



City Clerk's Office

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We exist to assist.

August 24, 2021

Dear Mr. Swenson,

I understand that the Legislative Audit Bureau has requested to be able to physically handle ballots, absentee ballot envelopes, poll books and other election records as part of the audit related to the 2020 General Election. Our staff has provided protocols that we use with individuals who request to inspect election records rather than to obtain copies. I am writing to explain why we need to follow those protocols in responding to the LAB's requests.

As I am sure you are aware, municipal clerks are responsible for securing and retaining election records until their destruction. This is my responsibility under both federal and state law and one I take seriously. I am attaching guidance recently issued by the U.S. Department of Justice, which notes that Section 301 of the Civil Rights Act of 1960 requires state and local election officials to retain and preserve all records related to a federal election for 22 months after the election. The purpose of this provision is to preserve the ability of the Department of Justice to investigate and prosecute election matters under federal law. This obligation is also established in state law by Wis. Stat. section 7.23. While I do not question the integrity of your staff and ability to handle sensitive records, I cannot in good conscience, take the risk that ballots or other election records will be inadvertently altered or damaged if we allow them to physically handle records. I also cannot put my staff in the position of not strictly complying with the law and potentially being responsible if something goes wrong.

In addition, given that the conduct and outcome of the Presidential Election is still being litigated in various forums, I cannot agree to turn over possession of original and irreplaceable election records absent a court order or some other legal authority that supersedes my obligations under federal and state laws, regardless of the requestor. The current audit seeks to review and assess the actions of election officials, and one of my duties is to secure election records until their destruction, and therefore I hope you can


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understand and respect my position in this matter. I do not wish to have a State audit note that my office permitted access to election records contrary to law and potentially jeopardized the security and chain of custody of records, which are to be preserved for potential use by the U.S. Department of Justice. The LAB is certainly welcome to obtain copies of any of the records that we are able to release under the Public Records Law. There is no information or data in the election records that can be observed through physical handling that cannot be viewed using our protocols or obtaining copies.

Finally, because I expect our office will not have an opportunity to preview the audit report, if the report intends to imply that we have provided access to records that is less than satisfactory, I request that the report include this explanation and our offer to provide copies of records. Thank you for your consideration of this information, and please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Maribeth Witzel-Behl". The signature is written in a cursive, flowing style.

Maribeth Witzel-Behl
Madison City Clerk