

Attachment D

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
CIVIL DIVISION
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March 17, 2005

VIA LEGAL MESSENGER

Mr. Kevin Hamilton
Perkins Coie
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099

Re: Your Public Disclosure Act request of March 8

Dear Kevin:

On March 8 I received your letter containing requests for public records in six specified categories. On that same date you submitted another public records request to Cheryl Broom, a copy of which was forwarded to me. I read your letter to me, specifically item #1 "Alleged Felons, Deceased Voter, or Double Voters", as, essentially, incorporating the Bloom request. Thus, I consider the two requests to be consolidated in the letter you sent to me, and am responding accordingly.

Since my receipt of your requests, you and I have communicated by telephone or email a number of times about the nature of the requests, including the relative priority of some of your requests. I have provided you with a number of responsive documents and computer files, and I have suggested ways in which your requests might be narrowed or refined, which would lessen the burden on REALS staff and result in an earlier production of documents. I write today to summarize the status of your requests and provide you with additional estimates as to when REALS may be able to produce the requested documents.

Regarding the itemized requests in your letter dated March 8:

1. Alleged Felons, Deceased Voters, or Double Voters.

You have provided the County with lists of persons in these three categories and asked that we produce copies of poll book signature pages, or absentee or provisional ballot envelopes for the alleged illegal voters. You had previously provided us with a list of alleged "double voters" and we have satisfied that aspect of your request by our production of responsive documents on March 9. On March 11 you provided us with a list of 22 more persons for whom you are requesting the same documentation.

Though I haven't precisely counted, there appears to be about 900 persons for whom you are requesting this information. Determining the manner in which each person voted, then retrieving and copying the poll book or absentee or provisional ballot envelope for 900 persons represents a

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massive labor-intensive project for REALS personnel. Because your request is related to the election contest litigation, the division will expedite your request and assign resources in a manner not required by the Public Disclosure Act. To satisfy your request as expeditiously as possible, the division is allowing staff to volunteer for evening and weekend overtime to work specifically on this project. Nonetheless, it is not anticipated that all the requested documents can be produced within two weeks of this letter. As the work progresses, I will release documents to you and provide you with updated estimates of when the entire project might be finished.

2. Rejected Provisional Ballots

In phone and email communications you asked that we give this request the highest priority. On March 16, I sent you via email two excel files. One file identifies all the provisional ballot voters whose ballots were rejected and provides a code showing the reason for the rejection. The second file contained the key for the rejection codes. In my email of March 16, I asked that you review the excel files, and determine for which of the rejection reasons you would like us to produce a copy of the provisional ballot envelope. The file indicates that 4997 provisional ballot voters had their ballots rejected for various reasons. Obviously, to locate, retrieve, and copy envelopes for 4997 rejected ballots would take an enormous effort, particularly with the ongoing effort relating to alleged felon voters. Therefore, we await the requested guidance from you to narrow the focus of this request.

3. Prematurely Counted Provisional Ballots.

Provisional ballots that were counted without verification are ballots that were improperly put through the poll site AccuVote machines rather than being inserted into the provisional ballot envelope and returned to the poll worker in accordance with instructions. Thus, in most cases, there are not provisional ballot envelopes to be copied. The parties have previously been provided with polling place reconciliation documents and spreadsheets describing the analysis of the poll site reconciliation. Regarding the wording of your request, in none of these cases did the County make a "decision whether to count or reject those provisional ballots" since the ballots were tabulated by the AccuVote machines. The County has since been able to determine in which cases the ballot was cast by a properly registered voter. A substantial number of documents relating to and reflecting that process will be ready for production on Monday, March 21.

4. Certificates and Orders of Discharge.

Enclosed with this letter you will find four certificates and orders of discharge (Brudigam, Cook, Beyerlein, and Torres) that had been received by REALS prior to October 15, 2004. These were the only such documents received by REALS before October 15, 2004. (Regarding the wording of this request, receipt of a certificate and order of discharge does not result in the activation of a previously canceled voter registration. The voter must re-register to vote.) On Monday, March 7, I produced to you the large number of responsive documents that were provided to REALS by the King County Superior Court after the election. You acknowledged receipt of those documents in our email exchange of March 9. Since that single large production of these documents by the court

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after the election, REALS has received the additional 24 certificates and orders of discharge that are also enclosed with this letter. I believe that this production of documents fully satisfies your request.

5. Cancelled Registrations.

Earlier today via email I provided you with two excel files. One file contains the list of all persons canceled from the roll of registered voters since January 1, 2004, and displays a coded reason for each cancellation. The second file explains the coded reasons for the cancellations and provides totals for each category. I also informed you that there are file cabinets full of documents supporting the cancellations of the more than 5000 persons on the list. For REALS to simply copy all documents "relating to voter registrations cancelled from January 1, 2004" as you have requested would be a massive and time consuming project for a division with resources already stretched too thin in dealing with your other documents requests relating to felon voters and provisional ballots. In my email I suggested that you have someone come to REALS to review the file materials and identify the documents you would like copied. I would be happy to facilitate that, and I await your response.

6. March 8, 2005, Revocations.

You and I spoke on the phone about this request and I referred you to Janine Joly. It's my understanding that the files responsive to this request will be copied for you by Monday, March 21. I understand that Janine has agreed to show a representative of yours these files today, and perhaps provide copies of certain documents at that time.

We are expediting your requests because of their relationship to the election contest. I anticipate that the depositions of Dean Logan and Bill Huennekens will soon be formally reset for March 28 and March 31, respectively. Mr. Logan and Mr. Huennekens will each be away from the office for a week in early April, and REALS is preparing for an election later that month. Further delay in their depositions is unacceptable to my clients. As you and I have discussed, I believe it is unreasonable to expect Mr. Logan or Mr. Huennekens to sit for multiple depositions in this matter, and I would object on behalf of my clients should either party attempt to compel a second deposition. However, I am committed to providing you with as many of your requested documents as possible before these depositions occur. Your assistance by narrowing the scope

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of the requests to the extent possible would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Don Porter". The signature is fluid and cursive, with the first name "Don" being more prominent and the last name "Porter" following in a similar style.

Don Porter
Senior Deputy Prosecuting Attorney

Enclosures

Cc: Dean Logan (w/o enclosures)