



STATE OF MICHIGAN  
JOCELYN BENSON, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

May 10, 2023

Minde B. Lux  
Isabella County Clerk  
200 N. Main Street Rm 240  
Mt. Pleasant, MI 48858

*By E-mail*

Dear Clerk Lux,



It is the Bureau of Elections' (BOE or Bureau) understanding that you have received a Freedom of Information Act (FOIA) request related to the Qualified Voter File (QVF) and electronic pollbook (EPB or ePollbook), and that you intend to disclose sensitive information in contravention of your duties as a clerk.

The Bureau's repeated and consistent guidance has been that requests for ePollbook data must be directed to the Bureau, to ensure that sensitive information related to both individual voters and the ePollbook is removed before public disclosure of otherwise available information. In a November 14, 2022, email to clerks, the Bureau wrote the following:

Clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. MCL 15.243(1)(y). In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." MCL 15.243(1)(z).

In response to your email requesting further guidance regarding the fulfillment of FOIA requests of EPB information, a member of the Bureau emailed you directly on May 1, 2023, stating in summary that "If the county receives a FOIA request for EPB data, you can provide paper pollbook copies after the security period has elapsed and the log file or voter history can be requested from BOE." This echoed the previous guidance issued November 14, 2022.

While we appreciate that you understand the need to redact a voter's date of birth and other personally identifiable information, the disclosure of security and technical information is also exempt from FOIA and may not be properly redacted if produced by you, instead of the Bureau.

 Please understand that the disclosure of this sensitive information compromises the integrity of Michigan's elections and may warrant an investigation by the Department of State or Department of Attorney General, and result in fiscal implications for the county. Specifically, disclosure could require the purchase of new EPB laptops for each precinct for which data was compromised. 

Please contact my office if you require additional information or clarification regarding this matter or have any additional questions.

Sincerely,

s/Michael J. Brady

Chief Legal Director  
Michigan Department of State

cc: Jonathan Brater, Director of Elections  
Heather Meingast, Division Chief, CLEE Division

## **Bourbonais, Lori (MDOS)**

---

**From:** Bourbonais, Lori (MDOS)  
**Sent:** Monday, November 14, 2022 1:17 PM  
**To:** Bourbonais, Lori (MDOS)  
**Subject:** Recent FOIA Requests

Clerks,

We are aware that clerks have received a request for the following:

- "1. An electronic copy of the Qualified Voter File (QVF) extract for all precincts completed on Monday November 7, 2022 and loaded to the electronic pollbooks.
2. The historical electronic pollbook flash drive for all voting precincts in the jurisdiction for the election concluding November 8, 2022. (This is likely in a CSV – comma separated value format).
3. An electronic copy of the Qualified Voter File extract for all precincts completed as soon as the November midterm election voter history is uploaded to the QVF which must be within 7 days pursuant to MCL 168.813."

Before responding to these FOIA requests, you should consult with your city or township attorney regarding the requests and exemptions that may apply including those contained in MCL 15.243(1)(y) and (z). Under FOIA, you may shield sensitive information from disclosure. Clerks must not publicly release data or files that would reveal the software design or data architecture of the Electronic Poll Book, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. In response to previous FOIA requests regarding EPB data, the Bureau of Elections has not disclosed these records because the records sought constitute "cybersecurity plans, assessments, or vulnerabilities" that are exempt from disclosure. The Bureau has an interest in maximizing the protection and defense of its information systems, which outweighs the public interest in the disclosure of this information as the release of this sensitive information could jeopardize the security of Michigan's electoral process. MCL 15.243(1)(y). In addition, the responsive records include sensitive information which, if released, "would disclose a person's cybersecurity plans or cybersecurity-related practices, procedures, methods, results, organizational information system infrastructure, hardware, or software." MCL 15.243(1)(z).

Further, electronic poll book files contain personal identifying information such as full birth dates for voters, which is exempt from disclosure. MCL 168.509gg. Attempted manual redaction of personal identifying information may not be sufficient to protect this information from disclosure if the software and program files are disclosed.

Please note that certain specific data derived from the qualified voter file electronic pollbook is subject to disclosure under FOIA, including the lists of registered voters from the Qualified Voter File and the paper printout of the electronic pollbook generated on election night. If members of the public are interested in verifying the names of individuals registered to vote on a certain date or included in the electronic pollbook, they may obtain this information by submitting a FOIA for publicly available records.

Additionally, we are aware that clerks received FOIA requests for a copy of or the opportunity to view tabulator tapes. While the tapes are a public record that can be provided, they are election records that should remain secured until security is released after the final canvass and certification, recounts, and audits. Once you are notified that security has been released in your jurisdiction, you can fulfill these requests.

Lori A. Bourbonais, Director  
Election Administration Division

Michigan Bureau of Elections

Clerks and Election Directors,

We are aware that clerks have recently received additional requests for epollbook (epb) data. Requests for epb data must be directed to the Bureau, to ensure that sensitive information related to both individual voters and the epb are removed before public disclosure of otherwise available information. As stated in our November 14, 2022 email (link below for your convenience), clerks must not publicly release data or files that would reveal the software design or data architecture of the epb, as doing so could compromise the Bureau of Elections' ability to secure and safeguard the software and data from hacking, theft, loss or destruction. The requested file contains proprietary software information, security feature information, and personal identifiable information for voters.

The disclosure of security and technical information is exempt from FOIA and may not be properly redacted if the file is produced by an individual clerk instead of the Bureau. Additionally, the file contains sensitive information regarding your epb laptop(s) that might require you to purchase a new laptop for each precinct if you disclose this information to a 3<sup>rd</sup> party. The disclosure of sensitive information compromises the integrity of Michigan's elections and may warrant referral for investigation.

If you receive a FOIA request for epb data, the requestor can be directed to the county clerk for paper pollbook copies or to BOE for the log file or voter history.

- [November 14 2022 email.pdf](#)

Lori A. Bourbonais, Director  
Election Administration Division  
Michigan Bureau of Elections