

FOIA and Election records

[Excerpt from MTA's book, *Introduction to the Freedom of Information Act*, reprinted with permission]

Ballots

Voted ballots that are not traceable to the individual voter are public records subject to disclosure under the FOIA. The secretary of state 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. (Attorney General Opinion 7247 of 2010)

A person must be allowed to inspect or examine voted ballots that 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. But 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. (Attorney General Opinion 7247 of 2010)

Voter registration information

Voter registration information is subject to public disclosure under the FOIA, except for the information exempt from disclosure under the Election Law. See page 54 for Election Law exemptions.

At least three sections of the Michigan Election Law, Public Act 116 of 1954, MCL 168.1, *et seq.*, completely exempt information about an individual registered voter from public disclosure:

- Office where person registered to vote. (MCLs 168.509ff and 168.509gg)
- Information on refusal to register to vote. (MCLs 168.509ff and 168.509gg)
- An electronic mail address provided by an absent uniformed services voter or overseas voter for electronic transmission of a voter registration or ballot application is confidential and exempt from disclosure. (MCL 168.759a(11))

Several other sections of the Michigan Election Law exempt information about an individual registered voter from being provided **in a copy** of a record. "Copy" includes a computer tape, disk or listing. (MCL 168.522) Note that the following exemptions are not complete exemptions from disclosure; a clerk may **not** release the information in a **copy**, but a person inspecting the records may **view** the information. This is because the public's right to inspect the voter registration information is not pursuant to the FOIA, but is governed by Section 516 of the Election Law, which states that, "The registration record shall be open for public inspection under rules and regulations prescribed by the clerk." (MCL 168.516) So the provisions of the Election Law that exempt the information listed below, by prohibiting the release of that information in a copy, are read as specifically applying to copies, and not to public inspection:

- Driver's license or state personal identification card number. (MCL 168.509gg)
- Birth day/month. (MCLs 168.509gg and 168.522a)
- Phone number. (MCL 168.509gg)
- Digitized signature of an elector that is captured or reproduced and transmitted to the qualified voter file by the secretary of state or a county, city or township clerk under MCL 168.509hh or by the secretary of state under Section 307 of the Michigan
- Vehicle Code, MCL 257.307. (MCL 168.509gg)