRD
Subject: SOS data matching against Foreign National Data

Hi Venkata,

[REDACTED]

Ortiz, Kenneth, SOS

From: Baca, Lee A., TRD
Sent: Thursday, March 17, 2011 6:46 PM
To: Ortiz, Kenneth, SOS
Cc: Saunders, Greg, TRD
Subject: First File Complete

Ken



Thanks,
lee

Ortiz, Kenneth, SOS

From: Rao, Tirumal, TRD
Sent: Friday, March 25, 2011 11:39 AM
To: Baca, Lee A., TRD; Saunders, Greg, TRD; Ortiz, Kenneth, SOS
Cc: Dodda, Venkata, TRD; Bandapelli, Rama, TRD
Subject: SSA - Checks Remaining

[REDACTED]

Please let me know if you need any further information

Thank you
Rao, Tirumal
MVD - Systems
505 . 690 9464 (W)

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Thursday, March 10, 2011 7:25 PM
To: Ortiz, Kenneth, SOS
Subject: Emailing: DuplicateSSNFromSOS.xls
Attachments: DuplicateSSNFromSOS.xls

Hi,




Thanks,
DBA-Team

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Friday, March 11, 2011 7:39 PM
To: Ortiz, Kenneth, SOS
Cc: Geoffrion, Jacque Y., TRD; Baca, Lee A., TRD
Subject: SOS Info.xls
Attachments: SOS Info.xls

Ken,


Please let me know if you have any questions.

Thanks
Rao chad

Ortiz, Kenneth, SOS

From: Baca, Lee A., TRD
Sent: Friday, March 18, 2011 8:50 AM
To: Ortiz, Kenneth, SOS
Cc: Saunders, Greg, TRD; Padilla, Demesla, TRD
Subject: First File
Attachments: File 1 (1036).xls

Ken,



Definitions for Results:

1 - SSN, Name, and DOB verified - no death record exists.

2 - Invalid SSN

3 - Name did not verify, DOB is valid

4 - DOB did not verify, Name is valid

5 - Name and DOB did not verify

6 - SSN, Name, and DOB verified - death record exists

7 - SSN did not verify, other reason

9 - System Not Available

SS - Original SS Message will return



Thanks,
lee

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Saturday, March 12, 2011 5:42 PM
To: Ortiz, Kenneth, SOS
Cc: Geoffrion, Jacque Y., TRD; Baca, Lee A., TRD; Dodda, Venkata, TRD
Subject: SOS Info.xls
Attachments: SOS Info.xls

Ken,



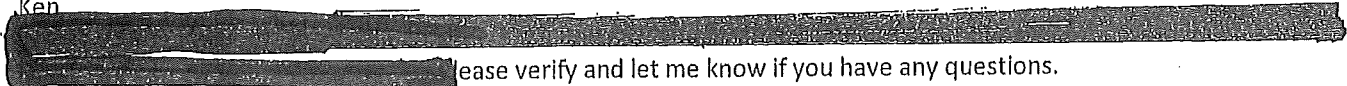
Please contact us if you have any questions.

Thanks
Rao

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Friday, March 11, 2011 9:59 AM
To: Ortiz, Kenneth, SOS
Subject: DuplicateDataInfo.xls
Attachments: DuplicateDataInfo.xls

Ken

 please verify and let me know if you have any questions.

Thanks
Rao Chad
505 476 1721
~~505 603 2179~~

Ortiz, Kenneth, SOS

From: Dodda, Venkata, TRD
Sent: Monday, March 14, 2011 10:09 AM
To: Ortiz, Kenneth, SOS
Cc: Baca, Lee A., TRD; Chad, Rao, TRD
Subject: RE: SOS data matching against Foreign National Data

Hi Ken,

[REDACTED]

Please let us know if any questions.

Thanks
Venkat.

From: Ortiz, Kenneth, SOS
Sent: Monday, March 14, 2011 9:45 AM
To: Dodda, Venkata, TRD
Cc: Baca, Lee A., TRD
Subject: SOS data matching against Foreign National Data

Hi Venkata,

[REDACTED]

Thank you and please feel free to call if you have any questions [REDACTED]

Thanks,
Ken

Ortiz, Kenneth, SOS

From: Chad, Rao, TRD
Sent: Wednesday, March 16, 2011 3:47 PM
To: Ortiz, Kenneth, SOS
Cc: Baca, Lee A., TRD; Geoffrion, Jacques Y., TRD
Subject: FNAMEANDDOB_03162011.xls
Attachments: FNAMEANDDOB_03162011.xls

Ken: Here is the data you asked for. Lee will follow up with a call in few minutes.

Thanks
Rao

Ortiz, Kenneth, SOS

From: Baca, Lee A., TRD
Sent: Friday, March 18, 2011 11:38 AM
To: Ortiz, Kenneth, SOS
Subject: SSA Verification

Ken,

Just checking to make sure that the initial file that we sent you was good. Please let me know.

[REDACTED]

Please let me know that the data is acceptable and this is what you were looking for.

[REDACTED]

Thanks,
lee



OFFICE OF THE SECRETARY OF STATE
STATE OF NEW MEXICO
SANTA FE, NEW MEXICO

March 21, 2011

Delivered Via E-mail

Ms. Tanla Maestas
Assistant Attorney General
408 Galisteo Street
Santa Fe, New Mexico 87501

Re: Inspection of Public Records Act requests -- voter registrations and voter information

Dear Tanla,

Thank you for taking the time to meet with my staff regarding the above referenced requests.

I am dedicated to transparency and open government. We are aware of our obligations to provide the greatest possible information to the public.

As discussed with you, my office has received requests for copies of certain documents related to our efforts to review voter rolls. As you may know, under previous administrations, social security numbers on voter registrations were not verified for a number of years. In addition, critical obligations under the National Voter Registration Act of 1993 were ignored or violated.

Our preliminary review, involving checking voter information against Motor Vehicle Division (MVD) records, as provided in the Help America Vote Act, appears to have identified a number of registered voters who appear to be non-citizens. Our preliminary review has revealed that a number of those individuals who appear to be non-citizens have voted in various elections. The registration cards reviewed thus far include a number of instances in which the person registering to vote checked "no" to the question "Are you a citizen?" Additionally, it appears that some of these individuals are identified on the MVD list of foreign nationals.

I understand you expressed your concerns about privacy considerations, as well as federal law and case law related to potential problems associated with disclosing certain personally identifiable information contained in the voter file, registrations and MVD records. I appreciate you advising me, at your earliest opportunity, what information we can and cannot provide in response to the requests for public documents.

Best regards,

A handwritten signature in cursive script, reading "Dianna J. Duran".

Dianna J. Duran
Secretary of State

cc: New Mexico county clerks



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

March 25, 2011

Bill Hubbard
New Mexico State Police
Special Investigations Division

Re: Investigation of voter registrations

Dear Mr. Hubbard,

At the request of Secretary Eden of the Department of Public Safety, we are enclosing the materials for criminal investigation by your agency.

This information is derived from the voter file and MVD files pursuant to the provision in the Help America Vote Act which provides for information matching to verify accuracy of information provided on voter registrations. This information is strictly confidential under Section 1-5-21 and 1-5-22 NMSA 1978, as well as the Help America Vote Act.

We are providing them to you for purposes of investigation, and you have agreed to act as a designated agent of the Secretary of State, as provided in § 1-5-21 NMSA 1978, for the investigation, and to maintain the strict confidence of these records.

Best regards,



Dianna J. Duran
Secretary of State

Exhibit E



April 11, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

Custodian of Records
Office of the Secretary of State
New Mexico State Capitol
325 Don Gaspar, Suite 300
Santa Fe, NM 87503
Facsimile: 505.827.8403

Dear Ms. Sanchez,

Our organization received your March 31, 2011 letter in which you responded to our March 16, 2011 request to inspect certain public records. We appreciate your response. I am concerned, however, that certain records to which we are entitled pursuant to the Public Records Act, NMSA 1978 § 14-2-1 et. seq. were not produced.

Our first two requests were for:

1. *All* records pertaining to possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to, any memoranda, correspondence, including email, and/or notes that discuss voter fraud and/or irregularities and the Office of the Secretary of State's search for voter fraud in voter rolls and registrations.
2. *All* records that support the Office of the Secretary of State's allegations of possible voter fraud and/or any irregularities noted in the master list of registered voters in New Mexico involving foreign nationals, including, but not limited to the voter registrations in question.

You responded that "all records within [our] request 'related to alleged and/or proven voter fraud involving foreign nationals' consist[s] of information...obtained from the New Mexico Motor Vehicle Division." However, the letter you produced from Dianna Duran to Tania Maestas at the Attorney General's Office says that the Secretary of State's office conducted "a preliminary review, involving checking voter information against Motor Vehicle Division (MVD) records...". While the MVD records may be protected from disclosure pursuant to NMSA 1978 § 14-2-1(A)(12) due to the Driver Privacy Protection Act (DPPA) and the New Mexico Driver Privacy Protection Act (NMDPPA) according to Republican Party of New Mexico v. New Mexico Taxation and Revenue Dept., 2010-NMCA-080, 148 N.M. 877, cert. granted, No. 32,524 (2010), **the voter information against which the MVD records were checked is not protected and must be disclosed.** The contents of voter registration information, excluding the social security numbers and dates of birth, are public records which we are entitled to inspect. See NMSA 1978 § 1-4-12.

Additionally, the letter from Dianna Duran to Tania Maestas also states that the Secretary of State's preliminary review appears to have identified non-citizens who have voted in elections. The voting

records identifying these alleged non-citizens and any information indicating how this information was discovered should be made available to us. Furthermore, the letter indicates that "the registration cards reviewed thus far include a number of instances in which the person registering to vote checked 'no' to the question 'Are you a citizen?'" These registration cards must also be disclosed. Moreover, the heavily redacted emails which you produced refer to attachments that appear to be spreadsheets regarding the issue of alleged non-citizens who have voted. These attachments should be produced as well. While the information from MDV records contained in these attachments can be redacted under the current law, any voter information included (other than social security numbers and dates of birth) and any other non-exempt information should be disclosed as should the attachments themselves. According to the New Mexico Attorney General's Compliance Guide to IPRA Requests, "[t]he fact that a document may contain some information that may not be disclosed does not protect all the information from public disclosure." Office of the Attorney General, Inspection of Public Records Compliance Guide, 37 (6th Ed.) 2009.

Additionally, you asserted the executive privilege as a reason for not disclosing information within the heavily redacted emails which you produced. "The executive privilege is not absolute and may not be used unless revelation of a document will truly compromise the agency's decision making process." *Id.* at 22-23 It also only applies to "recommendations and advice among members of the executive agency." *Id.* Thus, any information contained in the emails that does not represent advice or recommendations must be disclosed. This includes any data or factual information that may be contained in the email communications and the attachments to these emails.

Finally, in your March 31, 2011 letter, you indicated that in response to our request for any documents indicating communication between the Office of the Secretary of State and any other parties outside the office, you were providing the letter from Dianna Duran to Tania Maestas. Does this letter reflect the only document responsive to our request for "any documents that reflect communication between any parties outside of the Office of the Secretary of State...related to alleged and/or proven voter fraud involving foreign nationals and/or any irregularities noted in the master list of registered voters in New Mexico?"

Although I believe our previous requests listed above cover these documents, I hereby formally request pursuant to the New Mexico Statute Authority Public Records Act ("Public Records Act") NMSA 1978 § 14-2-1 et. seq. that we be allowed to inspect the following documents in addition to the documents requested in our March 16, 2011 requests:

1. For those individuals that have been identified as suspected non-citizens who have voted or have registered to vote, all documents regarding these individuals including, but not limited to, voter registration documents for these individuals, signature rosters and/or checklists of voters indicating that these individuals may have voted, voter lists identifying these individuals, and any other documents that the Secretary of State's Office has created, reviewed, received, or possesses that may indicate non-citizen voting.
2. All lists of individuals identified by any state agency as being suspected non-citizens who may have voted in any New Mexico election and all documents including, but not limited to, correspondence, memoranda, and spreadsheets that discuss or refer to these lists.
3. All voter registration documents indicating that a person registering to vote may be a non-citizen including, but no limited to, those documents where a person registering to vote checked "no" in response to the question "Are you a citizen?"

4. Where voter information has been used to check against Motor Vehicles Division records and possible non-citizen voting has been discovered, all voter documents that were used in this process as well as any documents created as a result of this process and any documents that refer to this process.
5. All attachments to the emails produced in response to our March 16, 2011 requests.

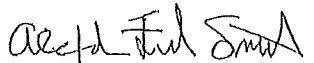
Please advise me if this request does not describe all of the documents with sufficient specificity for you to make a reasonable response, and I will attempt to reformulate the request in a manner that meets your requirements. If your agency does not maintain these public records, please forward this request to the designated custodian of the requested records, and notify me of that action, including information required by NMSA 1978, §14-2-8 (E).

If the request encompasses exempt information that the Office of the Secretary of State is unable to release, then please either separate or retain the exempt documents or redact that information from documents that are otherwise non-exempt. If documents are exempt, please identify the information and specify why the information falls under this exception.

I request that these documents be provided no later than 15 business days from the day this request is sent. Electronic documents are preferred and may be sent to asmith@aclu-nm.org. If your agency only has the capacity to produce hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at (505) 266-5915 x 1008 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at asmith@aclu-nm.org or by phone at 505.266.5915 Ext. 1008. Thank you in advance for your assistance in this matter.

Very truly yours,


Alexandra Freedman Smith
Staff Attorney
ACLU of New Mexico



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

April 26, 2011

Alexandra Freedman Smith
Staff Attorney
ACLU of New Mexico
P.O. Box 566
Albuquerque, NM 87103-0566

Sent via email at asmith@aclu-nm.org

Re: Records request

Dear Ms. Smith:

On March 16, 2011 we received your request to inspect certain records. We responded to this request on March 31, 2011, indicating that the requested records contained personal information protected from disclosure under both the Driver Privacy Protection Act ("DPPA") and the New Mexico Driver Privacy Protection Act ("NMDPPA") and pursuant to executive privilege, "as otherwise provided by law" in accordance with NMSA 1978, § 14-2-1(A)(12). Your most recent request dated April 11, 2011 reiterates your previous request and supplements your request for specific additional documents.

As referenced in our prior response, it would be impossible to reveal any voting records identifying alleged non-citizens who voted in elections without disclosing the confidential personal information as it correlates to MVD records. The DPPA provides, in pertinent part, that we "shall not knowingly disclose or otherwise make available to any person or entity... personal information... about any individual obtained by the department in connection with a motor vehicle record[.]" See 18 U.S.C. § 2721(a)(1). Any identified individual's name and residency status were obtained in connection with protected Motor Vehicle Division ("MVD") records. As such, revelation of the individual's name and corresponding voter record would violate the DPPA.

Moreover, while you are correct in stating that the Secretary of State's Office conducted a preliminary review of voter information against MVD records, we are unable to provide any records pursuant to this request at this time. The Secretary of State is currently in a review process to determine whether individuals improperly registered and/or illegally voted in New Mexico elections. All of the data derived from MVD, including the emails

and attached spreadsheets referenced in your request, are part of this review process and subject to the executive privilege recognized by law in the State of New Mexico.

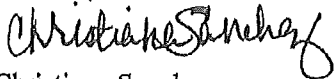
We have commenced an investigation based upon these documents and are in the process of confirming our findings. As such, any voter registration forms reviewed during this process have been forwarded to the Department of Public Safety ("DPS"), pursuant to our letter to DPS dated March 25, 2011. I have attached a copy of the letter for your convenience. DPS is now in possession of these records, so I will forward a copy of your request to them as the proper custodian. You may also contact them at:

Department of Public Safety
Attn: Records Custodian
P.O. Box 1628
Santa Fe NM 87504-1628

At this time, we are unable to provide any additional documents pursuant to your request. Voter registration documents, including signature rosters, checklists or voter lists are also being reviewed as part of our investigation. We firmly believe that revelation of this information will compromise the Secretary of State's decision making process, and we are currently strategizing on how to proceed with the information we have received and reviewed. Until such time that this investigation has been completed, we cannot reveal any of these records. However, please rest assured that upon completion of our investigation, we will disclose all relevant documents to the full extent allowed by law.

Secretary of State Duran is statutorily charged with ensuring the conduct of efficient, fair and secure elections. As such, she is making every effort to ensure that all data is properly reviewed and that all resulting information is accurately affirmed. As noted above, we have forwarded initial information to the Department of Public Safety and Secretary Duran fully intends to pursue this matter if affirmed. We ask for your patience during this complex and crucial investigation.

Sincerely,



Christiana Sanchez
Records Custodian

Attachment: as stated



STATE OF NEW MEXICO
DIANNA J. DURAN
SECRETARY OF STATE

April 26, 2011

New Mexico Department of Public Safety
Attn: Records Custodian
PO Box 1628
Santa Fe NM 87504-1628

Re: Records request forward

Dear Records Custodian:

Attached is a records request our office received from the American Civil Liberties Union of New Mexico, along with our response to the request. Pursuant to the New Mexico Inspection of Public Records Act, we are forwarding the request to you for your agency's handling.

If you have any questions, please contact me at 505.476.0327 or via email at Christiana.sanchez@state.nm.us.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Christiana Sanchez".

Christiana Sanchez
Records Custodian

Ed Macy

From: Fuqua, Scott <sfuqua@nmag.gov>
Sent: Friday, September 09, 2011 3:00 PM
To: Alexandra Smith; Ed Macy
Cc: Dow, Thomas, SOS
Subject: SOS Process
Attachments: Registration Check Process.docx

Counsel-

I've attached a Word document describing the process we discussed last week. I apologize for the delay in getting this to you. I thought it might make sense to extend the answer deadline by another two weeks while you mull over the legal questions we identified in our call concerning the public or private nature of some of the reports that resulted from this process. Please let me know your thoughts.

Scott

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SCOTT FUQUA
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501
(505)827-6920

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Exhibit H

SECRETARY OF STATE VOTER REGISTRATION CROSS-CHECK PROCESS

Goal - Analyzing the entire New Mexico voter database for accurate and complete voter registration information.

Step 1 – Reviewed the entire voter registration list for any duplicate Social Security Numbers or voter registrations that did not have a Social Security Number or dates of birth. This generated a list of voter registrations with duplicate Social Security Numbers and voter registrations that did not have Social Security Number or dates of birth. These lists are public.

Step 2 – The list from Step 1 was matched against MVD's Driver License file. This produced a side-by-side comparison of information from the voter registration list and the MVD list. The portions of that document that came from the voter registration list is public. The portions that came from the MVD list are not.

Step 3 – The voter registration list remaining after those registrations identified in Step 1 were removed was then matched against the MVD Driver License file. This produced a list of voter registrations that could not be matched against the MVD Driver License file. This list was never provided to the SOS.

Step 4 – This list that could not be matched against MVD from Step 3, is then matched against the MVD “Foreign National” database. This resulted in a list of voter registrations that potentially matched the MVD “Foreign National” database. All but 117 of this list were eliminated as non-matches with the MVD “Foreign National” database.

Step 5 – The list that could not be matched with MVD from Step 3 were then matched against information maintained by the Social Security Administration, pursuant to the authority granted in the Help America Vote Act (HAVA) This resulted in a list of voter registrations that did not match with SSA information along with a SSA match code identifying what did not match (i.e. the DOB does match the SSN but the name does not; or that the SSN provided on the voter registration is an invalid SSN). Due to the confidentiality provision cited in HAVA, we believe that this match that has now taken place with SSA is not public..

Step 6 – The list of 117 voter registrations from Step 4 is sent to the Department of Public Safety for further investigation. DPS then requests from the Secretary of State the list described in Step 5 (the list of voter registrations that could not be matched against Social Security Administration).

Ed Macy

From: Fuqua, Scott <sfuqua@nmag.gov>
Sent: Friday, October 07, 2011 4:34 PM
To: Ed Macy; Alexandra Smith
Subject: SOS Documents
Attachments: SOS Documents.PDF

Counsel-

I've attached a .pdf containing documents from the SOS responsive to your IPRA and document requests. The redactions that have been made to these documents are consistent with New Mexico's laws concerning the confidentiality of information obtained and maintained by MVD. As we have discussed, there are additional documents that we believe may be protected by law from disclosure. I would like to discuss with you next week where we are on the discovery. As it stands now I do not have an update for you on your settlement proposal, but I will certainly respond to that as soon as possible.

Scott

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SCOTT FUQUA
Assistant Attorney General
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, NM 87501
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Exhibit I

IPRA 1