



Montana Legislative Services Division
Office of Research and Policy Analysis

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TO: Cathy Fitzgerald, Co-President
Montana League of Women Voters, Billings

FROM: Sheri S. Scurr, Legislative Research Analyst

RE: Laws and Rules on Voter Information and Confidentiality
Information Request #4172

This memorandum responds to your request for information about what laws and rules are applicable to voter information and whether that information is public or confidential. This memorandum is not a legal opinion and is not intended to replace or be a comment on how county election administrators and the Office of the Secretary of State manage voter information.

State Constitution

There are two applicable state constitutional provisions, which I've extracted below:

Article II, Section 9, of Montana's Constitution states:

Section 9. Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Article II, Section 10, of Montana's Constitution states:

Section 10. Right of privacy. The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Election Laws

The fundamental portion of Montana's election laws are codified in Title 13 of the MCA. Title 13, chapter 2, part 1, MCA, deals with voter registration information. Under 13-2-107, MCA, the Secretary of State is required to establish and maintain a statewide voter registration database. This was required under the federal Help America Vote Act (HAVA) and was established in state law in 2003. Section 13-2-108, MCA, requires the Secretary of State to adopt rules to implement the provisions of HAVA with respect to the statewide voter registration system. The rules must address, among other things, the technical security of the system and also must keep from general public distribution information drivers' license

numbers, whole or partial social security numbers, and address information that is protected from general disclosure under section 13-2-115, MCA, for personal security reasons. See these MCA sections below.

13-2-107. Statewide voter registration system — information-sharing agreements. (1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration system that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration system must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The system must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the system.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration system.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

13-2-108. Rulemaking for statewide voter registration list. (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) technical security of the statewide voter registration system;

(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(f) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.

13-2-115. Certification of statewide voter registration list — local lists to be prepared. (1) No later than 5 working days after the deadline prescribed in 13-2-301(3), election administrators shall enter all voter registration applications that were submitted within the deadline for regular registration into the statewide voter registration system.

(2) The secretary of state shall certify the official statewide voter registration list by utilizing the information in the statewide voter registration system.

(3) Each election administrator shall have printed from the certified statewide voter registration system lists of all registered electors in each precinct in the county. Except as provided in subsections (6) and (7), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(4) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(5) Lists of registered electors need not be printed if the election will not be held.

(6) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(7) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (7)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (7)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction.

Section 13-21-228, MCA, provides that the e-mail address, which is collected only for certain voters, must be kept confidential. This section applies to voters covered by the Montana Absent Uniformed Services and Overseas Voter Act. See below.

13-21-228. Use of voter's e-mail address. (1) A local election official shall request an e-mail address from each covered voter who registers to vote after January 1, 2014.

(2) An e-mail address provided by a covered voter may not be made available to the public or any individual or organization other than a state or local election official and is confidential information as defined in 2-6-1002.

(3) The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission and verifying the voter's mailing address and physical location.

Please note that section 13-21-228(1), MCA, uses the term "covered voter", which is defined in 13-21-102, MCA, as follows:

(1) "Covered voter" means:

(a) a uniformed-service voter or an overseas voter who is registered to vote in Montana;

(b) a uniformed-service voter whose voting residence is in Montana and who otherwise satisfies Montana's voter eligibility requirements;

(c) an overseas voter who, before leaving the United States, was last eligible to vote in Montana and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements;

(d) an overseas voter who, before leaving the United States, would have been last eligible to vote in Montana had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies Montana's voter eligibility requirements.

General Laws on Public Information

More general statutes on public records and how those records must be managed are provided in Title 2, chapter 6, MCA. Section 2-6-1001, MCA, states:

2-6-1001. Purpose. The purpose of this chapter is to ensure efficient and effective management of public records and public information, in accordance

with Article II, sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.

Section 2-6-1002, MCA, defines "confidential information" and "public information" as follows:

2-6-1002. Definitions. As used in this chapter, the following definitions apply:

(1) "Confidential information" means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

- (a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;
- (b) related to judicial deliberations in adversarial proceedings;
- (c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and
- (d) designated as confidential by statute or through judicial decisions, findings, or orders.

(11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law."

Secretary of State's Office - Rules and Voter Files

The Secretary of State's Office has adopted one rule about the statewide voter registration system: Rule 44.3.1102 of the Administrative Rules of Montana (ARM). With respect to what voter information may be kept from public distribution, the rule cites the MCA sections already summarized above. The key subsections in this rule about what information must be kept from public disclosure are subsections (1)(e) and (3). See below.

44.3.1102 STATEWIDE VOTER REGISTRATION SYSTEM

(1) In addition to the procedures specified under (2) and (3) and ARM 44.3.2001, election officials authorized to use the statewide voter registration system must, as applicable, comply with the following procedures specified in the instruction manuals, user guides, and technical manuals as provided by the system vendor and the secretary of state (except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply):

- (a) maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;
- (b) proper maintenance and use of active and inactive lists;
- (c) proper maintenance and use of lists for legally registered electors and provisionally registered electors and late registrants;

(d) technical security of the statewide voter registration system;
(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115 and 13-21-228, MCA, effective January 1, 2014; and

(f) quality control measures for the system and system users.

(2) Consistent with (1)(d), as soon as a county election administrator enters voter registration information into the statewide voter registration system, the system will automatically make that information available to the secretary of state.

(3) Consistent with (1)(e):

(a) the driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA, and 13-21-228, MCA, effective January 1, 2014, may not be provided unless required by a court order; and

(b) all identifying information about an individual protected from disclosure may not be provided, unless required by a court order.

Additionally, the Secretary of State's website outlines how a person may request voter information files and what information in those files is publically available. The web address for accessing this information is http://sos.mt.gov/elections/voter_file. A list of the information fields and voter history contained in this publically available file is at the following web address: <https://app.mt.gov/voterfile/about.html>.

Conclusion

I hope the information provided in the memorandum is helpful and responsive to your request. Please let me know if you have questions or need additional information.