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March 23, 2007

Mr. Al Kolwicz
2867 Tincup Circle
Boulder, CO 80305

**RE: Mrs. Norback Open Records Request
March 15, 2007**

Dear Mr. Kolwicz:

Please be advised that I am the attorney for the City of Lafayette and in such capacity respond to your March 20, 2007 letter to Ms. Susan Koster, as follows:

In accordance with the Colorado Open Records Act (CORA), C.R.S.¹ 24-10-701 *et seq.*, by her email of March 19, 2007, Ms. Koster responded to Ms. Norback's open records request of March 15, 2007.

This letter is to address your concerns regarding the response. The February 27, 2007 election was a special mail ballot election legally conducted pursuant to the City's Charter, Chapter 3; Chapter 40 of the Lafayette Code of Ordinances (CODO); and applicable state law. Accordingly, the election was governed by the Colorado Municipal Election Code (CMEC), C.R.S. 24-10-101 *et seq.*

Because a recount has been conducted, any election contest must be as provided by the Mail Ballot Election Act (MBEA), C.R.S. 1-7, 15-101 *et seq.*, and it must be brought by a registered elector in accordance with the procedures in the CMEC. The filing of a verified affidavit in the Boulder District Court is required to begin such process. One who claims that the City's election officials have not performed their required duties or violated the CMEC, must file a verified affidavit either with the Boulder County District Court or Boulder County District Attorney.

To ensure the integrity of any contest or challenge, the city clerk must, in compliance with C.R.S. 31-10-616 secure and preserve ballots and election records. Additionally, C.R.S. 24-72-204(a) prohibits the city clerk from allowing (except as permitted by law) the inspection of any

¹ C.R.S. means Colorado Revised Statutes.

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records which permit the identification of any particular person. In my opinion, the clerk would violate these statutory, legal duties to allow any one, other than, of course, the District Court or the District Attorney, to inspect those records. CORA specifically prohibits disclosure of records if such disclosure is contrary to state statute. C.R.S. 24-72-204(1)(a).

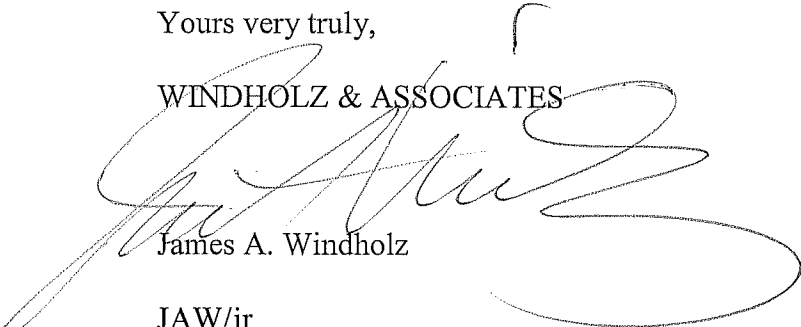
Additionally, C.R.S. 31-10-616 specifically provides that the clerk is to preserve ballots in some secure manner and provide for their safe keeping so that no one can ascertain how any voter may have voted. This express recognition of an individual's privacy interest is also evident in C.R.S. 24-72-204(1)(a), which prohibits disclosure of any person's original signature, social security number, birth date or other personal identification information. This serves as another ground for denying disclosure of the requested information because case law (court orders) recognizes that certain "public records" are nevertheless not subject to disclosure where the records relate to recognized privacy interests. *Denver Pub. Co., v. Bd. Of County Comm'r*, 121 P.3d 190 (Colo. 2005).

It is for these reasons that all of the records requested by Ms. Norback were legally denied by the clerk upon my advice and my recommendation. Additionally, there is nothing within the CMEC which grants pollwatchers special access to the records. Pollwatchers have the right to remain inside the polling places; to maintain a list of voters as the names are announced by the judges; and to witness each step in the conduct of the election. C.R.S. 31-10-102(11) and 31-10-602.

In conclusion, CORA is not the appropriate mechanism to contest or challenge the election. That procedure is in the CMEC. As stated previously, the procedure requires the filing of a verified affidavit, based upon the nature of the claim, with either the Boulder County District Court or the Boulder County District Attorney.

Yours very truly,

WINDHOLZ & ASSOCIATES



James A. Windholz

JAW/jr

cc: City Council
Gary Klaphake
Susan Koster