

Subject: 083-22 Winters - Notice of Comments Submitted
Date: Tuesday, March 1, 2022 at 3:50:42 PM Eastern Standard Time
From: Public Records
To: AO Records
Attachments: 083-22 Winters - Pre-AG Document Release.pdf, 083-22 Winters - Submitted AG Brief.pdf, TX-GOV-22-0150.pdf

EXTERNAL SENDER

March 1, 2022

Mr. Dylan Winters
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
records@americanoversight.org
VIA EMAIL ONLY

RE: OOG PIR # 083-22

Dear Mr. Winters:

This email is in response to your public information request to the Office of the Governor (“OOG”), received by the OOG on February 9, 2022. A copy of your request is attached to this email.

The OOG previously requested a ruling pursuant to section 552.301(b) of the Government Code on February 23, 2022. Today, the OOG submitted written comments to the Office of the Attorney General pursuant to section 552.301(e) of Government Code. A copy of the OOG’s comments submitted to the Open Records Division is attached. A portion of the information responsive to your request is also attached to this email.

If you have any questions, please contact me at 512-475-2256 or publicrecords@gov.texas.gov.

Thank you,

Kieran Hillis
Public Information Coordinator
Assistant General Counsel
Office of Governor Greg Abbott

The State of Texas

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John B. Scott
Secretary of State

December 10, 2021

Bruce Sherbet
Collin County Elections Administrator
2010 Redbud Blvd, Suite 102
McKinney, TX 75069

Isabel Longoria
Harris County Elections Administrator
1001 Preston
Houston, TX 77002

Michael Scarpello
Dallas County Elections Administrator
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Dallas, TX 75247

Heider Garcia
Tarrant County Elections Administrator
100 E. Weatherford
Fort Worth, Texas 76196

Dear Bruce, Michael, Isabel and Heider:

Thank you for your service to Texas voters and for your commitment to transparency in our election process. As indicated in our office's previous communications, the Texas Secretary of State's office is conducting the largest and most comprehensive forensic audit of the November 2020 General Election in your respective counties. The purpose of this audit is to provide clarity and confidence for Texas voters that all applicable laws and procedures were followed during the 2020 Election, and to identify any irregularities or issues that need to be addressed going forward.

Enclosed, please find a comprehensive list of documents and records our office will be examining as part of Phase 2 of the Full Forensic Audit, as well as requests for information from your office that will be instrumental in completing the audit process. We request that your respective offices begin locating the documents listed to prepare for our Forensic Audit Division's on-site examinations, which will be coordinated at a mutually convenient time in January 2022.

In the near term, we request that you provide us the following information, in writing, to our office by **Tuesday, December 21st** in order to guide the next phase of the forensic audit process:

- **A list of Early Voting or Election Day polling locations that had a discrepancy of one percent or more between the number of voters that checked in to the number of votes cast at that location.**
- **Whether any voting sites were closed or added due to an emergency or other necessity**
- **Any known procedural or chain of custody defects**
- **Any other issues discovered that you would like to disclose now that may be relevant to our audit process**

- **A list of complaints received and resolved, with a description of any known investigative steps or known resolution.**
- **A detailed accounting of the following:**
 - **Total Early Voting Ballots by Mail Requested**
 - **Total Early Voting Ballots by Mail Sent out**
 - **Total Early Voting Ballots requested by FPCA**
 - **Breakdown of Early Voting Ballots by Mail accepted/rejected**
 - **Total number of mail ballot voters that cancelled their mail ballot without surrendering the mailed ballot and voted in person**
 - **Total number of mail ballot voters that surrendered their mail ballot and voted in person**
- **A detailed accounting of the following:**
 - **Total Number of Provisional Votes Cast**
 - **A list of Provisional Voters by reason for voting provisionally**
 - **Total Number of Provisional Votes cast for voters lacking ID**
 - **Total number of Provisional Voted Accepted/Rejected**
- **List of entities that conducted recounts or had election contests**

We thank you in advance for your responses to this initial audit survey and request that you begin preparing the enclosed list of documents and records for our agency's review.

Please feel free to reach out to our office directly if you have any questions or concerns.

Sincerely,



John B. Scott
Texas Secretary of State

Encl.: 2020 Forensic Election Audit – Phase 2: Comprehensive Records Examination

2020 Forensic Election Audit

Phase 2: Comprehensive Records Examination

The purpose of this document is to outline the records and procedures that the Texas Secretary of State's office is reviewing for the forensic audit of the 2020 General Election in Collin, Dallas, Tarrant, and Harris counties. The specific review process for each category will be based on the county's response to the initial survey questions provided. Once the scope is established on a county-by-county basis, we will provide detailed documentation regarding the specific review of each applicable category.

We recognize that some counties may use different terminology for certain forms and procedures. The terminology used in this document is based on commonly used terms in the Texas Election Code and based on industry standards. To the extent that counties use different terminologies to describe the election materials and procedures used in the November 2020 General Election, county election officials will have the opportunity to provide an explanation in their responses ahead of our office's on-site visits.

Election Security

The following questions pertain to each county's election security measures. Please elaborate to the fullest extent possible in your responses:

- Do you have badge-controlled access to your election office?
- Do you keep track of who enters into the office, especially sensitive areas?
- Are visitors escorted at all times?
- Do you keep track of who enters the ballot programming area? Are the number of people authorized to access the programming area limited?
- Did your county attend Texas Secretary of State webinars that discussed the [Election Security Toolkit](#)?
- Did your county create individual versions of all six documents that address the procedures in your county?
- If you did not complete all 6 documents, which of these did you complete?
 - Vendor Risk Management Policy (VRMP)
 - Continuity of Operations Plan (COOP)
 - Incident Response Plan (IRP)
 - Election Information Security Policy (EISP)
 - Election System Security Plan (ESSP)
 - Election Security Best Practices
- Does your county have an offsite version of the Election Security Toolkit in a printed or electronically stored format?
- Does your county have a segmented election network?
- Does your county have a next generation firewall?

- Does your county IT Department regularly patch and maintain the latest software version throughout the division?
- Does your county employ the Principle of Least Privilege?

Acceptance Testing Records if New Voting System was Used for the First Time

An examination of the following records will gauge the percentage of equipment that did not pass the acceptance testing and, therefore, was not operable during the November 2020 General Election:

- Logs for each device tested
- Logs that show if a device did not function properly or had to be returned for vendor review or service

L&A Testing Records

An examination of the following documents and records will determine if the voting system accurately recorded the test voters' choices and therefore demonstrated that the voting system accurately recorded voters' ballot choices:

- Public Notice of Logic and Accuracy (L&A) Test
- All test ballots voted in the election
- Tally Sheets
- Test Deck Records
- List of participants who voted test ballots
- Records showing test outcomes and if tests had to be repeated
- Testing media, including:
 - memory sticks
 - mobile ballot boxes (MBBs)
 - paper ballots used for L&A test voting and tabulation)
- All testing seals or other test materials

Election Preparation

An examination of the following documents and records will determine whether or not protocols to secure the voting system and ballot were followed to protect the integrity of the election:

- List of Presiding Judges and Alternate Judges by Precinct and Party
- Notification of Election Training Program
- Ballot Programming: Please indicate whether your vendor programmed your ballot or if the ballot was programmed by in-house staff.
- Electronic Poll Books (EPBs) programming: Please indicate how your EPBs were programmed and at what intervals was the Official List of Registered Voters on the EPB updated.

Early Voting In Person

An examination of the following documents will provide a summary of all processes executed to conduct in-person Early Voting:

- **Election Workers**
 - List of Early Voting Deputies, Alternate Deputies and Early Voting Clerks
 - Lists of Early Voting Workers who dropped out of the election, the date they dropped out and the names of the replacement workers
 - Please indicate the training that any emergency replacement workers received.
 - List of “no show” Early Voting workers
- **Documentation related to Ordering and Providing Notice of the Election**
 - Order of November General Election for State and County Officers (GESCO)
 - Location of the Main Early Voting Polling Place as noted on the Order of Election
 - List of Early Voting Branch Polling Places as noted on the Order of Election
 - Notice of General Election (copy of posted notice and publication)
 - Record for Posting Notice of Election if posted in this manner
- **Documentation for Ballot Corrections, if applicable**
 - Notice of Ballot Correction, if applicable
 - Notice of Ballot Destruction, if applicable
 - Record of Ballot Destruction, if applicable
 - Notice of Ballot Reprint Order, if applicable
- **Documentation for Tracking Ballots**
 - Register of Official Ballots for Early Voting at the Main Location (if ballots are pre-serialized, if not the number of ballot cards delivered)
 - Register of Official Ballots for Early Voting at a Branch Location (if ballots are pre-serialized, if not the number of ballot cards delivered)
- **Polling Place Paperwork**
 - Combination Forms for each day of Early Voting OR a report generated by the general custodian to accurately create a summary of all processes that were required to be executed as noted on paper Combination Forms
 - Daily Balancing Envelope or Report (contain copy of daily returns for Early Voting, to the extent possible)
 - Ballot Styles of voters who were given a ballot vs. how many votes of each ballot style should have been cast, based on voter registration precinct (this identifies when a voter is given the wrong ballot style)
 - Results Tapes/Suspend Reports
 - List of Declared Write-In Candidates for posting in the voting booth
 - Reasonable Impediment Declarations, if applicable
 - Statements of Residence, if applicable
 - Standard Affidavits

- Registration Omissions List
- **Other Information to be Reviewed**
 - List of Registered Voters that was used in the 2020 Presidential Election (electronic copy).
 - List of any Early Voting Site that had to be closed or changed according to county records
 - Signature Roster for Hand Delivery of a Ballot by Mail Forms (usually this process is only done only on Election Day, but the hand delivery period was extended only for the November 3, 2020 General Election)
- **Chain of Custody Paperwork**
 - Chain of Custody forms (Record of Early Voting Ballot Seals) that document the seals on the ballot boxes for each day of Early Voting
 - Chain of Custody delivery of equipment to voting sites (with seal numbers and equipment serial numbers noted) (signatures of persons who delivered equipment)
 - Chain of Custody of pickup of equipment from voting sites (with seal numbers and equipment serial numbers noted) (signatures of persons who picked up equipment)
 - Chain of Custody forms for when troubleshooters picked up completed forms from Early Voting sites for daily processing
 - List of Early Voting Daily seals for Provisional Secure Container
- **Voting System Equipment Management**
 - Trouble Logs and equipment replacement records
 - Troubleshooter visit logs
 - Equipment returned to vendor for technical support
 - Call Center Event/Complaint Logs
- **Poll Watcher Paperwork**
 - Poll Watcher Certificates of Appointment

Ballot by Mail – Early Voting

An examination of these documents and records will determine whether Early Voting by Mail was conducted in accordance with state and federal law:

- Applications for Ballot by Mail (ABBM)s
- List of Annual ABBM Voters
- List of Declared Write-In Candidates
- Notices of Improper Delivery (and to whom they were sent)
- Emails from the county to voters regarding ABBM and Federal Post Card Application (FPCA) rejections
- Notices of Rejected ABBMs and reasons
- **Mail Ballot Cancellation Paperwork**
 - Request to Cancel a Ballot by Mail for Use in the Polling Place

- Request to Cancel a Ballot by Mail for Use in the Early Voting Clerk's Office
 - Notice of Denial of Request to Cancel Application for a Ballot by Mail
 - Notice of ABBM or FPCA Cancellation (Formerly Notice to Presiding Judge)
- **Ballot By Mail Forms**
 - A sample of the November 3, 2020 Special Ballot Envelope to demonstrate that the correct version was used
 - A sample of the November 3, 2020 Special Carrier Envelope to demonstrate that the correct version was used
 - Special Carrier Insert for an ABBM voter for November 3, 2020 Election to demonstrate that the correct version was used
- **Other Information to be Reviewed**
 - List of FPCA ballots transmitted by email to the voter
 - List of FPCAs that were physically mailed to the voter
 - List of Voters Mailed a Corrected Ballot, if applicable
 - Statistics of how many uncorrected ballots were returned and counted as well as how many corrected ballots were returned and counted, if applicable.
 - List of Voters who were required to complete and return a Statement of Residence with their Ballot by Mail
- **Special Early Voting Forms**
 - Restricted Ballot Rosters for Chapter 112, 113 and 114 Ballots
 - Poll List of Voters Voting a Limited Ballot by Personal Appearance
 - Applications for a Limited Ballot
 - Notice to Voter Registrar of Application for a Presidential Ballot
 - Applications for an Emergency Early Voting Ballot Due to Sickness or Physical Disability
 - Applications for Emergency Ballot Due to Death in the Family
 - List of persons who voted on a space flight, if any

Election Day

An examination of the following documents and records from voting sites will determine if election officials followed proper chain of custody procedures, produce documentation of the chain of custody of ballots and election materials, and determine whether all state and federal laws were followed:

Election Workers

- Final List of Election Day Polling Places
- List of Presiding Judges and Alternate Judges by Precinct and Party
- Order of Appointment of Election Judges and Alternates
- Notifications of Appointment as Election Judge
- Writs of Election for the General Election for State and County Officers

- List of emergency appointments for Election Day Workers
- Lists of Election Day Workers who dropped out of the election, the date they dropped out and the names of the replacement workers.
 - Please indicate the training that any emergency replacement workers received.
- List of “no show” workers on Election Day

Election Day Forms

- Combination Forms for election day OR a report generated by the general custodian to accurately create a summary of all processes that were required to be executed as noted on paper Combination Forms
- Ballot Styles of voters who were given a ballot vs. how many votes of each ballot style should have been cast based on voter registration precinct (this identifies when a voter is given the wrong ballot style)
- Results Tapes/Suspend Reports
- List of Declared Write-In Candidates for posting in the voting booth
- Reasonable Impediment Declarations, if needed
- Statements of Residence, if needed
- Standard Affidavits
- Registration Omissions List
- Envelope Containing Spoiled Ballots with the Register of Spoiled Ballots
- Defectively Printed Ballots
- Ballot by Mail Cancellation Requests attached to the surrendered ballots
- Register of Official Ballots for each Polling Place or the Combined Ballot and Seal Certificate and Official Ballot Register
- Ballot and Seal Certificates by Polling Location or the Combined Ballot and Seal Certificate and Official Ballot Register
- Applications to Cancel a Ballot by Mail for Use in the Polling Place

Chain of Custody Paperwork

- Chain of Custody delivery of equipment to voting sites (with seal numbers and equipment serial numbers noted) (signatures of persons who delivered equipment)
- Chain of custody of pickup of equipment from voting sites (with seal numbers and equipment serial numbers noted) (signatures of persons who picked up equipment)
- Chain of custody forms for when troubleshooters picked up completed forms from Election Day sites for processing (if performed on Election Day)
- List of seals put on equipment for Election Day, including:
 - Those put on at elections office in the morning; and
 - Those put on by Presiding Judge at the polling place in the evening when voting has concluded

Election Day Notices

- Notices of Consolidated Precincts and records of which staff member posted the notices at the various sites, if any

- Record for Posting Notice of Election if posted in this manner
- Notices of Previous Precinct and records of which staff member posted the notices at the various sites, if any
- Notices of Four Nearest Countywide Polling Places and records of which staff member posted the notices at the various sites, if any

Additional Items for Consideration

- All sign-out sheets for those picking up supplies for Election Day.
 - Please indicate who picked up supplies for Election Day.
- List of any Election Day Site that had to be closed or changed and the reason for the closure or change
- Trouble Logs and equipment replacement records
- Names of individuals who returned supplies to the Receiving Substation/Central Receiving Station
- Names of individuals who received the supplies into his or her custody when the supplies were returned by election workers

Provisional Ballots

An examination of the Provisional Forms will determine if voters' provisional ballots were accepted or rejected according to the law, as well as determine the percentage of provisional ballots accepted vs. rejected:

- Affidavits of Provisional Voter
- Early Voting List of Provisional Voters
- Election Day List of Provisional Voters
- Summary of Provisional Ballots
- List of Seals for Provisional Secure Containers for Early Voting and chain of custody forms where they were documented
- List of Seals for Provisional Secure Containers for Election Day and chain of custody forms where they were documented
- Notice of Delivery of Provisional Ballots – To Voter Registrar on Election Night
- List of Rejected Provisional Ballots and reason
- Number of Provisional Ballots cured for lack of ID
- Verification of Provisional Ballots and Seal Numbers
- Review Notices of Outcome to Provisional Voter
 - Number of provisional ballots accepted
 - Number of provisional ballots rejected
- Breakdown of percentage of Provisional Ballots counted and rejected

Signature Verification Committee

An examination of the following documents related to the Signature Verification Committee (SVC) will determine whether there was party balance on the Committee and who was responsible for the processes of accepting and rejecting signatures:

- Order Calling for Signature Verification Committee – date posted
- Notification of Appointed Members to SVC
- Notice of Appointment of SVC
- Chain of custody forms when ballots were transmitted to Central Counting Station from SVC
- Poll Watcher Certificates of Appointment for SVC

Early Voting Ballot Board

An examination of the following documents related to the Early Voting Ballot Board (EVBB) will determine whether there was party balance and properly review adjudications, acceptances and rejections, as well as who was responsible for those processes:

- Order for EVBB
- Notice of Convening of EVBB
- Notification of members appointed to the EVBB
- Notice of appointment of the EVBB
- Notice of delivery of balloting materials to the EVBB (Receipt of Sealed Early Voting Ballot Boxes)
- Chain of Custody forms when ballots were delivered to the EVBB
- Samples of Notice of Rejected Ballot by Mail and reasons for rejection
- Samples of Notice of Rejected FPCAs Carriers and reasons for rejection
- Poll Watcher Certificates of Appointment

Central Counting Station

An examination of these documents will determine whether the Central Counting Station (CCS) Plan was followed along with all applicable laws and procedures, and whether proper Chain of Custody procedures for voted ballots were followed:

- Central Counting Station Plan
 - Please indicate whether it posted 5 days before Election Day, as required by law.
- Public Notice of Test of Automatic Tabulating Equipment
- Certification of First Test of Automated Tabulating Equipment
- Oaths for Early Voting Ballot Board and Central Counting Station Personnel
- Chain of Custody documents related to the transmittal of ballots to the CCS from Election Day polling places, Early Voting Clerk's storage, or Early Voting Ballot Board.

Partial Manual Count Records

An examination of these documents and records will determine whether the Partial Manual Count was performed according to the law, as well as who performed the count:

- All records associated with the post-election Partial Manual Count
 - Please indicate who performed the partial manual count.
- Record of the Partial Manual Count results submitted to the Texas Secretary of State's office
- Poll Watcher Certificates of Appointment, if any

Post-Election and Canvass Records

An examination of these documents will determine whether certification of election results was conducted properly and whether proper documentation to support the official results was provided:

- Canvass of the General Election
- Summary of Precinct Returns
- Canvass reports by official in charge of certifying results
- Records of any recounts requested and performed after the election
- Records related to any election contests filed

Records Retention

An examination of these documents and records will determine whether Chain of Custody of records was maintained, and whether officials properly followed the 1st to 60th day rule and the 61st day to 22-month retention rule. If records must be opened, please supply a copy of the court order:

- Records of seal numbers put on and taken off records when the initial 60-day period for records retention ended
- Record of seals that were placed on the ballots and other materials on the 61st day for the remainder of the 22-month record retention period
 - Please indicate whether records were stored in a locked in a surveilled room.
- Please indicate whether county officials keep a log of anyone accessing the room where the records/ballots are stored.
- Please indicate whether any court order necessitated the unsealing of the records.
 - Provide a copy of any court order requesting opening of the records.

Central Counting Station Test Records

An examination of these records will validate the test procedures that were performed before and after counting on the automatic tabulating equipment:

- Central Counting Station (CCS) Plan
- Certification of 1st test of automated tabulating equipment
- Records from 2nd Logic and Accuracy (L&A) test before ballots are counted in the CCS
- Certification of the 3rd L&A test after ballots were counted at the Central Counting Station
- Records indicating whether there was a + or – 4 ballots tabulated that necessitated a recounting of ballots at the CCS
- Copy of final reports (unofficial results, precinct returns) signed by the presiding judge of the CCS

Training Materials

An examination of these materials will determine whether poll workers were trained according to all state and federal laws and procedures. Examining the training materials allows auditors to know if the poll workers were instructed to perform their duties accurately:

- Manuals, PowerPoint presentations, materials that were used in poll worker training and sent to the field
- An example of the forms kit that was deployed to the field, if possible
- Training attendance records, including in-person and online training

General

Any video surveillance records that were recorded from the time the election was ordered until the canvass was completed.

Additional Audit Compliance Questions

1. Are any of your election materials that are required for the audit, stored at facility not under your control?
2. How quickly could you access the materials from the storage vendor?
3. Will it take longer than one month to locate and have your records ready for examination?
4. Do you still have the same voting systems as when your county conducted the 2020 Presidential Election?
5. Of the records listed in the Audit requirements, please specify which are electronically stored and which are physical copies.
6. Are there any records that you may not be able to produce? If so, why?
7. Are there any permanent staff members who have left your office since the Presidential Election? Please give names and job duties.