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FACSIMILE TRANSMITTAL SHEET

DATE: August 21, 2003
TO: Mr. Jim March
FROM: Nancy Fenton, Deputy County Counsel
FAX NO: (707) 221-7152
SUBJECT: Follow-up Public Records Act Request

FYI Urgent CONFIDENTIAL
 Per our conversation
 Per your request
 Please call after you have reviewed this
 Please review and send your comments/suggestions

Hard copy to follow: No Yes

COMMENTS:

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 3

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RICHARD E. WINNIE
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August 21, 2003

Mr. Jim March
[Address withheld]

Sent via facsimile machine

Re: Follow-up Public Records Act Request of August 11, 2003

Dear Mr. March:

Your "Follow-up Public Records Act Request" dated August 11, 2003 was received by Ms. Nadel in our office after she had responded on August 9, 2003 to your initial request while I was on vacation.

You requested six numbered items pursuant to the California Public Records Act [Government Code Sec. 6250 *et seq.*] and this response is made pursuant to the provisions of that Act. You also specified in your follow-up request that you were "not interested in any action or information request which would compromise the security of your election systems, or that would give me access to proprietary Diebold product[s]." We appreciate your sensitivity to these important issues.

Re requested Items 1, 2 and 3: There is only one contract that Alameda County has with Diebold, which is for the voting equipment systems and which would also include the items you requested in items 2 and 3. This contract is a substantial document, approximately one inch thick, and the non-exempt portions can be made available for your inspection and/or copying. The County copying charge is 10 cents per page. In line with the exemptions of the Public Records Act (particularly those set forth in §§ 6252, 6253, 6253.9, and 6254 and Evidence Code §§ 1040, 1050 and 1060 pertaining to trade secrets, confidentiality and voter information) and protections of trade secrets and issues concerning voting security, which were discussed in our office's prior letter and your own appropriate limitations, certain aspects of the contract will be redacted. Please let me know if you would prefer to set a time to inspect this document or whether you wish this mailed to you or picked up by you; it is too extensive for convenient faxing.

Re Item #4: Your request for "a directory listing of all files on the central vote-count computer that runs the GEMS program" does not comply with any record required to be provided under the Public Records Act (see particularly sections 6252 and 6253), would violate voter security and privacy (see sections 6253.6 and 6254.4), and would in any event be part of county software exempt from disclosure pursuant to section 6254.9. Thus, this request is denied pursuant to these sections and § 6255.

Jim March
August 21, 2003
Page 2

Re Item #5: Your request for "an electronic copy of the vote-tally database from the 2002 election results for Alameda County" also is not a record required to be provided under the Public Records Act and would further violate both voting security for Alameda County as well as trade secrets of the Diebold system and thus be exempt, particularly under sections 6252 and 6253, 6253.9 and 6254 and 6254.4. This request is denied pursuant to these sections and § 6255.

Re Item #6: I am not certain what document or record subject to the Public Records Act is being requested in this paragraph.

Re Item #7: This is an improper request in that no public records are requested. For your information, however, no candidate was "left off the Chinese ballot" in 2002.

Finally, I cannot resist correcting one misapprehension in the final paragraph of your letter: there is no U.S. Senator on Diebold's board of directions - there is one on a competitor's, ES&S, however.

Please let me know how you would like to proceed to obtain the redacted contract.

Very truly yours,

RICHARD E. WINNIE
County Counsel

By 
NANCY E. FENTON
Deputy County Counsel

cc: Bradley J. Clark, Alameda County Registrar of Voters