
From: The official communication list for the General Registrars of the Commonwealth
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Sent: Friday, August 19, 2016 3:42 PM
To: GRLIST@LISTLVA.LIB.VA.US
Subject: [GRLIST] Guidance on responding to request from Public Interest Legal Foundation

Good afternoon – many of you have received a request for records from the Public Interest Legal Foundation for certain information to be provided pursuant to the National Voter Registration Act (NVRA). The Department of Elections will reach out to the requesting organization to offer certain information from a statewide level in lieu of the individual localities responding. While we will offer this, there is no guarantee the requesting organization will accept our offer. We will let everyone know the response we receive. Even if the requesting organization accepts the offer from the Department related to statewide data, it is possible the organization may still request copies of other related records, such as voter registration forms that are only maintained or accessible at the local level.

Below is a summary of what we are offering to provide and pursuant to what federal or state authority:

- 1) The requesting organization seeks documents regarding all registrants who were identified as potentially not satisfying the citizenship requirements for registration from any information source, including information obtained from the Virginia Department of Motor Vehicles or from the Virginia State Board of Elections since 2011. This request extends to all documents that provide the name of the registrant, the voting history of such registrant, the nature and content of any notice sent to the registrant, including the date of the notice, the response (if any) of the registrant, and actions taken regarding the registrant's registration (if any) and the date of the action. This request extends to electronic records capable of compilation.

In response to this portion of the request:

- a. The Department will offer to provide a sample of the correspondence sent to individuals flagged as potentially non-citizens. This is VERIS generated correspondence so it is uniform across the state.
- b. The Department will offer to provide a data report containing everyone with a correspondence record in VERIS that was sent a non-citizen letter, the date of correspondence, and current registration status of the individual. This will be a custom report offered to the organization and not a ready-made report in VERIS that you can pull locally.

- c. ELECT is working on creating a single cancellation report that does not include the reason for cancellation and only releasable information to facilitate your response to these types of requests. We will offer a statewide report to the requesting organization. While there is a VERIS report that provides a list of registrants canceled due to non-citizenship for your administrative use, **you may not provide the information regarding reason for cancellation for non-citizen status** as this information is received from DMV and is covered under the federal Driver's Privacy Protection Act (DPPA). The GR/EB Handbook already indicates that this information is not releasable. The DPPA prohibits the release of covered data. It is not sufficient to simply redact the reason code column from the current VERIS report since it contains only individuals identified by DMV as being potentially non-citizen and cancelled as a result.
 - d. The Department will not provide voting history as this is not covered under NVRA. The Code of Virginia establishes who may obtain this information and how in 24.2-406. Only the Department of Elections may provide this information to authorized individuals and entities. We will notify the requestor of this fact and you should respond accordingly to this or any other request for voting history.
- 2) The requesting organization seeks all communications regarding your list maintenance activities relating to #1 above to the Commonwealth's Attorney, Virginia Attorney General, Virginia State Police, any other state law enforcement agencies, the United States Attorney's office, or the Federal Bureau of Investigation.
 - a. You should consult with your local attorney regarding this request. These are not records covered by NVRA and may be covered by state FOIA exemptions related to information about potential and/or ongoing criminal investigations. Your legal counsel will be able to advise you appropriately.
 - 3) The requesting organization seeks the total voting-age population in your jurisdiction as of the date of your response
 - a. Several registrars provided useful information you can point the requesting organization to, such as the U.S. Census or Weldon Cooper Center. The Department will also make the requestor aware that this information is readily available online. You do not need to provide or create records that you do not have when responding to requests.
 - 4) The requesting organization seeks the total number of voters registered in your jurisdiction as of the date of your response.
 - a. The Department posts monthly reports containing voter registration statistics for every locality in the Commonwealth. You should direct the requesting organization to those reports for questions regarding number of registered voters. The Department will also make the requestor aware that these reports are readily available online. Those reports, dating back to 2000, are available here: <http://elections.virginia.gov/resultsreports/registration-statistics/index.html>

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