

STATE OF UTAH  
OFFICE OF THE LIEUTENANT GOVERNOR



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**POSITION STATEMENT REGARDING ELECTION RETURNS  
AND REQUESTS FOR ELECTION SYSTEMS DATABASE**

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Counties and local election officials statewide have received numerous and varied requests seeking copies of election system “database backups,” “raw data stored on the server,” “project database backup” and related materials regarding the 2020 elections. County election officers have requested the Lieutenant Governor’s Office offer direction regarding responding to such requests. The Lieutenant Governor’s Office offers the following position statement:

All requests for documents or information should be considered as requests for records under Utah’s GRAMA statute and should be managed and administered as required in that statute, Utah Code § 63G-2-101 et. seq. GRAMA, however, defers to other state statutes for retention and disclosure requirements particularly applicable to certain records. GRAMA at § 63G-2-201 (3) states:

“(3) The following records are not public: (b) records to which access is restricted pursuant to court rule, another state statute, federal statute...”

Subsection (6) of that provision holds that:

“(a) the disclosure of a record to which access is governed or limited pursuant to court rule, another state statute... is governed by the specific provisions of that statute . . .”

By this provision, certain election materials are not “public records” and are instead subject to strict disclosure and access limitations under the Election code.

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The state statute that governs disclosure and access to election materials is Utah Code § 20A-4-202. Pursuant to the specific provisions of that statute, election officials are to:

- inspect ballots and election returns to make sure they are sealed
- preserve ballots and “all other election returns” and deposit and lock them in a safe and secure place
- preserve all other election returns for 22 months and destroy them “without opening or examining them” and
- only provide the election returns “unopened and unaltered” to a court presiding over a timely election contest, pursuant to an order of the court or subpoena

These requirements are not limited to “election returns.” Other election materials are also to be sealed, stored and disposed of as required in § 20A-4-202. For example, § 20A-4-104(10) states, “[a]fter the count is complete the election officer shall seal and retain the *programs, test materials, and ballots* as provided in § 20A-4-202.” Similarly, as a matter of election administration, § 20A-5-408 requires that “as soon as the returns are canvassed, the election officer shall file the *election returns and papers produced before the board* [of canvassers] as required by § 20A-4-202.”

It is the opinion of this office, based on the practice of local election offices, that “election returns” necessarily includes, “back-up databases,” “first full run raw election results tables,” “project database back-ups,” “relational databases,” and other electronic programming, tabulating data and other election materials subject to the requirements of Election Code § 20A-4-202.

Accordingly, regardless of the requested format or form of the materials (original versus a copy, printed or electronic), election officials should secure, seal, and preserve election returns including “database” and “programs” and other materials and, absent a court order, should not open, manipulate, copy, review, summarize, disclose or otherwise provide access to election returns and materials, programs and papers that by statute are to be sealed and secured for 22 months and then destroyed, “without opening or examining.” *See*, § 20A-4-202.

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In addition to Elections Code provisions governing disposition of election returns, other provisions of Utah's GRAMA statute may also dictate denial of a request for backup database that include election returns and sealed records. Many records requests presume that a particular record exists, and that the governmental entity possesses or maintains that record. Under GRAMA a governmental entity is not required to create, compile, manipulate, package, summarize or tailor information, and is not required to provide a record in a particular format, medium, or program not currently maintained by the governmental entity. *See*, § 63G-2-201(8). Accordingly, if responding to a particular request would require the entity to create, compile, manipulate, or reformat data or information, the request may be denied on those grounds.

Disclosure or dissemination of election management system database, raw data, etc. in a manner not consistent with § 20A-4-202 could also jeopardize the security and integrity of the election systems and create a security risk to systems providers and governmental election offices. Secure election systems have been declared "critical infrastructure" by the United States Department of Homeland Security. Turning data and other system materials over to third parties could put that critical infrastructure at risk. GRAMA exempts from disclosure records that contain security measures and secure programs. *See*, § 63G-2-106.

Similarly, providing or allowing access to election system database and data may constitute a breach of election system vendor contracts which expressly limit dissemination of proprietary programming software and documentation. Proprietary software and computer programs developed or purchased by a governmental entity are not "records" subject to GRAMA. *See*, § 63G-2-103(22)(b)(v), (x). Proprietary election system data and related information considered confidential by the election system developers are also protected under GRAMA. Databases, configuration files, and related election management system programs are proprietary and confidential to the election management system partners who have contracted with election offices statewide. Absent express written permission from those election management partners, election system materials are exempt from disclosure. *See*, § 63G-2-305(36); § 63G-2-309(1)(a)(i).



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GRAMA allows a governmental entity discretion to consider a particular records request in light of the public interest served in disclosing the records. It is the opinion of the Lieutenant Governor that repeated demands for access to election systems data with the stated purpose to “audit” or “verify” officially certified elections is not in the public interest. The procedures and grounds for challenging or contesting an election are specifically laid out in Utah code, and such contests are limited to particular statutory circumstances. *See*, § 20A-4-402. No one in the state of Utah invoked those procedures or cited any of the statutory bases for challenging any of the dozens of elections conducted across the state of Utah in November 2020. Instead, some individuals and groups have appointed themselves to “verify” already verified and certified elections. These efforts not only ignore applicable statutory regulation of elections, election systems, and election security procedures, but also subvert the exceptionally professional and accurate work of the county clerks, canvassers, and other election officials who have been chosen by their constituent voters to administer elections statewide. To permit self-appointed and unelected, untrained, uncertified individuals to “audit” election system programming, software, and certified election results would be a costly and redundant exercise creating unmanageable workloads for election offices across the state, while simultaneously eroding the public trust in the security and accuracy of those certified elections and the tested election systems. All when no candidate, no public initiative sponsor, no disgruntled voter has formally challenged or contested any 2020 Utah election in the manner required under Utah law. Such costly and redundant exercise does not serve the public interest.

The Lieutenant Governor’s Office actively supports election officers in their sworn duty to administer elections and ensure they are accurate and secure. To that end, the Lieutenant Governor’s Office also encourages county and local election officers - county clerks, canvassers, and legislative bodies to consult legal counsel for advice regarding election law, best practices in administering elections, and in responding to requests for election database and election returns.