

N128W12795 Highland Road
Germantown, WI 53022
October 9, 2007

Todd K. Martens
Washington County District Attorney
432 East Washington Street
West Bend, WI 53095
(262) 335-4311

Dear District Attorney Martens:

Please find below a set of emails between myself and the county clerk, Brenda Jaszewski.

Since 1987 Wisconsin election law [WI Stats. 7.23(1)(g)] has expressly mandated that a backup of the data found on the removable memory cards used by election equipment shall be created.

On September 27, 2007, I asked for copies of these backup images under the open records law. Ms. Jaszewski has given a legal sufficient answer to the open record request. No backups of the memory cards exist from the past two federal elections.

But in doing so Ms. Jaszewski has admitted she is violating Wisconsin election law.

I would ask you to investigate why the election records at the heart of this exchange are not being created as mandated by Wisconsin election law, WI Stats. 7.23(1)(g) and to explore whether this violation of statute is criminal.

My contact information is
John Washburn
N128W12795 Highland Road
Germantown, WI 53022
(262) 238-8940 (home)
(262) 532-2850 (office)
(414) 375-5777 (cell)
john@WashburnResearch.org

In Liberty,

John Washburn

From: John Washburn [mailto:john@washburnResearch.org]
Sent: Thursday, September 27, 2007 8:51 AM
To: 'webclk@co.washington.wi.us'
Subject: Open Records Request

Brenda Jaszewski
Clerk of Washington County
432 E. Washington Street
West Bend, WI 53095

Dear Ms. Jaszewski

Under the open records act found in WI Stats. Chapter 19, I request the following records:

- A. For each of the Diebold AccuVote OS optical scanner used in the general election November 7, 2006 in the Village of Germantown, I would like the electronic copy of the removable memory pack used and which has been retained by the Washington County Clerk pursuant to WI Stats. 7.23(1) (g).
- B. For each of the Diebold AccuVote OS optical scanner used in the primary election September 12, 2006 in the Village of Germantown I would like the electronic copy of the removable memory pack used and which has been retained by the Washington County Clerk pursuant to WI Stats. 7.23(1) (g).
- C. For each of the Diebold AccuVote TSx DRE used in the general election November 7, 2006 in the Village of Germantown, I would like the electronic copy of the removable memory pack used and which has been retained by the Washington County Clerk pursuant to WI Stats. 7.23(1) (g).
- D. For each of the Diebold AccuVote TSx DRE used in the primary election September 12, 2006 in the Village of Germantown, I would like the electronic copy of removable memory pack used and which has been retained by the Washington County Clerk to WI Stats. 7.23(1) (g).
- E. The access logs for the memory packs used in the ward/election combinations listed below. These 8 access logs are created pursuant to the security recommendations adopted by the Wisconsin State Elections Board on June 23, 2006.

A copy of WI Stats. 7.23(1) (g) can be found at: <http://tinyurl.com/3677cu>.

A copy of the security recommendations adopted by the Wisconsin State Elections Board can be found at: <http://elections.state.wi.us/docview.asp?docid=9124&locid=47>.

It is my understanding there are four (4) distinct polling places and there is only one AccuVote OS optical Scanner and one AccuVote TSx DRE at each polling location. Based on this number of 4 scanners and 4 DRE units per election, this document creates twenty-four (24) separate and distinct open records requests. In order to manage the production of these records, I have given each open record request a unique ID number.

For Item A the separate open records requests (one per scanner used) have the following identification numbers: A-001, A-002, A-003, and A-004 where:

A-001	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 1 of the Village of Germantown used in the General election of November 7, 2006
A-002	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 2 of the Village of Germantown used in the General election of November 7, 2006
A-003	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 3 of the Village of Germantown used in the General election of November 7, 2006
A-004	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 4 of the Village of Germantown used in the General election of November 7, 2006

Since the records requested for item A are already electronic records, I expect the 4 memory pack images produced to be provided in electronic form.

For Item B the separate open records requests (one per scanner used) have the following identification numbers: B-001, B-002, B-003, and B-004 where:

B-001	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 1 of the Village of Germantown used in the Primary election of September 12, 2006
B-002	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 2 of the Village of Germantown used in the Primary election of September 12, 2006
B-003	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 3 of the Village of Germantown used in the Primary election of September 12, 2006
B-004	Is the electronic image of Diebold AccuVote OS Memory Pack used in District 4 of the Village of Germantown used in the Primary election of September 12, 2006

Since the records requested for item B are already electronic records, I expect the 4 memory pack images produced to be provided in electronic form.

For Item C the separate open records requests (one per DRE used) have the following identification numbers: C-001, C-002, C-003, and C-004 where:

C-001	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 1 of the Village of Germantown used in the General election of November 7, 2006
C-002	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 2 of the Village of Germantown used in the General election of November 7, 2006
C-003	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 3 of the Village of Germantown used in the General election of November 7, 2006
C-004	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 4 of the Village of Germantown used in the General election of November 7, 2006

Since the records requested for item C are already electronic records, I expect the 4 memory card images produced to be provided in electronic form.

For Item D the separate open records requests (one DRE used) have the following identification numbers: D-001, D-002, D-003, and D-004 where:

D-001	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 1 of the Village of Germantown used in the Primary election of September 12, 2006
D-002	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 2 of the Village of Germantown used in the Primary election of September 12, 2006
D-003	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 3 of the Village of Germantown used in the Primary election of September 12, 2006
D-004	Is the electronic image of Diebold AccuVote TSx Memory Card used in District 4 of the Village of Germantown used in the Primary election of September 12, 2006

Since the records requested for item D are already electronic records, I expect the 4 memory card images produced to be provided in electronic form.

For Item E the eight separate open records requests have the following identification numbers, E-01, E-02, E-03, E-04, E-05, E-06, E-07, and E-08 where:

E-01	The access log for the Diebold AccuVote OS Memory Pack used in District 1 of the Village of Germantown used in November 7, 2006 general election.
E-02	The access log for the Diebold AccuVote OS Memory Pack used in District 2 of the Village of Germantown used in November 7, 2006 general election.
E-03	The access log for the Diebold AccuVote OS Memory Pack used in District 3 of the Village of Germantown November 7, 2006 general election.
E-04	The access log for the Diebold AccuVote OS Memory Pack used in District 4 of the Village of Germantown used in November 7, 2006 general election.
E-05	The access log for the Diebold AccuVote TSx Memory Card used in District 1 of the Village of Germantown used in November 7, 2006 general election.
E-06	The access log for the Diebold AccuVote TSx Memory Card used in District 2 of the Village of Germantown used in November 7, 2006 general election.
E-07	The access log for the Diebold AccuVote TSx Memory Card used in District 3 of the Village of Germantown used in November 7, 2006 general election.
E-08	The access log for the Diebold AccuVote TSx Memory Card used in District 4 of the Village of Germantown used in November 7, 2006 general election.

If the copying costs exceed \$50, please send me a written estimate itemizing the copying costs. You may contact me at the above address or at the following telephone numbers:

262-532-2850 (office)

414-375-5777 (cell).

My postal address is:

N128W12795 Highland Road

Germantown, WI 53022

Severability:

This document creates 25 (or more if there are more than 4 scanners and DRE's per polling location) separate open records requests. These 25 requests are severable and are included in this single document for administrative simplicity and the thematic similarity between the several requests. It is understood that any delay in the production of records under one request or the inability to produce records under a request will not delay or otherwise hinder the production of records for any other request. It is possible the 25 requests below overlap in the sense that the same set of records satisfies two or more of the 25 requests simultaneously. If this is the case one copy the records will suffice along with a designation as to which of the 25 requests the records simultaneously satisfy. Examples of such a designation would be:

The electronic images for the Diebold AccuVote OS Memory Packs for the first two districts are identical. This single record satisfies requests A-001 and A-002.

Exemption from Inspection: If you contend that the a record, or any of part of it, is exempt from inspection, you are required hereby to state in writing, and with particularity, the statutory authority for the exemption and the reason or reasons for your conclusion that the record or parts thereof are so exempted.

Exemption from Copying: If you contend that the a record, or any of part of it, is exempt from copying, you are required hereby to state in writing, and with particularity, the statutory authority for the exemption and the reason or reasons for your conclusion that the record or parts thereof are so exempted.

Redaction: Redaction itself constitutes a claim for exemption for the portion of the record(s) redacted. As such you are required hereby to state in writing, and with particularity, the statutory authority for any redactions and the reason or reasons for your conclusion that the redacted item is exempt from disclosure.

Thank you for your time on this matter.

In Liberty,
John Washburn

From: Brenda.Jaszewski@co.washington.wi.us [mailto:Brenda.Jaszewski@co.washington.wi.us]

Sent: Friday, September 28, 2007 10:56 AM

To: John Washburn

Cc: Kim.Nass@co.washington.wi.us

Subject: Re: Open Records Request

Mr. Washburn:

I have received your request for the public records listed below from your email dated September 27, 2007.

Please be advised that I will research the feasibility of satisfying your records request for items A, B, C, and D regarding the electronic records of the removable memory cards for the OS and TSX machines from the September and November 2006 elections for the Village of Germantown.

Your records request in Item E regarding the access logs for the Village of Germantown's memory cards for these same elections, results in a total of 14 pages of copied records. Be advised that the Village of Germantown utilizes one ADA-compatible TSX voting machine for their Districts 1 and 3, resulting in only one memory card and one Chain of Custody Record for that memory card. The cost for copies of these records is \$3.50 (14 pages @ \$.25/pg.) and they are available in the office of the Washington County Clerk, 432 E. Washington Street, West Bend, Monday through Friday between 8:00 a.m. and 4:30 p.m.

Brenda J. Jaszewski
Washington County Clerk

From: John Washburn [mailto:john@washburnResearch.org]

Sent: Friday, September 28, 2007 12:36 PM

To: 'Brenda.Jaszewski@co.washington.wi.us'

Subject: RE: Open Records Request

Dear Ms. Jaszewski:

The several records for items B and D (the electronic images of the memory cards from the September election) should already on a CD-ROM or hard disk somewhere. That is unless the Village of Germantown used one memory card for the September Election and a second memory card for the November election and the information transfer required under 7.23(1)(g) have not yet been made.

Thank you for the clarification that the record request C-001 and C-003 are the same and that record requests D-001 and D-003 are the same.

From: Brenda.Jaszewski@co.washington.wi.us [mailto:Brenda.Jaszewski@co.washington.wi.us]

Sent: Tuesday, October 02, 2007 2:21 PM

To: John Washburn

Cc: Kim.Nass@co.washington.wi.us

Subject: Re: Open Records Request

Mr. Washburn:

In response to your request for separate electronic records of the OS and TSX removable memory cards for the Village of Germantown from the September and November 2006 elections, please be advised that the records you are requesting do not exist.

Brenda Jaszewski
Washington County Clerk

"John Washburn" <john@washburnResearch.org> 10/03/2007 10:20 AM
To <Brenda.Jaszewski@co.washington.wi.us>
cc <Kim.Nass@co.washington.wi.us>, <eknaack@village.germantown.wi.us>

Subject
RE: Open Records Request

Dear Ms. Jaszewski:

Thank you for your concise answer.

I take from you [sic] answer it is now not possible to obey the legal requirements of 7.23(1)(g) regarding the November 7, 2006 election (Requests A-nnn and C-nnn below) because the data on the memory cards has already been destroyed. If this is not the case then there is a problem.

So, for clarification, which of the following is true:

- 1) The data still exist on the memory cards used November 7, 2006 election, but records required under WI Stats. 7.23(1)(g) have not yet been made, or
- 2) The data on the memory cards used November 7, 2006 election was destroyed without making the backups required under WI Stats. 7.23(1)(g)

From: Brenda.Jaszewski@co.washington.wi.us [mailto:Brenda.Jaszewski@co.washington.wi.us]
Sent: Wednesday, October 03, 2007 11:53 AM
To: John Washburn
Cc: Kim.Nass@co.washington.wi.us
Subject: ***SPAM*** RE: Open Records Request

Mr. Washburn:

As stated in my response dated October 2, 2007, the records you have requested for separate electronic records of the OS and TSX removable memory cards for the Village of Germantown from the September and November 2006 elections do not exist.

Brenda Jaszewski
County Clerk

From: John Washburn [mailto:john@washburnResearch.org]
Sent: Wednesday, October 03, 2007 12:53 PM
To: 'Brenda.Jaszewski@co.washington.wi.us'
Cc: 'Kim.Nass@co.washington.wi.us'; 'eknaack@village.germantown.wi.us'
Subject: RE: Open Records Request

Dear Ms. Jaszewski:

The creation of these records is mandated by law and has been since 1987.

If the data on the memory card have not been destroyed then I request you make the records as WI 7.23(1)(g) requires you to make the records. If it is still possible to create the legally required records then you are obligated to create this record. Chapter 19 does not require you to create a record in response to an open records request. The creation of these election records is mandated by 7.23(1)(g). If it is still possible to create these records as mandated by 7.23(1)(g) then you need to do so regardless of the presence or absence of an open records request for the records created under 7.23(1)(g).

Consider this open records request disputed and these election records subject to an open records contest.

This email is my prompt notice to you that if the memory cards are unchanged, then the contents of the memory cards cannot be changed, altered, or cleared until this matter is resolved.

The statutory authorities for preserving these data are two-fold; WI. Stats 7.23(2) and 19.35(5). Under 7.23(2) these election records are now covered by the phrase "or any contest". WI Stats. 19.35(5) prevents the destruction of the data on the memory cards for at least 60 days after a denied request or longer if litigation ensues.

It seems I need to consult an open records attorney and contact the Washington county DA at this point.

Thank you for your time and patience on this matter.