



STATE OF NEBRASKA  
**Office of the Attorney General**

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**MIKE HILGERS**  
ATTORNEY GENERAL

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February 10, 2023

Via email at [REDACTED]  
Robert J. Borer

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: *File No. 23-R-105; Lancaster County Chief Deputy Election Commissioner;  
Robert J. Borer, Petitioner*

Dear Mr. Borer:

This letter is in response to the public records petition emailed to this office on January 26, 2023. You have asked us to review Lancaster County Chief Deputy Election Commissioner Becki Gaston-Wise's decision to deny you access to certain election materials. Upon receipt, we forwarded your email to Ms. Gaston-Wise, and advised her of the opportunity to provide us a response. On February 1, we received a response from Deputy County Attorney John M. Ward. We considered your petition and Mr. Ward's response in accordance with the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022). Our findings in this matter are set forth below.

On January 25, 2023, you emailed Ms. Gaston-Wise a public records request seeking "a digital copy of all audit logs from the EMS laptop used in the 2022 general election." Ms. Gaston-Wise denied your request the next day, advising that your request seeks information that her office is prohibited from disclosing under Neb. Rev. Stat. § 32-1032. In an email to Ms. Gaston-Wise, sent January 27, you argued that you did "not see anything in that statute that prevents the copying and sharing of digital records created in the course of the People's elections."

In his response, Mr. Ward reiterated that under § 32-1032, the Election Commissioner's Office may only allow inspection of "the precinct sign-in register, the record of early voters, and the official summary of votes cast . . . ." He noted that "[t]he

election commissioner or county clerk shall not allow any other election materials to be inspected, including ballots and provisional ballot envelopes, except when an election is contested or the materials become necessary to be used in evidence in the courts.” *Id.* He asserted that the requested audit logs did not constitute the records enumerated above, and that the circumstances that would allow access to election materials, i.e., a contested election or litigation, did not exist. As a result, Mr. Ward stated that “the election commissioner was required to deny the public records request.”

You state in your petition:

I was told this was "protected information" without any basis for the assertion, other than a reference to a statute that says nothing about digital/electronic records that are easily copied.

What is it about these "Audit Logs" that makes it necessary for them to be protected from the public who paid for them and for whom they were designed to serve? The digital information is not at risk, since I am only asking for a copy. I am not asking for the device, or access to the device, they live on. Nor am I asking for usernames and/or passwords.

## **DISCUSSION**

Ms. Gaston-Wise’s denial is based on § 32-1032 of the Election Act, Neb. Rev. Stat. §§ 32-101 to 32-1551 (2016, Cum. Supp. 2022), which states:

Upon the completion of the canvass by the county canvassing board, all books shall again be sealed, and the election commissioner or county clerk shall keep all election materials, including the ballots-cast containers from each precinct, the sealed envelopes containing the precinct list of registered voters, the precinct sign-in register, the official summary or summaries of votes cast, and the container for early voting materials, for not less than twenty-two months when statewide primary, general, or special elections involve federal offices, candidates, and issues and not less than fifty days for local elections not held in conjunction with a statewide primary, general, or special election. The election commissioner or county clerk shall keep on file one copy of each ballot face used in each precinct of the official partisan, nonpartisan, constitutional amendment, and initiative and referendum ballots, as used for voting, and all election notices used at each primary and general election for twenty-two months. The precinct sign-in register, the record of early voters, and the official summary of votes cast shall be subject to the inspection of any person who may wish to examine the same after the primary, general, or special election. The election commissioner or county clerk shall not allow any other election materials to be inspected, including ballots and provisional ballot envelopes, except when an election is contested or the materials become necessary to be used in evidence in the courts. The election

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commissioner or county clerk shall direct the destruction of such materials after such time, except that the election commissioner or county clerk may retain materials for the purposes of establishing voter histories.

Neb. Rev. Stat. § 32-1032 (2016).

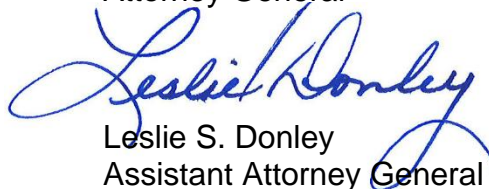
This is not the first time this office has considered your access to election audit records. In our disposition letter in File No. 22-R-131, dated July 12, 2022, we concluded that § 32-1032 governed your access to election materials. And since an audit log was not one of the items subject to inspection enumerated in the statute, the election commissioner was prohibited from disclosing it. We further noted that the conditions that might warrant disclosure, an election contest or when necessary as evidence in litigation, did not exist.

The Legislature has not amended § 32-1032 since your last petition on this matter. The statute still requires the election commissioner to seal election materials after the “completion of the canvass.” It permits inspection of only “[t]he precinct sign-in register, the record of early voters, and the official summary of votes cast . . . .” It prohibits the election commissioner from disclosing any other election materials, “except when an election is contested or the materials become necessary to be used in evidence in the courts.” There is nothing in § 32-1032, or any other statute in the Election Act, that would authorize access to the requested audit logs.

“Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Aksamit Resource Management LLC v. Neb. Pub. Power. Dist.*, 299 Neb. 114, 123, 907 N.W.2d 301, 308 (2018). Based on the plain language of § 32-1032, Ms. Gaston-Wise is *prohibited* from disclosing the information you seek. Thus, we conclude that Ms. Gaston-Wise did not unlawfully deny you access to public records, and we are closing this file. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Public Records Statutes.

Sincerely,

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: John M. Ward (via email only)  
49-3157-30