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October 16, 2007

Sent via: email [alkolwicz@qwest.net](mailto:alkolwicz@qwest.net)  
& United States mail

Mr. Al Kolwicz  
Colorado Voter Group  
2867 Tincup Circle  
Boulder, CO 80305

RE: September 20, 2007 Colorado Open Records Act ("CORA") request to Colorado Secretary of State Mike Coffman.

Dear Mr. Kolwicz:

This is intended to respond to your October 9, 2007 letter regarding my requests for clarification of your September 20, 2007 CORA request to the Secretary of State ("the Department"). It is evident by your letter that we have had some miscommunications, or misunderstandings regarding your 9/20/07 CORA request. I will try to clarify matters here.

Section 24-21-111(2), C.R.S., (2007) provides that where a document is stored by the Secretary of State and available to the public by electronic means, the Department may designate electronic access the sole means of access to the document. I have already informed you that much of what you are seeking is available on the Department of State's web site. Let this serve as formal notice that any responsive documents available on the Department's web site will not be provided in paper or other format, and that your access is designated solely through the Department of State's web site, found at <http://www.elections.colorado.gov/DDefault.aspx?tid=501>.

Under CORA, the Department is not required to fill out any particular form provided by a person making a CORA request, but instead is required to provide responsive public records in his possession, to which no CORA exemptions apply. See § 24-72-203, 24-72-

204, C.R.S. I understand that you would like the Department to fill out the worksheet you provided. However, the Department cannot do this because your worksheet makes presumptions to which the Department does not agree. In particular, the terminology on the spreadsheet does not translate to documents that are responsive to your request. Thus, the Department will respond to the requests by giving reasonable interpretation to your terminology, but will not fill out your worksheet.

Another point warrants clarification. You have made a request for records under CORA. See 24-72-201, et. seq. However, your letters mix requests for records with specific questions. The Department is interpreting your questions as requests for records which may have information that answer those questions. The Department will provide you access to existing public records which may be responsive to your questions.

Unfortunately, your last letter does not completely clarify matters. However, in order to avoid continued unproductive communications, I will explain the Department's interpretation of your requests based on the information you have provided. I ask that you simply let me know if these interpretations are correct, and if not, to please clarify your requests. A complete cost estimate will be provided once you let me know if our interpretations are correct, and/or clarify your requests. In accordance with the Department of State rules and C.R.S. 21-21-104(1), applicable fees shall be paid by the applicant prior to inspection of any public records and prior to receipt of or copying any public records. We believe the responsive existing public records in the Department's possession may be made available for your inspection within a week of receipt of the deposit.

Regarding the items requested in your 9/20/07 letter, under "A. Voting System Requirements and Specifications", (items A (1) through (10)), the Department is interpreting your request as generally encompassing internal Department of State records which involve all four vendors of electronic voting systems' requirements and specifications.<sup>1</sup> The Department reads your request as including those vendors that have submitted their systems for certification in Colorado. However, some of the specific requests under this heading do not relate to electronic voting machines' requirements and specifications. This has caused some confusion. I will address each item below:

A(1): The Department interprets this as a request for documents that have a diagram of the components of any electronic voting machine system submitted for certification.

*Response:* The Department does not have a diagram of each voting system with a formal identification of each component. However, you may find information regarding the components of each voting system submitted for certification on the Department's website.

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<sup>1</sup> To be clear, reference herein to "electronic voting systems" is to the direct record electronic voting machine systems which have been submitted for certification for use in Colorado.

A(2): The Department interprets this as a request for documents showing the tests that counties must perform on their certified voting systems prior to their use in any election.

*Response:* Please see § 1-5-610 and § 1-7-509, and the Department of State Election Rules 11.5, 43.8.6.1.d, and 43.8.11.3 (also available on the Department's web site).

A(3): The Department interprets this as a request for documents showing requirements for certification of electronic voting systems.

*Response:* Please see Department of State Rule 45, §§ 1-5-608.5, 1-5-611, 1-5-612, 1-5-614, 1-5-615, 1-5-616, 1-5-617 and the Colorado Constitution. Detailed information on requirements is also found by reference to the test logs (showing over 1200 tests to be conducted on the systems), which is posted on the Department's website.

A(4): The Department interprets this as a request for documents showing limits discovered by the Department for the electronic voting systems regarding "accuracy, security, verifiability, transparency, anonymity, accessibility and accountability."

*Response:* To the extent that any limitations have been discovered, (and I am not stating that any limits have been discovered), records reflecting such limits would be found within the test logs for each of the systems which have been submitted for certification. I have already informed you that completed test logs are not public records and will not be provided at this time because they are work product. *See* § 24-72-202(6)(IV) and § 24-72-202(6.5). However, as previously indicated, when the Department issues final decisions regarding certification of each system, these records may be available for inspection. *See* my October 5, 2007 letter.

A(5): The Department interprets this as a request for records that show the numerical results of post election audits. Your terms "statistical confidence" is rather confusing, but this is the best we can decipher from it.

*Response:* Results of the post-election audits are available on the Department's website at <http://www.elections.colorado.gov/DDefault.aspx>. The Department's Rule 43, also available on the Department's web site, encompasses requirements for the post-election audit. To the extent that you are seeking a document which analyzes results of post-election audits and creates some sort of statistic (i.e., "statistical confidence"), no such record exists.

A(6): The Department interprets this as a request for records that show the statistics that relate to the work the canvass boards conduct. Again, your terms "statistical confidence" is rather confusing, but this is the best we can decipher from it.

*Response:* There are no records in existence that show statistics relating to the canvass boards' work.

A(7): The Department interprets this as a request for records reflecting statistics showing "any vote on any ballot is not counted as the voter intended." Perhaps you meant to ask for records showing statistics that votes that *are* counted as the voter intended. This request is confusing for that reason, and again due to terms "statistical confidence."

*Response:* The Department conducts tests on the voting systems in the course of the certification process to ensure that votes *are* counted as intended by the voter. These test results are logged on the test logs, which are work product, and will not be provided because they are not public records at this time. *See* § 24-72-202(6)(IV) and § 24-72-202(6.5). In addition, county post- election audit results may also be responsive to this request, and as previously indicated, those results are available on the Department's web site.

A(8): The Department has already addressed this request. *See* my October 5, 2007 letter.

A(9): The Department interprets this as a request for records which show threat models or risks that have been identified by the Department for each individual electronic voting system submitted for certification. Since the request comes under the heading "Voting System Requirements and Specifications" the Department does not interpret this as including other categories of threat models or risks (such as those addressed through county security plans).

*Response:* There is no specific document created by the Department which identifies a particular threat model. However, Department Rule 45.5.2.7.10 requires voting system providers to document known threats to which their voting systems are vulnerable. In addition, the California Secretary of State may have created a threat model in the course of their "red team" testing of voting systems, which the Department may have obtained or been provided. You may also obtain that information by contacting the California Secretary of State's office. For your convenience, here is their web address (which has their "red team" reports posted):  
[http://www.sos.ca.gov/elections/elections\\_vsr.htm](http://www.sos.ca.gov/elections/elections_vsr.htm)

A(10): The Department interprets this as a request for security plans related to the electronic voting equipment.

*Response:* Responsive records include all county security plans and the Department Rule 43 and Rule 45. The county security plans address internal and external security controls, including secured storage of equipment. I have asked you several times if you want to inspect county security plans, and if so,

to what extent. Although this request is reasonably read to include county security plans, your last letter seemed to indicate you are not interested in those plans. Therefore, the Department is interpreting your request to specifically exclude county security plans. In addition to county security plans, the tests conducted on these systems during the certification process are designed to ensure there are sufficient controls on the systems themselves to protect them from attack. Those test logs are work product, and will not be made available for inspection at this time because they are not public records at this time. *See* § 24-72-202(6)(IV) and § 24-72-202(6.5). In addition, the post-election audits, and canvass boards are also intended to address these security concerns. Both the post-election audits and information concerning the canvass boards are also available on the Department's web site (refer to the Department's rules regarding canvass boards as previously stated herein).

Regarding the items listed under the heading "B. Voting System Certification Project Administration" (items B(1) – (10)), the Department generally interprets these requests as for Department of State documents showing the overview and oversight of the certification testing for electronic voting systems in Colorado.

B(1): The Department interprets this as a request for a Department of State plan which explains how the public can be involved in the decision to certify or not certify the electronic voting systems presented for certification.

*Response:* Please see Department Rule 45, pertaining to public demonstrations, available on the Department's website. However, there is no written document specifying a plan for the public to be involved with the decision to certify the electronic voting systems. Note, however, that Rule 45 allows for appeals of decisions relating to certification, which the members of the public may initiate.

B(2): You have withdrawn your request for this item.

B(3): The Department interprets this as a request for records which may be interpreted as status reports involving the testing of electronic voting systems which have been submitted for certification.

*Response:* To the extent that any such records exist, they are work product, are not public records and will not be released at this time. *See* § 24-72-202(6)(IV) and § 24-72-202(6.5).

B(4): The Department interprets this as a request for records which may reflect alternatives for conducting elections in the event that any electronic voting system is not certified for use.

*Response:* These records are work product, are not public records and will not be released at this time. See § 24-72-202(6)(IV) and § 24-72-202(6.5).

B(5): The Department interprets this as a request for records reflecting internal analysis of your correspondences listed.

*Response:* There are several documents available for inspection.

B(6): The Department interprets this as a request to review videos of any and all public demonstrations made during the certification process for each electronic voting system submitted for certification.

*Response:* The Department will make video recordings of the four public demonstrations available for your inspection, and/or may provide you with copies of the recordings. In either event, the Department must download the recordings from a computer onto a DVD just to permit inspection, so there will be a research and retrieval fee irrespective of whether you simply want to inspect the videos, or if you would like copies of the videos. Please let us know which option you prefer, keeping in mind that there will be approximately 80 hours of recordings to view.

B(7): The Department interprets this as a request for any record reflecting the questions asked by the public at any demonstration (as listed above).

*Response:* The video recordings as detailed above are the only responsive records in the Department's possession and will be made available for inspection as indicated above.

B(8): The Department interprets this as a request for any record reflecting the an analysis or response to questions asked by the public at any demonstration (as listed above).

*Response:* The video recordings as detailed above are the only responsive records in the Department's possession and will be made available for inspection as indicated above.

Regarding the items listed under the heading "C. Voting System Certification Tests and Results", (items C (1) – (2)), the Department is generally interpreting your requests as including documentation of completed test logs to date on all electronic voting systems submitted to the Department for certification.

*Response:* As stated repeatedly, test logs are work product, are not public records and will not be released at this time. See § 24-72-202(6)(IV) and § 24-72-202(6.5). However, the blank test logs are posted on the Department's web site, and they will show all the tests that are being conducted on each system. These tests are designed to determine if the electronic voting systems meet the

requirements of Colorado's Constitution, HAVA, and all other statutory and regulatory requirements for use of electronic voting systems in Colorado as well as for post election audits and other county testing such as logic and accuracy testing. The test logs should address your requests C(2)a through h.

However, many of the items listed under C(2) and described by you as "test case library" and "test case plans" are not included in test logs and do not involve certification test results at all. This has caused confusion on what it is that you are seeking.

C(2)(i): The Department interprets this as a request for records of test logs for the electronic voting systems concerning signature verification.

*Response:* The electronic voting systems do not functionally require voters' signatures, so the Department does not know what type of system you are referring.

C(2)(j): The Department interprets this as a request for records of test logs for the electronic voting systems concerning mailing ballots to ineligible electors.

*Response:* The electronic voting systems are not responsible for mailing ballots, so the systems cannot be tested for this. Thus, there are no test logs for electronic voting systems submitted for certification reflecting such a test.

C(2)(k): The Department interprets this as a request for records of test logs for the electronic voting systems concerning the estimated number of ballots that will be mailed to ineligible voters.

*Response:* The electronic voting systems are not responsible for mailing ballots, so the systems cannot be tested for this. Thus, there are no test logs for electronic voting systems submitted for certification reflecting such a test.

C(2)(l): The Department interprets this as a request for records of test logs for the electronic voting systems reflecting that the trusted build procedure detects modified voting systems prior to their use, and before an election is certified.

*Response:* The certification tests do not encompass the trust build process. However, to the extent you are seeking information regarding the trusted build process, you may access that information on the Department's web site.

C(2)(m): The Department interprets this as a request for records of test logs for the electronic voting systems concerning the public's access to voting systems' source code and files/modules.

*Response:* The certification tests do not encompass whether the public has access to source code or a list of files/modules. Thus, there are no test logs for electronic voting systems submitted for certification reflecting such a test.

C(2)(n): The Department interprets this as a request for records of test logs for the electronic voting systems concerning the procedure for verifying equipment has the correct hardware and software and control data prior to and after their use in an election.

*Response:* The certification tests do not create a procedure for verifying correct versions of hardware. The tests are just that: tests, and are not procedures. If you are seeking information on procedures unrelated to *tests*, refer to the Department's web site for information regarding the trusted build procedure and to Rule 43.

C(2)(o): Even with your clarification, this request is very confusing and the Department is unable to give a reasonable interpretation of it. It mixes items that may be included in test logs, such as functional and performance tests, and verifying election procedures and results, with other un-related items, such as whether poll watchers and canvass board members can view logic and accuracy testing, vote "interpretation," vote counting, post-election audit, canvass process, "all election procedures and files are verifiable" and "publication of election files and results."

*Response:* This is the best response that can be provided based upon the confusing nature of this request and the presumptions made by the request itself. This response is not to be interpreted as an admission of your terminology or language in section C(2)(o) i through vii. Items C(2)(o) i through iv are included in the certification testing, and I refer you to my other responses concerning certification tests (the test logs are posted on the Department's web site, and test results are not being made available at this time as work product). However, to the extent you are seeking *procedures* for all the items listed in C(2)(o) i through vii, these items are not a part of the certification tests. You may access information relating to these items on the Department's web site and by referring to the Colorado Constitution, election code, and all the Rules relating to elections. See, for example, Election Rule 8, concerning watchers, and Rule 41, concerning canvassing.

To the extent that any of your requests may be reasonably interpreted to include requests for inspection of election software and supporting documentation, such records are not public and will not be made available for inspection. See § 24-72-202(7), § 1-7-510(7), § 1-7-511(6).

You made several incorrect presumptions in your October 9, 2007 letter. In particular, you presumed that certain categories of records do not exist because I did not specifically address them in my prior letters. This is erroneous. Indeed, my last letter informed you that much of what you sought is available on-line at the Department's web

page, and/or by viewing the Colorado Statutes, and Department's rules. To be clear, the only record I specifically addressed prior to this letter is your request for a document defining "holistic security." I refer you to my footnote in my October 5, 2007 letter. However, hopefully your confusion on this is now clarified given that I have addressed each request specifically.

Nonetheless, to the extent that I did not address a particular requested item, this was not intentional and should not be interpreted as a representation that no such record exists. On this note, to the extent that I have failed to deny or address any other conclusions in your last two letters (dated October 2, 2007 and October 9, 2007), this failure was not intentional and should not be interpreted as an admission of your conclusions.

The Department is continuing to determine whether additional, responsive public records exists. Due the confusion regarding your requests, this search has taken longer than most CORA requests. If any additional documents not discussed here are discovered prior to your inspection, I will let you know.

Please let me know if the Department's interpretations of your requests are correct, and/or please clarify your requests. Once you have confirmed and/or clarified the requests, we will provide you with a complete estimate of the fees to be charged for all of your requests. We believe we can have records ready within a week of receipt of the deposit.

Sincerely,

FOR THE ATTORNEY GENERAL

*/s electronic signature*  
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