



July 18, 2017

Lieutenant Governor Byron Mallott
P.O. Box 110001
Juneau, AK 99811-0001

by email: byron.mallott@alaska.gov

Re: Privacy considerations in complying with Vice Chair Kris Kobach's information request

Dear Lieutenant Governor Mallott:

The ACLU of Alaska is writing regarding the request sent to your office on June 28, 2017, from Kris W. Kobach, Vice Chair of the Presidential Advisory Commission on Election Integrity ("Commission"). The Commission has requested sensitive voter roll data, presenting an incursion into Alaskans' privacy interests. There is patently no evidence of voter fraud of the kind that President Trump has alleged and this purported investigation is a sham designed to undermine confidence in the electoral system and to create restrictive policies that primarily harm minorities and keep many from exercising their right to vote.

We appreciate that the Division of Elections has declined to provide to the Commission information after it withdrew the request pending the outcome of a protective order in litigation filed against it.¹ Nevertheless, if the Commission revives its request, the ACLU of Alaska urges you to safeguard the personal information entrusted by Alaskans and not share certain sensitive voter information with the Commission.

Withholding only the information deemed "confidential" by statute does not adequately protect Alaskans' privacy

You have indicated that you do not intend to share items of information that are deemed confidential by statute,² however, you have not clearly indicated whether you intend to

¹ Henry Leasia, *White House's election fraud commission suspends request for Alaska voter information*, Alaska Public Media (Jul. 11, 2017), <http://www.alaskapublic.org/2017/07/11/white-houses-election-fraud-commission-suspends-request-for-alaska-voter-information>.

² Office of Lt. Governor, Press Release, Division of Elections' Protocol on Dissemination of Voter Information, June 30, 2017 *available at* <https://ltgov.alaska.gov/newsroom/2017/06/30/division-of-elections-protocol-on-dissemination-of-voter-information/>.

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release all information that is not deemed confidential or whether you intend to respond to the questions³ posed by Commission Vice Chair Kris Kobach.

You correctly note that state law governing confidentiality⁴ does not include some of the requested information, including:

- voter status (active or inactive),
- voter name,
- residence address (if not requested by voter to be maintained as confidential under AS 15.07.195),
- mailing address,
- voter registration dates,
- party affiliation,
- district and precinct designation, and
- voter history.⁵

Additionally, there are many items that Vice Chair Kobach has requested that are simply not mentioned in state law or in your statement, including:

- information regarding felony convictions;
- information regarding voter registration in another state;
- information regarding military status; and
- overseas citizen information.

You have not indicated whether you intend to release all items of information that are not designated as confidential under state law. When legislators considered the confidentiality of information in passing SB 284 (now codified in part in AS 15.07.195), they could not have contemplated that a Commission designated by the federal government would request and make public all of these data on every Alaskan. We write to encourage you to limit your response only to the narrow realm of information that is deemed public and does not impede Alaskans privacy interests.

In short, simply because some information on Alaskan voters is not deemed “confidential” by statute does not mean that it should be released without further scrutiny.

³ The questions include your views on local election-related security vulnerabilities, the instances of voter fraud in Alaska, criminal convictions for election-related crimes in the state, your recommendations for enhancing integrity of federal elections.

⁴ AS 15.07.195.

⁵ Office of Lt. Governor, Press Release, Division of Elections’ Protocol on Dissemination of Voter Information, June 30, 2017 *available at* <https://ltgov.alaska.gov/newsroom/2017/06/30/division-of-elections-protocol-on-dissemination-of-voter-information/>.

Alaska’s privacy guarantee precludes disclosing sensitive voter information.

Privacy is one of the most cherished of our civil liberties, and its express protection in our governing compact is among the unique qualities of Alaska’s democracy. That is why Alaskans voted overwhelmingly to add this to our constitution in 1972.⁶ Disclosing sensitive voter information to outside parties—including federal entities— should not be taken lightly.

The information requested by the Commission that is not deemed confidential by statute would provide a broad array information about every voter, and this aggregation of Alaskans’ data represents a “revealing mosaic”⁷ of sensitive, personal information. The disclosure of one’s name, address, prior felony convictions, military status, and political party taken together can form a revealing portrait of an individual. When the legislature crafted the scope of confidential information now embodied in AS 15.07.195, it could not have imagined all the potential personal details that a Commission appointed by the federal government would seek and aggregate about every Alaskan. We encourage you to restrict any information released to this Commission only to the information expressly made public by statute and accessible by any member the public.

There is no legitimate state interest in turning over this sensitive information.

There is no evidence to substantiate President Trump’s claims that three to five million illegal votes were cast in the 2016 presidential election.⁸ President Trump’s own legal team told a court that “all available evidence suggests that the 2016 election was not tainted by fraud or mistake.”⁹ Further, elected officials, including Republican party leaders, have rejected the President’s false claims.¹⁰

⁶ 1966-2004 Proposed Amendment Titles & Vote Counts, Alaska Office of the Lieutenant Governor, <http://ltgov.alaska.gov/services/alaskas-constitution/> (last visited July 18, 2017) (showing the measure passing with 86% of voters approving, and 14% voting against the measure).

⁷ Orin S. Kerr, *The Mosaic Theory of the Fourth Amendment*, 111 Mich. L. Rev. 311 (2012).

⁸ David Cottrell et al. *Evaluating Donald Trump’s Allegations of Voter Fraud in the 2016 Presidential Election*, Dartmouth College, (Dec. 2, 2016). <http://www.dartmouth.edu/~voterfraud/>; Lorraine C. Minnite, Politics of Voter Fraud, *Project Vote*, http://www.projectvote.org/wp-content/uploads/2007/03/Politics_of_Voter_Fraud_Final.pdf; NYU Brennan Center for Justice, *The Truth About Voter Fraud*, <https://www.brennancenter.org/publication/truth-about-voter-fraud>.

⁹ Philip Bump, *Reminder: In an anti-recount filing, Trump’s lawyers said the election was ‘not tainted by fraud or mistake,’* The Washington Post (January 25, 2017), https://www.washingtonpost.com/news/the-fix/wp/2016/12/05/in-an-anti-recount-filing-trumps-lawyers-say-the-election-was-not-tainted-by-fraud-or-mistake/?utm_term=.8e71ad18c430.

¹⁰ David A. Graham, *The Republican Backlash Against Trump’s Vote-Fraud Commission*, The Atlantic (Jul. 6, 2017), <https://www.theatlantic.com/politics/archive/2017/07/kobach-to-where-you-came-from/532878>.

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The lack of any legitimate reason to investigate voter fraud, in addition to Vice Chair Kobach's record of disenfranchising voters, suggests that the Commission is being deceptive about its purpose and may instead seek voter suppression and intimidation. In his career, Vice Chair Kobach has disenfranchised 18,000 Kansas voters in a move called a "mass denial of a fundamental constitutional right" by the U.S. Court of Appeals for the Tenth Circuit.¹¹ The ACLU has prevailed in all four of its challenges against Vice Chair Kobach in voter suppression cases.¹²

This context of the Commission's request has given many cause for concern. Some municipalities have reported an uptick in voter registration cancelations due to concern about their sensitive personal information being disclosed.¹³ Alaska has no reason to believe its vote has been compromised, and even less reason to believe that the Commission is anything other than political theater.

Alaska has a responsibility to safeguard entrusted sensitive information.

Maintaining fair and well-regulated elections requires Alaskans to entrust the state with sensitive information about themselves, including personally identifiable information and party affiliation. It is integral to the privacy of Alaskans that such information is used *only for the purposes for which it was entrusted to the state*. When Alaskans registered to vote or voted in prior elections, they shared their personally identifiable information solely for the purpose of exercising their right to a voice in our democratic system. Alaskans never consented to have that information be disclosed en masse to a Commission created by the federal government and shared with the public.¹⁴

If you are requested to provide voter data, we encourage you to construe the request narrowly only to provide data that is available to any other member of the public and to interpret the request in line with court orders that may follow from the pending litigation that has caused the Commission to withdraw its request. In the event such a request is made again and Alaska does comply, we urge you to inform the public what information is disclosed and the statutory or constitutional authority for providing that information.

¹¹ *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016).

¹² ACLU, Trump's Voting Commission is a Sham, <https://action.aclu.org/secure/sham-voting-commission>.

¹³ Corey Hutchins, *In Colorado, 'confusion,' 'hysteria,' and voters unregistering at some local election offices*, The Colorado Independent (Jul. 7, 2017) <http://www.coloradoindependent.com/166227/colorado-voting-trump-unregister-confidential>.

¹⁴ Vice Chair Kobach himself has indicated that the documents submitted to the Commission will be made available to the public. See Letter from Kris. W. Kobach, Vice Chair, Presidential Advisory Commission on Election Integrity, to Denise Merrill, Secretary of State of Connecticut, (June 28, 2017) ("Please be aware that any documents that are submitted to the full Commission will also be made available to the public").

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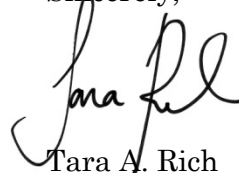
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Thank you for your time and attention to Alaskans' privacy concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Tara A. Rich". The signature is fluid and cursive, with the first name "Tara" being the most prominent part.

Tara A. Rich
Legal & Policy Director

c: Scott Kendall (scott.kendall@alaska.gov)
Claire Richardson (claire.richardson@alaska.gov)