

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

August 5, 2022

Secretary Jocelyn Benson
Michigan Department of State
430 W. Allegan St.
Richard H. Austin Building
Lansing, MI 48918

Sent via email only

Re: Investigation into Third Party Access to Vote Tabulators

Dear Secretary Benson,

In February of 2022, you referred a complaint to this Department and to the Michigan State Police related to at least one unnamed third party gaining inappropriate access to tabulation machines and data drives used in Richfield Township and Roscommon County. As a result of that referral, and in partnership with the Michigan State Police, we initiated a joint criminal investigation into these allegations. Ultimately, our investigation uncovered that, after the 2020 election, a group of individuals gained unauthorized access and compromised tabulators from the following clerk's offices: the Roscommon County Clerk, the Richfield Township Clerk, the Lake City Township Clerk, and the Irving Township Clerk. All unauthorized access occurred between the dates of March 11, 2021, and late June of 2021. All impacted tabulators have been seized as evidence as part of our investigation and decommissioned from use in any future elections.¹

We have requested the appointment of a Special Prosecuting Attorney ("SPA") to review the case for the issuance of possible criminal charges against several of the individuals involved.² We view the actions of these individuals to be very serious,

¹ Pursuant to our earlier meeting with you, it's our understanding that these tabulators have already been replaced and therefore would not impact the August 2nd Primary.

² The case has been referred to the Prosecuting Attorneys Coordinating Council (PACC) due to a potential conflict of interest stemming from the actions of one of the individuals involved in gaining unauthorized access to the tabulators. PACC will choose another prosecutorial agency through the SPA process.

yet we do not believe these actions impair the integrity of the recent August 2nd primary election.

As Secretary of State, you have a legal obligation to advise and direct local election officials as to the proper methods of conducting elections, MCL 168.31, and you have role with respect to the supervision and administration of election laws, MCL 168.32.³ In light of these important duties, and now that our prosecutorial referral has been made, we thought it necessary to provide you with an overview of the factual findings of our investigation thus far *as they relate to election administrators and election equipment*. This is just a summary of information and should not be interpreted as an exhaustive accounting of what transpired. If you believe you need additional information about the conduct of election officials, please let me know. I will note at the outset that all election officials interviewed for purposes of this investigation were cooperative with law enforcement.

Investigatory Findings:

In January or February of 2021, newly elected Richfield Township Supervisor Walter John Bawol received a telephone call from a Houghton Lake resident who asked if she could give his name to a State Representative (hereinafter “Representative”) in reference to alleged fraud concerning his township’s voting machines. Bawol subsequently spoke with the Representative who advised that she was looking into the tampering of voting machines and wanted him to turn over the township tabulators to “investigators.” Bawol subsequently had telephone conversations with an individual (hereinafter “Person 1”)⁴ about the tabulators.

On or about March 9, 2021, Person 1 went to Irving Township in Barry County to obtain a statement from Irving Township Clerk Sharon Olson. Person 1 had already met and interviewed Olson prior to this call. Person 1 and a Barry County Deputy Sheriff previously met with Olson at a coffee shop in Hastings to discuss a possible “vote shaving” investigation they were conducting. The representation was made that Person 1 was acting on behalf of the Sheriff’s Department and asked her to cooperate with him. Once Person 1 arrived at Irving Township on March 9, 2021, Olson gave him a tabulator that had been used in the 2020 General Election.

Person 1 subsequently collected another tabulator from a location in Missaukee County. Sometime around the middle of March 2021, the Representative advised Lake City Township Clerk Korinda Winkelmann that she was conducting an audit of the 2020 General Election and would have an investigator call Winkelmann for assistance. On March 18, 2021, Person 1 went to the office of Lake Township Clerk

³ In light of your statutory authority, I have identified the clerks by name in this summary.

⁴ Person 1 is not a law enforcement officer.

Winkelmann and obtained a tabulator and a laptop computer that had served as an electronic poll book.

On March 20, 2021, Roscommon County Clerk Michelle Stevenson received a telephone call from a former clerk. That person told her that the Representative had some questions and wanted Clerk Stevenson to reach out to an individual, hereinafter "Person 2." Following this call, Stevenson received a text message advising her that Person 1 had left a message on her home answering machine. Clerk Stevenson subsequently received a call on her cell phone from the Representative, who then told her that "representatives" were doing an investigation into election fraud and needed her voting machine. Following that conversation, she spoke with Person 1 on the phone. He told her there was an investigation into fraud and asked for her voting machine. She agreed to meet with Person 1 the next day.

On Sunday, March 21, 2021, Person 1 went to Roscommon and met Clerk Stevenson at the Roscommon County Clerk's office. She turned over a tabulator and several associated USB drives. When he asked for the stand-alone computer containing the Election Reporting Management (ERM) software, she refused the request. However, she stated that she would allow him to copy the software from the stand-alone county computer. Person 1 then left but subsequently returned with another individual ("Person 3"). Person 3 then copied the ERM software. The process took several hours. On that same date, Person 1 and Person 3 went from the Roscommon County Clerk's office to the Richfield Township office and picked up two more tabulators from Supervisor Bawol.

At the time the tabulators were obtained, Person 1 assured each separate clerk that they would be returned in just a few days. But as time passed, and the clerks grew more apprehensive, they contacted the Representative or Person 1. In each instance, they were simply put off and assured that the equipment would soon be returned. Clerk Stevenson had several conversations with the Representative over a period of weeks asking where her equipment was. The Representative kept making excuses and Stevenson began to question the authority of the investigation. The Representative told her not to worry about the tabulators, as she was doing the right thing and they had her back. She further advised the clerk that her name would never come up.

On April 6, 2021, Person 1 finally returned the voting equipment to Stevenson. The clerk met Person 1 at the carpool lot at the West Branch exit of southbound I-75 and returned the Roscommon County tabulator and the three USB drives. On or about the same time, the two tabulators were returned to Richfield Township.

On April 7, 2021, the plaintiff's attorney issued a subpoena in the matter of *William Bailey vs. Antrim County*, 13th Circuit Court case 2020-9238-CZ, ordering Verizon to produce detailed information concerning specific devices.⁵ Those devices were identified in the subpoena as: (1) Specific IMEI or modem ID 351862109252898; (2) Specific IMEI or Modem ID 351862109252930; and (3) Specific IMEI or Modem ID 351862109256717. These ID numbers are those of voting tabulators manufactured by ES&S. A representative of ES&S confirmed that the only way to get the Verizon modem ID number from the tabulators is to break open the security seals and physically remove the outer panels to look inside of the tabulators and read the ID numbers on the modems. The modem ID numbers listed on the subpoena were those of the two tabulators belonging to Richfield Township and the one tabulator from Roscommon County.

Sometime in April of 2021, a photograph of an ES&S modem was used as an exhibit in *Bailey v Antrim County*. Clerk Stevenson confirmed that the photograph was that of the modem in the Roscommon tabulator because of the IP address seen on the audit tape. Plaintiff's attorney also has a website with a splash page featuring the *Bailey v Antrim County* case. A video is displayed on that page. The video clearly shows a tabulator with red tape placed in a distinctive manner over the serial number and other identifying information.

On June 11, 2021, Person 1 delivered the tabulator taken from Irving Township back to Clerk Olson at the township office. On September 10, 2021, Person 1 delivered the tabulator taken from Lake City Township back to Clerk Winkelmann at the Great Lakes Crossing shopping mall.

On March 2, 2022, the tabulators that had been provided to Person 1 by the Roscommon County Clerk and the Richfield Township Supervisor were seized pursuant to a search warrant and are currently being held in evidence. They were subsequently examined by ES&S technicians. The ES&S subject matter experts confirmed that there was an attempt to access the internal components by unauthorized personnel. ES&S subject matter experts further found that one from Roscommon County had unusual damage to the access door brackets that hold the paper roll door assembly.

Based on their review, ES&S subject matter experts concluded that one of the five tabulators was subject to extensive physical tampering, but that tampering only resulted in equipment damage. ES&S found no evidence that the physical tampering resulted in any software or firmware manipulation of the device. They found no evidence that any of the secure, encrypted USB thumb drives were subject to any unauthorized access or any software/firmware manipulation. Lastly, they found no evidence that the EMS Windows operating system or

⁵ You participated in this litigation as an Intervening-Defendant and were represented by this office in those proceedings.

ElectionWare application were manipulated or altered in any way.

On April 26, 2022, the Dominion tabulator that had been given to Person 1 by Lake City Township Clerk Winkelmann was seized pursuant to a search warrant at the township office. The seal number on the machine was covered over with red tape in the same manner as that of the tabulator shown in the video.

On April 29, 2022, the Dominion tabulator that had been given to Person 1 by Irving Township Clerk Olson was seized pursuant to a search warrant executed at the township office. Visual inspection indicated that the State of Michigan seals were voided on this machine.

As a result of this investigation, all tabulators that had been improperly accessed were decommissioned before the primary election. Because these tabulators were accessed improperly and damaged, they should not be used in any future election. They are currently being held as evidence pending a Special Appointed Prosecutor's review for potential criminal charges.

On February 12, 2021, the Bureau of Elections issued a News Update which included an article titled "Release of Security." Within the article is a statement stating:

While jurisdictions should consult with city, township, or county counsel regarding any pending court orders, subpoenas, or records requests regarding these materials, please note that *only election officials, licensed vendors, or accredited voting system test laboratories should be granted access to voting equipment.* (emphasis added)

Notwithstanding this notice, based on the findings of our investigation and in addition to whatever action you may otherwise decide to take, we recommend that additional education be provided to *all* clerks outlining their legal obligation to safeguard election equipment. For example, MCL 168.932(b) makes it a five-year felony for a person to obtain undue possession of a voting machine used in an election. In addition, MCL 750.157a makes it a five-year felony to conspire with another person to commit an offense that is prohibited by law, or to commit a legal act in an illegal manner.⁶ Beyond potential criminal implications, there could also be potential civil liability stemming from the unauthorized release and destruction of government property.

Lastly, election clerks should be notified that they should always request to see identification from any individual purporting to be a law enforcement officer and

⁶ This should not be construed as an opinion or recommendation as to the criminal charges that could apply in this case or an exhaustive list of the facts relevant to this particular investigation. Nor should it be construed as an exhaustive list of the charges that could apply when election equipment is improperly accessed, used, or tampered with.

seeking to inspect or seize election equipment. Further, even law enforcement officers should have a search warrant to inspect or seize equipment. A search warrant is an order signed by a judge authorizing a police officer to search for specific objects at specific locations. If a clerk is presented with a legal document and is unsure of how to proceed, he or she should seek advice from their legal counsel.

If you have any questions or concerns, please don't hesitate to contact me.

Sincerely,

Christina Grossi

Christina M. Grossi
Chief Deputy Attorney General