

NORTH CAROLINA

STATE BOARD OF ELECTIONS

VIA EMAIL

Public Interest Legal Foundation
c/o Noel Johnson, Esq.

May 3, 2019

Re: Notice citing the National Voter Registration Act of 1993 (NVRA).

Dear Ms. Johnson:

This letter responds to the above-referenced Notice, *enclosed*, received by the N.C. State Board of Elections Office (“State Board Office”) today by U.S. Mail. We are aware of communications between the Public Interest Legal Foundation (PILF) and certain staff at the State Board Office in recent months, and it appears a number of items may have been misunderstood.

Records are maintained and freely available for list maintenance activities as to each registered voter, statewide, online: [ncVoter Statewide.zip](#) (468.7 MB). It was our understanding that PILF was previously aware of that public file, which is updated weekly to reflect current registration and list maintenance activities. From the public file, PILF can identify each individual removed from the rolls, the reason for that removal, and the date of removal. Additional information is also available to you using that file. Our State has gone further and made freely available individual voter participation history for all voters, statewide, at no cost: [nchist Statewide.zip](#) (264.4 MB).

However, your Notice states that PILF’s request is fundamentally for records affecting “registrations belonging to individuals who do not satisfy the citizenship requirements for voting,” and your correspondence to various counties further clarifies that you seek “information obtained from the various agencies within the U.S. Department of Homeland Security, North Carolina Department of Motor Vehicles” and this Agency.

The State Board Office is unable to disclose the identity of particular individuals in the manner you request, although we wish to provide you an overview of the process and the reasons why individuals cannot be identified in the manner sought.

In 2013, the State Board Office sought to enhance its ability to identify non-citizen registrants by entering an agreement with the U.S. Department of Homeland Security (DHS) and the United States Citizenship and Immigration Service (USCIS) to access their Systematic Alien Verification for Entitlements (SAVE) Program, which allows state agencies to query certain information regarding particular individuals' citizenship status. Before the State Board was granted access to the SAVE Program, however, DHS and USCIS required the State Board to enter into a memorandum of agreement that outlined and restricted the State Board's use and reliance on data from the SAVE Program. Additionally, the State Board was required to submit both the proposed agreement and other documents to the United States Department of Justice for preclearance under Section 5 of the Voting Rights Act. The State Board entered into this agreement in September 2013 (the "MOA"), *enclosed*.

Use and disclosure of information obtained through SAVE is strictly limited by the terms of our Agency's MOA with DHS and USCIS. We are required, for instance, to "use any information provided by DHS-USCIS under this MOA solely for the purpose of determining the eligibility . . . and limit use of such information accordance with this and all other provisions of this MOA," which expressly requires that the Agency "protect its confidentiality, including ensuring that it is not disclosed to any unauthorized person(s) without the prior written consent of DHS-USCIS." MOA at Sections IV(B)(1)(g) and (i), *enclosed*.

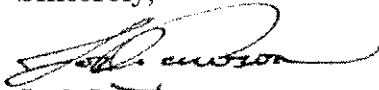
The SAVE Program is most effectively queried using alien identification numbers, which the State Board Office sought from the Department of Motor Vehicles. We understand that information is subject to nondisclosure under the Driver's Privacy Protection Act (DPPA).

In addition to the above, the State Board Office and certain county boards of elections continue to provide records sought by federal law enforcement, as described in Numbered Memos 2018-09 and 2019-01, *enclosed*. We will not presently disclose the identity of any prior or current registrant that may be subject to review by federal law enforcement.

Our Agency conducts list maintenance activities in a transparent manner consistent with the NVRA, and it has detailed investigatory steps regarding the use of the SAVE Program data and DMV data. See Post-Election Audit Report (April 21, 2017), *enclosed*. While the State Board Office cannot provide information and data otherwise restricted by agreement with federal agencies, the pendency of federal proceedings affecting that data, or other federal statutes, our Agency has provided broad access to list maintenance data for the entire state, *supra*.

Understanding the restrictions on the discrimination of particular data, we would ask that PILF please indicate what records it now seeks. We look forward to providing all records to which you are entitled under the NVRA.

Sincerely,



Josh Lawson
General Counsel

Encl.: Memorandum of Agreement (2013)
 Post-Election Audit Report (2016), with copies of
 requested correspondence
 Numbered Memo 2019-01
 Numbered Memo 2018-09
 Notice Letter