STATE OF MICHIGAN

MIKE COX, ATTORNEY GENERAL

ELECTIONS: Access to ballots voted at an election under the Freedom of Information Act

FREEDOM OF INFORMATION ACT:

PUBLIC RECORDS:

SECRETARY OF STATE:

Voted ballots, which are not traceable to the individual voter, are public records subject to disclosure under the Freedom of Information Act, MCL 15.231 *et seq*. The Secretary of State, in her role as the Chief Elections Officer, or the Director of Elections through the authority vested in that office, may exercise supervisory authority over local elections officials responding to a Freedom of Information Act request for voted ballots by issuing directions for the review of the ballots in order to protect their physical integrity and the security of the voted ballots.

A person must be allowed to inspect or examine voted ballots, which are not traceable to the individual voter, and to receive copies of the ballots upon request subject to reasonable restrictions prescribed by the Secretary of State. The public body may charge a fee for the copying of the voted ballots as provided for in section 4 of the Freedom of Information Act, MCL 15.234.

A person requesting access to voted ballots, which are not traceable to the individual voter, under the Freedom of Information Act, MCL 15.231 *et seq*, is entitled to a response from a public body granting or denying the request within 5 to 10 business days. MCL 15.235(2). However, the public body in possession of the voted ballots may not provide access to the ballots for inspection or copying purposes until 30 days after certification of the election by the relevant board of canvassers. 1979 AC, R 168.790.

Opinion No. 7247 May 13, 2010

Honorable Patricia L. Birkholz
State Senator
The Capitol
Lansing, MI

You have asked several questions concerning a request made under the Freedom of Information Act (FOIA or Act), MCL 15.231 *et seq*, to review voted ballots. Your reference to a "voted ballot" is understood to mean a ballot cast by an elector during an election, either at the

polls or by absent voter ballot, and which is not traceable to the individual voter. Information supplied with your request indicates that several jurisdictions within Allegan County received a FOIA request from an individual seeking to review the ballots cast during the November 2008, general election.[1]

Before turning to your questions, it is helpful to understand the sequence of events that surround the casting of ballots on election day. Numerous security measures are in place to protect both the elector's right to secrecy of the ballot under the Michigan Constitution,[2] and the State's obligation to ensure that each ballot is counted and then properly secured for the appropriate time period.

On election day, before being issued a ballot, a voter at the polls completes an application to vote form by printing the voter's name, street address, and birth date on the form, and signing the form. The voter then presents the application to vote form and a piece of photographic identification to an election inspector. MCL 168.523(1). After verifying the identity of the voter, the election inspector initials the application to approve the issuance of a ballot to the voter. Each ballot is printed with a perforated detachable stub that bears a unique ballot serial number.[3] The election inspector enters that unique serial number on the voter's application to vote form. MCL 168.523(2). Each voter's name is entered in a poll book along with the unique

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[1] Although your request and the information supplied with it refer only to ballots voted at the November 2008, general election, the analysis set forth in this opinion applies to ballots voted at any recent or upcoming election.

[2] "The legislature shall enact laws to preserve the purity of elections, [and] to preserve the secrecy of the ballot . . . ." Const 1963, art 2, § 4.

[3] The serial numbers printed on the stubs run in consecutive order. MCL 168.569 and 168.570; 1979 AC, R 168.772(1).

serial number that appears on the ballot issued to the voter. The election inspector retains the application to vote form and issues the voter a ballot. MCL 168.735(1).

The ballot is contained within a "secrecy sleeve" to preserve the privacy of the voter's selections. After voting the ballot, the voter places the ballot in the secrecy sleeve and proceeds to the polling station's optical scan tabulator. Before placing the ballot in the tabulator, the voter presents the ballot, which remains in the secrecy sleeve, to an election inspector stationed near the tabulator. The election inspector checks the serial number on the ballot stub which extends outside the secrecy sleeve against the ballot serial number recorded on either the voter's application to vote form or the poll book, detaches and retains the stub bearing the serial number, and hands the ballot back to the voter. The voter then feeds the ballot into the electronic tabulator. MCL 168.797a. Notably, once the stub is detached and the ballot is deposited in the tabulator, the voted ballot cannot be traced to the voter.

The ballot remains in the tabulator's ballot receptacle until the close of the polls at 8:00 p.m. After the polls close, the election inspectors use the tabulator to generate a tape showing the precinct's vote totals. This tape functions as the precinct's statement of votes. MCL 168.801. The ballots are removed from the tabulator's ballot receptacle and placed in an approved ballot container that is then sealed by two election inspectors with a tamper-proof election seal that bears a unique serial number. Before the container is sealed, a "ballot tag" is affixed to the seal. The ballot tag records the date the container was sealed, name of the individuals who sealed the container, and the serial number on the seal used to secure the container. The seal serial number is also recorded in the poll book and on the statement of votes.

The sealed ballot containers are returned to the clerk's office where they are maintained in a secure place. MCL 168.805.

During the county canvass, the ballots remain in the local clerk's office unless summoned by the board of county canvassers due to the identification of an error in the documents prepared by the precinct's election inspectors. The board of county canvassers has the authority to direct the precinct's election inspectors to count the ballots if necessary to correct the error. If the ballots are unsealed during the canvass, they are resealed after the examination and returned to the custody of the clerk for safekeeping. MCL 168.823. If a recount is requested, the sealed ballot containers are delivered to the recount site. A precinct is not recountable unless the seal on the precinct's ballot container is intact, the serial number on the seal is accurately documented, and the number of ballots in the container balances with the number of names entered in the precinct's poll book. MCL 168.871(2).[4]

Against this statutory backdrop, you first ask whether voted ballots are public records under the FOIA, and if so, whether they are exempt from disclosure. As a corollary to that question, you ask whether the Department of State may control the process of review in the event voted ballots are not exempt from disclosure.

Requests to access public records are governed by the FOIA. The FOIA regulates and sets requirements for the disclosure of public records by all public bodies in the State. The core

[4] Absent voter ballots are returned to the local clerk by mail or in person by the voter or someone assisting the voter. Similar security and privacy precautions are taken by the local clerk with respect to these ballots as with ballots voted on election night. As with in-person voting, once the stub with the serial number is removed from an absent voter ballot, the ballot is no longer traceable back to the original voter. On election day, these ballots are fed into a tabulator to be counted, and then secured in approved containers.

purpose of the FOIA is stated at section 1(2) of the Act, MCL 15.231(2), which provides in pertinent part:

> It is the public policy of this state that all persons . . . are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

Michigan courts have interpreted the policy of the FOIA as one of full disclosure of public records absent a legislatively created exemption. See *Swickard v Wayne County Medical Examiner*, 438 Mich 536, 544; 475 NW2d 304 (1991). To that end, the FOIA provides that a person who submits a written request that describes a public record sufficiently to enable the public body to find the public record, has a right to inspect, copy, or receive a copy of an existing, nonexempt public record in the possession of the public body. MCL 15.233 and 15.235.

The FOIA defines "public body" to mean a state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government, and includes a county, city, township, village, or intercounty, or any other body that is created by statute or local authority or that is primarily funded by or through state or local authority. MCL 15.232(d). The Department of State is within the executive branch and is administered by the Secretary of State. See Const 1963, art 5, § 2; MCL 16.125 and 16.126. The Secretary of State has supervisory control over local election officials in the performance of their duties. MCL 168.21. The Department of State, the Secretary of State, and local city, township or county election clerks are all public bodies.

The FOIA defines "public record" in relevant part as "a writing prepared, owned, used, in the possession of, or retained by a public body in the performance of an official function, from the time it is created." MCL 15.232(e). The Act defines a "writing" to include:

> [H]andwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, and includes letters, words, pictures, sounds, or symbols, or combinations thereof, and papers, maps, magnetic or paper tapes, photographic films or prints, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content. [MCL 15.232(h).]

A ballot is a paper document upon which a voter affixes a mark or symbol to indicate the voter's selections as to candidates and ballot proposals. Voted ballots evidence the electors' preferences, and ultimately support the election or defeat of candidates and the approval or disapproval of ballot proposals in an election. They are the primary source for election results. Therefore, voted ballots are "writings" that record meaningful content and constitute "public records" for purposes of the FOIA.[5] Importantly, the question you pose does not raise "secrecy of the ballot" concerns because, as described above, a ballot is no longer traceable to the elector who voted it once the stub with its unique serial number is removed and the ballot is placed in the tabulator. Once placed in the tabulator, the voter's ballot and the selections recorded upon it become anonymous.

Again, public records must generally be disclosed after a public body receives a written request that describes the record sufficiently to enable the public body to locate the record. MCL 15.233(1). But the FOIA provides a number of exemptions in section 13(1) that allow public

[5] Consistent with that fact voted ballots are included in the Michigan Department of State's mandatory retention and disposal policy, which applies to public records. See Department of State Retention and Disposal Schedule, General Retention Schedule #23 – Election Records, items 306 – Ballots (Federal Offices) and 307 – Ballots (State and Local Offices); see also MCL 399.5 and 750.491 (requiring that public records be kept to satisfy administrative, legal, fiscal, and historical needs).

bodies to withhold from disclosure certain records and information. MCL 15.243(1)(a) – (y). These exemptions must be narrowly construed. *Detroit Free Press, Inc v Dep't of Consumer & Industry Services*, 246 Mich App 311, 315; 631 NW2d 769 (2001). A public body that denies a FOIA request has the burden of showing that the requested information falls within one of the exemptions found in section 13 of the Act. MCL 15.243; *State Employees Ass'n v Dep't of Management & Budget*, 428 Mich 104, 109-110; 404 NW2d 606 (1987). The FOIA does not prevent disclosure of public records that are covered by these exemptions; rather, it authorizes nondisclosure at the agency's discretion. *Herald Co v Bay City*, 463 Mich 111, 119 n 6; 614 NW2d 873 (2000).

In determining whether voted ballots are exempt from disclosure, only two of the enumerated exceptions in section 13(1) need be examined. The first is section 13(1)(a), which exempts from disclosure "[i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." MCL 15.243(1)(a). Known as the privacy exemption, this exemption has two prongs that the information sought to be withheld from disclosure must satisfy. First, the information must be "of a personal nature." Second, it must be the case that the public disclosure of that information "would constitute a clearly unwarranted invasion of an individual's privacy." *Michigan*

Federation of Teachers v Univ of Michigan, 481 Mich 657, 675; 753 NW2d 28 (2008). Because voted ballots are untraceable to a specific voter, they do not contain "[i]nformation of a personal nature," and, therefore, do not implicate the privacy exemption.[6]

The second exemption to be examined is section 13(1)(d) of the FOIA, which exempts from disclosure "[r]ecords or information specifically described and exempted from disclosure by statute." MCL 15.243(1)(d). Applying the language of the exemption and keeping in mind that FOIA exemptions must be narrowly construed, it must be determined whether any statute specifically describes and exempts voted ballots from disclosure.

Federal law requires the retention of election ballots and other matter related to elections where federal candidates were voted on for 22 months, and authorizes access to these materials by federal officials. 42 USC 1974. It does not, however, specifically exempt these election materials from disclosure at the state level. Thus, this statute cannot serve as the source for a section 13(1)(d) exemption, and research disclosed no other federal law relevant to this issue.

Turning next to state law, no statutes specifically describe and exempt voted ballots from disclosure under the FOIA. MCL 168.794c mandates that the Secretary of State promulgate

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[6] This conclusion is supported by the Court of Appeals' decision in *Korn v Southfield City Clerk*, unpublished opinion per curiam of the Court of Appeals, decided July 27, 2004 (Docket No. 251827), lv den 472 Mich 867; 692 NW2d 839 (2005), cert den 546 US 1076; 126 S Ct 831; 163 L Ed 2d 707 (2005). The issue there was whether the release of absent voter ballot jacket information, which contained voter name, address and signature, *along with the individual's vote*, would constitute an unwarranted invasion of privacy under FOIA. The Court held that the jacket information separated from the voting record was not personal in nature and, thus, did not fall under the privacy exemption. The Court reiterated, however, that how a person votes is intimate, and therefore personal in nature. Accordingly, the Court held that while the release of the ballot jacket information absent the voting record would not fall within the privacy exemption, release of the jacket with the voting information would fall within the exemption. In other words, election material is not personal in nature where the vote is not traceable to the voter.

rules concerning electronic voting records;[7] MCL 168.799a discusses the release of ballots; and MCL 168.847 empowers the Secretary of State to "authorize the release of all ballots." None of these statutes specifically describes and exempts voted ballots from disclosure under the FOIA. Accordingly, there are no state statutes that may serve as the basis for a section 13(1)(d) exemption under the FOIA. Voted ballots are not exempt from disclosure.

While the FOIA imposes the disclosure requirement, and sets the parameters for responding to a request for records, the Michigan Election Law and other related statutes impose constraints with respect to the release of voted ballots that must be accounted for in responding to any request under the FOIA.

As part of your first question you ask whether the Department of State may control the process by which a person may seek to review a voted ballot. Under the FOIA, a public body may "make reasonable rules necessary to protect its public records" and must "protect public records from loss, unauthorized alteration, mutilation, or destruction." MCL 15.233(3). The protection of public records from mutilation or destruction also is provided for in section 491 of the Michigan Penal Code, MCL 750.491. As the chief election officer of the State, the Secretary of State is authorized to supervise local election officials in the performance of their duties. MCL 168.21. Accordingly, the Secretary of State is authorized to supervise local election officials with regard to the public review of voted ballots. Therefore, an election clerk – under

[7] MCL 168.794c provides that:

> The provisions of sections 794 to 799a control with respect to elections where electronic voting systems are used, and shall be liberally construed so as to carry out the purpose of the provisions. A provision of law relating to the conduct of elections that conflicts with sections 794 to 799a does not apply to the conduct of elections with an approved electronic voting system. The secretary of state shall promulgate rules to implement the provisions of sections 794 to 799a, in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

the supervision of the Secretary of State – may control the process for reviewing voted ballots to the extent necessary to protect the physical integrity of the ballots, and to ensure chain of custody.

This conclusion is supported by the federal retention law, 42 USC 1974, which requires the retention and preservation of ballots and all other records that are requisite to voting in elections where federal candidates were voted upon for a period of 22 months. The purpose of this federal retention law is to maintain election ballots and other materials as evidence in the detection and prosecution of election crimes and federal civil rights offenses. Section 1974 requires that covered election documentation be retained either physically by election officials themselves, or under the direct administrative supervision of election officers. 42 USC 1974. A United States Department of Justice publication on ballot retention underscores the duty of election officers to retain and safeguard these documents:

> Section 1974 requires that administrative procedures be in place giving election officers ultimate management authority over the retention and security of those election records. Those administrative procedures should ensure that election officers retain ultimate responsibility for the retention and security of covered election documents and records, and that election officers retain the right to physically access and dispose of them.[8]

In accordance with Michigan Election Law and consistent with 42 USC 1974 and the FOIA, the Director of Elections instructed Allegan County election officials that, in responding to a FOIA request, no person other than the election clerk of the relevant jurisdiction or office

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[8] See Donsanto, Craig C., Director of the Election Crimes Branch in the Criminal Division of the United States Department of Justice, *Retention of Voting Records under 42 USC 1974*, Appendix 2 to "Election Document Retention in an Age of High Technology" published in 1994 by the Federal Election Commission, National Clearinghouse on Election Administration, the duties and functions of which were transferred to the United States Election Assistance Commission in 2002. Available at <http://www.eac.gov/election/quick-start-management-guides/fec-publications> (accessed April 12, 2010).

staff designated by that clerk may have any unsupervised access to the ballots, ballot containers, or ballot bags.[9]

More specifically, the Director instructed these local clerks that 1) the clerk or office staff designated by the clerk shall be present in the room where the inspection takes place for the entire time the ballots are being examined; 2) the person or persons inspecting the ballots shall not be permitted to touch or handle the ballots, touch or handle the container or ballot bag in which the ballots are secured, or be left unattended in the room where the examination is carried out; and 3) any photocopying is to be performed by the clerk or office staff designated by the clerk, and during the photocopying process the person or persons requesting the photocopies may not be permitted to touch or handle the ballots, touch or handle the container ballot bag in which the ballots are secured, or be left unattended in the room where secured or unsecured ballots are present.[10] These instructions are reasonable, and designed to ensure the physical integrity and security of the voted ballots.

It is my opinion, therefore, in answer to your first question that voted ballots, which are not traceable to the individual voter, are public records subject to disclosure under the Freedom of Information Act, MCL 15.231 *et seq*. The Secretary of State, in her role as the Chief

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[9] By law, the Director of Elections is "vested with the powers and shall perform the duties of the secretary of state under his supervision, with respect to the supervision and administration of the election laws." MCL 168.32. The duties of the Secretary of State, as Chief Elections Officer, MCL 168.21, include issuing "instructions" for the conduct of elections in accordance with Michigan Election Law, MCL 168.31(1)(a), which certainly includes providing for the security of voted ballots. Thus, it is within the Director's authority to issue instructions to local elections officials as to how ballots should be handled and disclosed in response to a FOIA request.

[10] See September 29, 2009, memorandum from Christopher Thomas, Director of Elections, Michigan Department of State, to Allegan County Election Officials. This office has been advised that if it is concluded that voted ballots are public records subject to mandatory disclosure under the FOIA, it is the intent of the Director of Elections to issue the same instructions to all local elections officials. (A copy of the memorandum is attached to this opinion as an Appendix.)

Elections Officer, or the Director of Elections through the authority vested in that office, may exercise supervisory authority over local elections officials responding to a FOIA request for voted ballots by issuing directions for the review of the ballots in order to protect their physical integrity and the security of the voted ballots.

You next ask whether a public body must only allow inspection and examination of the voted ballots, or whether the public body must also provide copies of the voted ballots upon request and for a charge.

Under the FOIA, a person may ask to inspect, copy, or receive a copy of a public record that is subject to disclosure. MCL 15.233(1). Thus, a person may ask to copy or receive copies of voted ballots. However, as stated above, a public body may "make reasonable rules necessary to protect its public records" and must "protect public records from loss, unauthorized alteration, mutilation, or destruction." MCL 15.233(3). Accordingly, if a person seeks or requests copies of the ballots, this process may be subject to any procedures for ballot handling prescribed by the Secretary of State. A public body may also charge a fee for the necessary copying of a public record for inspection or for providing a copy of a public record as set forth in MCL 15.234 of the FOIA.[11]

It is my opinion, therefore, in answer to your second question that a person must be allowed to inspect or examine voted ballots, which are not traceable to the individual voter, and to receive copies of the ballots upon request subject to reasonable restrictions prescribed by the

[11] The FOIA allows those who are indigent or receiving public assistance to acquire copies of public records without charge for the first $20 of the fee for each request. MCL 15.234.

Secretary of State. The public body may charge a fee for the copying of the voted ballots as provided for in section 4 of the Freedom of Information Act, MCL 15.234.

Finally, you ask whether federal law, specifically 42 USC 1974, or a rule promulgated by the Michigan Department of State, 1979 AC, R 168.790, controls the timing of when a ballot voted in an election may be disclosed or released. This question is understood as asking when a public body must provide a person requesting access to voted ballots under the FOIA with an opportunity to inspect or receive copies of the ballots.

Under the FOIA, a public body has five business days within which to respond to the FOIA request by either granting or denying the request, granting or denying the request in part, or invoking an additional ten days for responding to the request. MCL 15.235(2). However, federal and state election laws impose time constraints on when access to voted ballots may be had for inspection and copying purposes.

42 USC 1974 requires that ballots cast for federal candidates in a state-run election be held for 22 months after the election.[12] Section 1974 provides that the election official, or state-designated custodian, must make the ballots available to the United States Attorney General for

[12] The statute provides:

> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. . . . [42 USC 1974.]

inspection, reproduction and copying upon written demand by the United States Attorney General that contains a statement of the basis and purpose for the inspection and copying. 42 USC 1974b.

Rule 168.790(19), promulgated by the Michigan Department of State, provides:

> *Ballots used at an election may be destroyed after 30 days following the final determination of the board of canvassers with respect to the election, unless their destruction has been stayed by an order of a court or the secretary of state.* Ballots shall not be released for examination, review or research unless prior approval is obtained by the board of state canvassers. [Emphasis added.]

The first sentence of this rule provides for the retention of ballots for a minimum of 30 days. While this state administrative rule may appear to conflict with the federal statute, the two are easily reconciled. In state elections involving federal candidates, voted ballots must be retained for 22 months. In all other state-run elections, voted ballots must be retained, at a minimum, for 30 days following the final determination of the board of canvassers with respect to the election subject to the applicable retention and disposal schedule.[13]

While these provisions establish how long voted ballots must be *retained*, they do not – for purposes of answering your question – address the timing of *release or disclosure* of voted ballots required under state FOIA law.

With respect to release or disclosure, the Michigan Election Law provides:

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[13] Under the Department of State's retention and disposal schedule, voted ballots in elections involving federal offices must be retained for 22 months, while voted ballots in elections involving only state and local offices must be retained until 30 days after the canvass of the election is completed, until a recount is completed, until a court order or a Secretary of State order to suspend destruction is lifted, or until an investigation into defective ballots or voting equipment is completed. Department of State Retention and Disposal Schedule, General Retention Schedule #23 – Election Records, item 306 – Ballots (Federal Offices) and item 307 – Ballots (State and Local Offices). See also n 5, *supra*.

> The secretary of state may authorize the release of all ballots, ballot boxes, voting machines, and equipment *after 10 days following certification of an election by the board of state canvassers* in a precinct other than a precinct in which 1 or more of the following occur:
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> (a) A petition for recount has been filed with the board of state canvassers.
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> (b) A petition has been filed pursuant to section 879.
>
> (c) A court of competent jurisdiction has issued an order restraining interference with ballots, ballot boxes, voting machines, and equipment. [MCL 168.847; emphasis added.]

The administrative rules provide that:

> The clerk in charge of the election shall secure the container containing the programs, test deck, accuracy test results, and other related materials, and the original edit listing *until 30 days following the certification of the election* if a recount has not been requested or until a date prescribed by the secretary of state. [R 168.790(18); emphasis added.][14]

The Board of State Canvassers is charged with examining the returns for state and federal elections. MCL 168.841. If state or federal offices are not involved, the board of county canvassers is charged with examining the election returns. MCL 168.821 and 168.822. The Board of State Canvassers is required to meet on or before the twentieth day following an election to examine the returns, and certify the election results. MCL 168.842 and 168.845. A board of county canvassers must meet within five days of an election to examine the returns, and certify the election results. MCL 168.821.

Reading these provisions together, with respect to elections in which federal candidates appear on the ballot, the earliest date that voted ballots could be released or disclosed for

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[14] This office is advised that the Secretary of State interprets R 168.790(18) to include voted ballots as "other related materials," and thus subject to the 30-day retention period. This interpretation is entitled to "respectful consideration." See *In re Complaint of Rovas*, 482 Mich 90, 102-103; 754 NW2d 259 (2008).

purposes of allowing an inspection or making copies pursuant to a FOIA request would be 30 days following the Board of State Canvassers' certification on or before the twentieth day after the election.[15] It is noted, however, that if a petition for recount is filed,[16] if certification is otherwise delayed, or a court order is issued, the time period might extend beyond 30 days after certification. MCL 168.842(1); MCL 168.847(a)-(c).

Regarding all other elections, the earliest date that voted ballots could be released or disclosed for purposes of allowing an inspection or making copies pursuant to a FOIA request would be 30 days following the board of county canvassers' certification on or before the fifth day after the election. Again, this date would be subject to extension if a petition for recount was filed,[17] if certification is otherwise delayed, a court order is filed, or the Secretary of State prescribed a different date.

At this point, it is necessary to place into context Rule 168.790(19), which provides, in part, that "[b]allots shall not be released for examination, review, or research unless prior approval is obtained by the board of state canvassers." Statutes and rules must be interpreted in a manner that ensures they work in harmony with an entire statutory scheme. *Walters v Leech*, 279 Mich App 707, 709-710; 761 NW2d 143 (2008); see also *Wayne County v Auditor Gen*, 250

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[15] While section 847 indicates that the Secretary of State "may authorize" the release of ballots ten days after certification, Rule 168.790(18) states that a clerk "shall secure" the ballots for 30 days. In light of the rule's use of the mandatory term "shall," the Secretary of State must exercise the discretion accorded her under MCL 168.847 consistent with Rule 168.790(18).

[16] With respect to elections certified by the Board of State Canvassers, a petition for recount must be filed within 48 hours of certification of the election. MCL 168.879 and 168.880.

[17] Regarding elections certified by boards of county canvassers, a petition for recount must be filed within six days of the board's certification. MCL 168.866. "All recounts shall be completed for a primary election not later than the twentieth day and for any other election not later than the thirtieth day immediately following the last day for filing counter petitions or the first day that recounts may lawfully begin." MCL 168.875.

Mich 227, 233; 229 NW 911 (1930). Harmonizing Rule 168.790(19) with the election rules and statutes discussed above, as well as the FOIA, leads to the conclusion that its application is limited to the ballot security time period. In other words, subsection (19)'s requirement that the Board of State Canvassers approve any review of ballots only applies during the time period within which voted ballots cannot be disclosed for purposes of the FOIA. Once the security periods lapse, voted ballots are subject to disclosure in response to a FOIA request without approval by the Board of State Canvassers.

It is my opinion, therefore, in answer to your third question that a person requesting access to voted ballots, which are not traceable to the individual voter, under the Freedom of Information Act, MCL 15.231 *et seq*, is entitled to a response from a public body granting or denying the request within 5 to 10 business days. MCL 15.235(2). However, the public body in possession of the voted ballots may not provide access to the ballots for inspection or copying purposes until 30 days after certification of the election by the relevant board of canvassers. 1979 AC, R 168.790.

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