

**To:** General Registrars  
**From:** Don Palmer, Secretary, State Board of Elections  
**Re:** Compliance with *Project Vote* Decision and Court-Approved Agreement  
**Date:** April 3, 2013

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The recent *Project Vote* decision involving public disclosure requirements of the National Voter Registration Act (NVRA) provides public access (inspection and/or copying) to individual voter registration applications, excluding the applicant's social security number and residence street addresses of protected voters. The decision also requires production of other documents relating to voter registration, including correspondence to registered voters (excluding, of course, the protected information noted above). The federal court recently entered a consent decree that concluded the litigation.

As required by the court order and because NVRA does not specify a deadline or procedures for responding, SBE has outlined the following recommended guidance and procedures for compliance. Some basic parameters:

**What documents are required for inspection and disclosure? Are there exemptions?**

- The *Project Vote* decision requires you to make available for inspection and, where available, photocopying at a reasonable cost, completed voter registration applications and other documents relating to voter registration maintenance activities. This may include copies of correspondence to voters such as denial letters, if available.
- Yes, there are exempted applications:
  - As per the court order, the disclosure requirement only applies to voter registration applications that were submitted since July 20, 2011.
  - According to the NVRA, you are not permitted to produce voter registration applications that reveal the identity of the voter registration agency through which any particular voter is registered. Accordingly, applications that were submitted at the Department of Motor Vehicles should be withheld. If applications submitted through other NVRA-designated agencies (see list in Va. Code § 24.2-411.2) reveal the particular agency where the individual registered, then those should also be withheld.
- Similar to FOIA requests, NVRA requests do not require you to create a record that does not already exist.

**Am I required or permitted to redact information from the documents produced for inspection and/or photocopying?**

- Yes, registrars must redact the following “confidential information”:
  - Social security numbers from all copies of registration applications inspected or produced pursuant to a request under NVRA.

- All residence street addresses of any individual that provides a post office box address in lieu of his/her street address pursuant to § 24.2-418(B) of the Va. Code. These are commonly known as “protected voters.”

Please note that these redaction requirements apply to registration applications made available for inspection **and** those photocopied for disclosure to the requesting party:

- For the inspection process, you may photocopy the application card and redact the protected information prior to the inspection or, alternatively, establish an inspection process in your office to temporarily redact the social security number with a temporary label or removable sticker prior to the individual inspection by the requester. Each office will need to establish an inspection process that includes the time, place, and manner in which your office has the time and personnel to provide redacted applications (temporarily or otherwise) to a requester to personally inspect.

### **May I charge for production?**

- Yes, you may charge reasonable costs for photocopying only. You may not charge for simply making the documents available for inspection. You may require payment before providing the copies. The issue of specific costs is admittedly a gray area of the law so you must be able to articulate why your costs for photocopying are reasonable and how you came to determine that cost analysis. One example of calculating costs for photocopying may be the FOIA schedule/calculations that your office uses. Costs may differ from locality to locality depending on the personnel and resources available in your office and the timing of the request.
- **You may not charge for costs simply related to making the applications available for inspection unless agreed to by the requester as a timelier and more efficient means to disclose the information.**

### **How long do I have to respond to a request under NVRA?**

- While NVRA does not mandate a specific response time, SBE’s recommendation is that requests should be acknowledged within ten (10) working days with an estimate of the cost and timeframe for producing the documents or an estimate on the process and timeframe for making the applications available for individual inspection or photocopying. SBE recommends you comply with the request within twenty (20) working days after receiving the request, if possible.
- NVRA only requires photocopying where available. If you are unable to produce photocopies of the applications due to the high volume of work in your office, lack of personnel or the photocopier being unavailable, you are not required to produce photocopies until you are able.
- If there is request to inspect a large or voluminous number of applications, you should estimate the number of days necessary for your office to provide the redacted photocopies or to allow temporarily redacted original applications to be reviewed in an inspection process at

your office. You may offer alternatives to the inspection process to a requester that include the cost of photocopying and redacting as a more efficient way to respond to their request; however, the requester may request the physical in-person inspection process.

- Requesters should include their name and sufficient information for you to contact the requester and must reasonably describe the records the individual is requesting.

### **Additional Information:**

Alternative Sources of Registration Data: When receiving a request you may wish to communicate to the requester that he/she may be eligible to view/inspect the list of registered voters and persons denied registration in your office or obtain a copy of the list of registered voters from SBE. For individuals interested in obtaining a copy of the list of registered voters, you can direct them to SBE.

Voluminous Requests and Disputes: If a request involves an extraordinary volume or lengthy search or requests the documents be produced more quickly than is possible, you should make reasonable efforts to reach an agreement with the requester concerning the production of the applications requested. Neither the court order nor the NVRA outlines specifics of how to respond to these types of requests. While you may suggest a mechanism to more timely and efficiently provide a large number of photocopies and redacted applications to the requester, if the requester requests the inspection of applications at your office, you will need to establish:

1. An inspection process that temporarily redacts confidential information from the application for personal inspection in your office; or
2. A mechanism to copy and redact the applications for inspection at your own cost. While SBE is available for consultation, you should consult your attorney if you are unable to reach an agreement to explore what options are available to you.

Optional Notice Guidelines: Please also see the sample notice below that may be helpful in explaining to individuals the specifics of the NVRA disclosure requirements as dictated in the *Project Vote* decision.

These are not FOIA Requests: Please note that document requests under the NVRA are not the same as FOIA requests. Accordingly, the Virginia FOIA provisions that limit its eligibility to in-state requesters only do not apply. Accordingly, these disclosure provisions are available to both Virginians and non-Virginian requesters.

## **Citations:**

USC [§1973gg-6\(i\)](#).

### **(i) Public disclosure of voter registration activities**

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) of this section are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

**Consent Decree:** A copy of the consent decree was attached to email transmitting this guidance.

**Link to Project Vote Decision:** <http://www.ca4.uscourts.gov/opinions/Published/111809.p.pdf>

## **Sample Public Notice:**

### **National Voter Registration Act Requests**

Under the National Voter Registration Act (NVRA), a federal law, you may request access to voter registration applications held by this office submitted since July 20, 2011. Social security numbers and residence street addresses of any individual that provides a post office box address in lieu of his street address pursuant to § 24.2-418(B) of the Va. Code must be redacted. If you seek this information, your request must include your name and sufficient information for us to contact you, and must reasonably describe the records you are requesting and whether you are seeking disclosure of photocopies of the application(s) or are seeking visual inspection of the application(s) at the general registrar office. We will acknowledge response to your request within ten (10) days and attempt to produce the requested disclosure documents within twenty (20) working days of your request.

Before submitting a request, check with the General Registrar to see if the information you seek may be available through an inspection of the list of registered voters or denials or for a request for a list of registered voters with the State Board of Elections.

Our office will charge \_\_\_\_\_ per page for copying applications. Our office may require payment before providing the copies. If charges are estimated to exceed \$\_\_\_\_\_, or if you have other unpaid charges, we may require payment in advance before proceeding with the document request. Payment is required before copies will be provided. If charges are estimated to exceed \$\_\_\_\_\_, or you have other unpaid charges, we may require payment in advance before proceeding. Please submit requests by mail, fax or e-mail to:

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