

VIA MAIL

July 13, 2017

The Honorable Mark Martin
Secretary of State
ATTN: FOIA Officer
256 State Capitol
500 Woodlane Street
Little Rock, AR 72201

Dear Sir or Madam:

This letter constitutes a request under the Arkansas Freedom of Information Act Ark. Code Ann. § 25-19-105(a)(2)(A) (1967) to receive copies of records, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Office of Arkansas Secretary of State Mark Martin.

EPIC seeks records in possession of the Office concerning the transfer of voter data from the State of Arkansas to the Department of Defense following the June 28, 2017 Commission letter.

EPIC does not assert a claim to Arkansas records as a citizen of the state. § 25-19-105(a)(1)(A). Rather, EPIC urges the Secretary of State to publicly release the requested records in light of the profound public interest favoring release. “The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny and committed itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to.” *EPA v. Mink*, 410 U.S. 73, 105 (1973) (Douglas, W. dissenting) (quoting from *The New York Review of Books*, Oct. 5, 1972, p. 7). Transparency secures “informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). Here, EPIC seeks records concerning the Arkansas transfer of state voter data to the federal government in the pursuit of this overriding public interest.

Background

On June 28, 2017, the Vice Chair of the Commission attempted to collect detailed voter histories from all fifty states and the District of Columbia. In letters to state officials, the Commission requested:

the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions,

information regarding voter registration in another state, information regarding military status, and overseas citizen information.¹

The letter provides no indication that the Commission will pay fees for the receipt voter data. The Commission also indicated a website for the transmission of voter data, which has since been determined to be insecure for the receipt of personally identifiable information from the general public.² Further, the letter from the Commission indicated no familiarity with the data that may be disclosed by a particular state that received the request or the procedures the Commission would be required to follow to obtain voter data from a particular state.

Following the proceeding brought by EPIC, *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017) on July 7, 2017 the U.S. Department of Justice told the D.C. District Court that Arkansas transferred voter data, to the Department of Defense's SAFE Website, following the letter from the Vice Chair.³

The Arkansas Secretary of State's Office charges \$2.50 per statewide voter registration data file.⁴ A requesting party also completes a "Data Request Form" in order to obtain the file and must mail payment (in check or money order form) to the Arkansas Secretary of State offices.⁵ The Office provides three types of files, with three clearly defined sets of information:

(1) "...Voter Registration (VR) file which is a list of all registered voters within the state. The file contains the Voter ID #, county of residence, voter name, address information (residential and/or mailing), phone number, DOB, precinct information, district information, party (if applicable) and the date last voted."

(2) "Vote History information for the state. This file lists the Voter ID # and Vote History data for all Federal elections from 1996 – current election cycle" while "older elections are incomplete since some counties did not enter voter results into the previously used VR databases." And

(3) "...a combination of the Voter Registration and Vote History files (VRVH)."⁶

¹ See, e.g. Letter from Presidential Advisory Commission on Election Integrity to Hon. Elaine Marshall, Secretary of State, North Carolina (June 28, 2017), <https://www.documentcloud.org/documents/3881856-Correspondence-PEIC-Letter-to-North-Carolina.html>.

² Lewis Decl. Ex. 11., *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017).

³ Transcript of Temporary Restraining Order at 40, *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017).

⁴ *Arkansas Voter Registration Data*, Arkansas.gov

<http://www.sos.arkansas.gov/elections/Documents/Data%20Request%20Form.pdf> (last visited July 12, 2017).

⁵ *Id.*

⁶ *Id.*

The files are provided in “.CSV format” and “are available in CD format for pickup at the State Capitol Building or by mail” or “can also be placed on an FTP site.”⁷

EPIC seeks four categories of records from the agency concerning the Arkansas transfer of data to the Commission.

Records Requested

- (1) All records indicating payment by the Commission to obtain Arkansas voter records;
- (2) The completed “Data Request Forms,” prepared by the Commission to obtain the Arkansas state vote records;
- (3) All records indicating the types of data transferred by Arkansas to the Commission; and
- (4) All records indicating the Commission’s compliance with the Arkansas procedures to obtain state voter records.

Request for Fee Waiver

EPIC requests that copies of the records “be furnished without charge or at a reduced charge” because (1) the records “have been requested primarily for noncommercial purposes,” and (2) “waiver or reduction of the fee is in the public interest.” § 25-19-105(d)(3)(A)(iv).

First, disclosure of the records “have been requested primarily for noncommercial purposes. § 25-19-105(d)(3)(A)(iv). EPIC has no commercial interest in the requested records. EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.⁸

Second, “waiver or reduction of the fee is in the public interest.” § 25-19-105(d)(3)(A)(iv). The requested records concern a matter of profound public interest: the transfer of Arkansas voters’ data a Presidential commission. Nonetheless, there are few public details about the circumstances surrounding the transfer, and, indeed, the mere fact of the transfer was first made public only days ago.⁹ On July 7th, in a hearing before the D.C. District Court, the DOJ first revealed that Arkansas alone had transferred personal data to the Commission.¹⁰ There are approximately 1.7 million registered voters in the state of Arkansas potentially implicated by this transfer.¹¹ The Commission will hold its first meeting on July 19, 2017.¹² Ahead of that meeting,

⁷ *Id.*

⁸ *About EPIC*, EPIC.org, <http://epic.org/epic/about.html>.

⁹ Transcript of Temporary Restraining Order at 40, EPIC v. Commission, No. 17-1320 (D.D.C. filed July 3, 2017).

¹⁰ *Id.*

¹¹ *Registered Voters [As of 6/1/16]*, Arkansas.gov

<http://www.sos.arkansas.gov/elections/Documents/ARRegisteredVoters6-1-16.pdf> (last visited July 12, 2017).

the public must know whether the Commission and Arkansas state officials complied with state procedures in transferring this sensitive personal data.

For these reasons, a full fee waiver should be granted.

Conclusion

Thank you for your consideration of this request. For questions regarding this request I can be contacted at 202-483-1140 x111 or FOIA@epic.org, cc: Kyriakides@epic.org. EPIC anticipates your response within a maximum of three working days. § 25-19-105(e).

EPIC requests receipt of responsive records via e-mail, and, if not “readily convertible” to electronic format, in physical copies via mail to the 1718 Connecticut Ave. NW, Suite 200, Washington, DC 20009. § 25-19-105(d)(2)(B).

Respectfully submitted,

/s/ Eleni Kyriakides

Eleni Kyriakides

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¹² Meeting notice, 82 FR 31063 (July 5, 2017).