

PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL AND CERTIFIED MAIL

March 5, 2020

Jocelyn Benson
Secretary of State
Richard H. Austin Building
430 W. Allegan, 4th Floor
Lansing, MI 48933
Secretary@michigan.gov

RE: National Voter Registration Act Request

Dear Secretary Benson:

Pursuant to the National Voter Registration Act, we request that you permit inspection or provide copies of records pertaining to the conduct of the City of Southfield City Clerk Sherikia Hawkins during the November 2018 General Election.

Specifically, we request that you permit inspection or provide copies of the following records:

1. All records concerning the 193 absent voters impacted by Clerk Hawkins' alleged alterations to their QVF records for the November 2018 General Election. This Request includes, but is not limited to,
 - a. all information contained on the list or record described by MCL § 168.760, including
 - i. "the name of the applicant and the address to which the ballot or ballots are to be sent";
 - ii. "the date of receiving the application";
 - iii. "the date of mailing or delivering the ballot or ballots to such voter"; and,
 - iv. "the date of receiving the ballot from such voter."
 - b. copies of the absent ballot application submitted by each of the 193 voters. *See* MCL § 168.760 ("Applications and lists shall be open to public inspection at all reasonable hours."); and,
 - c. copies of the absentee ballot return envelopes from each of the 193 voters.
2. Copies of all written communications, including emails, between your office and the City of Southfield City Clerk's Office for the time period between November 5, 2018 and the present concerning Clerk Hawkins' alleged conduct during the November 2018 election.
3. Copies of all written communications, including emails, between your office and the Oakland County Elections Division for the time period between November 5, 2018 and the present concerning Clerk Hawkins' alleged conduct during the November 2018 election.

The NVRA requires your office to “make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]” 52 U.S.C. § 20507(i)(1).

For months, the Public Interest Legal Foundation has endeavored to inspect these records that federal law requires to be publicly available. For months, the Foundation has been denied by both the City of Southfield and Oakland County.

Requests to the City of Southfield

On September 26, 2019, we made a request to the City of Southfield City Clerk’s office pursuant to the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.*, the Michigan Freedom of Information Act (FOIA), MCL § 15.231 *et seq.* Our request sought records concerning the official activities of the City of Southfield with respect to absent voters and the announced criminal charges against Southfield City Clerk Sherikia Hawkins. On October 21, 2019, the City granted the request in part and denied the request in part.

On November 6, 2019, we notified you and the City Administrator of Southfield that the City of Southfield is in violation of the National Voter Registration Act for failure to permit inspection and duplication of public records as required by 52 U.S.C. § 20507(i). A copy of this correspondence is attached.

Over the following months, the City of Southfield’s representatives have denied our right to inspect certain documents that federal law requires be maintained. Specifically, in an email received on February 11, 2020, the City of Southfield stated that certain documents were “dropped off with the board of canvassers on November 17, 2018 and November 18, 2018 were never returned to City of Southfield.” A copy of this email correspondence is attached.

Requests to Oakland County

On September 26, 2019, the Foundation submitted a request to the Oakland County Elections Director pursuant to the Michigan Freedom of Information Act (FOIA), MCL § 15.231 *et seq.*, and the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.* A copy of the request is attached.

On October 7, 2019, Oakland County granted the request in part and denied the request in part. On October 15, 2019, the Foundation submitted an appeal of the denial of its FOIA request. On October 23, 2019, the County upheld the denial. Specifically, the County stated that “Any remaining records that were responsive to this request had already been sent to the Michigan Attorney General’s Office before the County received your request. The County did not make any copies of these records and is not able to recreate them. This portion of the request was therefore denied because the records do not exist.”

We plan to send a representative to your office to inspect these documents on March 13, 2020. If you wish to dispense with a public inspection and provide copies of these records instead, please send them to the following address:

32 E. Washington Street
Suite 1675
Indianapolis, IN 46204

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Logan Churchwell", written in a cursive style.

Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lchurchwell@publicinterestlegal.org

PUBLIC INTEREST

—— LEGAL FOUNDATION ——

VIA EMAIL AND CERTIFIED MAIL

November 6, 2019

Frederick E. Zorn
City Administrator
26000 Evergreen Road
P.O. Box 2055
Southfield, MI 48037-2055
Email: fzorn@cityofsouthfield.com

Jocelyn Benson
Secretary of State
Richard H. Austin Building
430 W. Allegan, 4th Floor
Lansing, MI 48933

RE: Notice of NVRA Violation and Michigan FOIA Appeal

Dear Secretary Benson and Administrator Zorn:

On September 26, 2019, we requested the opportunity to inspect or receive copies of records pursuant to the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.*, the Michigan Freedom of Information Act (Michigan FOIA), MCL § 15.231 *et seq.*, and statutory inspection rights provided for specific document types.

The request sought four categories of records, three of which concerned the official activities of the City of Southfield with respect to absentee voters and the recently announced criminal charges against Southfield City Clerk Sherikia Hawkins. A copy of the request is attached.

On October 21, 2019, the City granted the request in part and denied the request in part.

This letter serves to **notify the City of Southfield and the Michigan Secretary of State, that the City of Southfield is in violation of the National Voter Registration Act** for failure to permit inspection and duplication of public records as required by 52 U.S.C. § 20507(i). Because some of the records we have requested must also be publicly disclosed under the Michigan FOIA, this letter also serves an appeal of our Michigan FOIA request.

It is our hope that you will work quickly to provide for disclosure of the requested records. If not, according to federal law, a lawsuit under the NVRA may be filed within 90 days of your receipt of this notice. 52 U.S.C. § 20510(b). For lawsuits initiated by a private party, an award of attorney's fees, expenses, and costs incurred are available under 52 U.S.C. § 20510(c).

As required by 52 U.S.C. § 20510(b)(1), the Secretary of State, Michigan's chief election official, is also receiving this notice of NVRA violations.

I. Violation of the National Voter Registration Act of 1993

As explained in our request, the NVRA requires election officials to “maintain for at least 2 years and . . . make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i).

Requests #1 and #2—which the City denied—sought records relating to registered voters who requested and cast absentee ballots in the November 2018 General Election, including records specific to the 193 absentee voters whose votes were impacted by the alleged alterations of Clerk Hawkins.

Under federal and Michigan law, voting (and failing to vote) plays an important role in the maintenance of the official list of eligible voters. Both the NVRA and Michigan law require election officials to remove someone from the voter roll if they have not responded to an address confirmation notice and not voted in two consecutive general elections. 52 U.S.C. § 20507(d)(1)(B)(i)-(ii); MCL § 168.509aa(4). Thus, voting records must be reviewed as part of the process of removing ineligible registrants from Michigan's voter rolls.

Furthermore, election officials can use the address information supplied on an absentee ballot application—copies of which were requested—to initiate address confirmation procedures. *See* MCL § 168.509aa(1)-(2). Address confirmation notices—and replies to the same—are the means by which election officials update registration information, in order to keep the voter rolls accurate and current.

Records concerning absentee ballot applications and absentee ballot votes are therefore records that “concern[] the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. § 20507(i). Those records must be maintained for at least two years and must be made available for public inspection.¹ *Id.*

Your response indicates that you have transferred *all* records responsive to Requests #1 and #2 to the Attorney General of Michigan. The City of Southfield is therefore not maintaining records and is not making them available for public inspection, as required by the NVRA.

¹ Federal law places an independent obligation on your office to retain and preserve for twenty-two months “all records and papers which come into [your] possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election” 52 U.S.C. § 20701.

II. Appeal of FOIA Request

Your response indicates that records responsive to Requests #1 and #2 do not exist in your possession because *all of them* were transferred to the Attorney General. We challenge and appeal that claim.

Request #1 sought “a copy of the complete absent voter list described by MCL § 168.760.” Request #2 sought “[a]ll absentee ballot records concerning the 193 absentee voters impacted by Clerk Hawkins’ alleged alterations to their QFV records.” We challenge your claim that *all* records responsive to these requests have been transferred to the Michigan Attorney General. We also challenge your claim that you performed a sufficient search for responsive records.

Michigan law requires that absentee “[a]pplications and lists shall be open to public inspection at all reasonable hours.” MCL § 168.760. If the City has transferred these records out of its possession, it is violating Michigan law.

Furthermore, according to Chapter 6 of the Michigan Election Officials’ Manual, “A record of AV ballots sent and returned must also be entered into the AV module of the Qualified Voter File.”² The QVF, as you know, is the statewide computer system used to manage Michigan voter files. Records stored in the QVF are electronic and not subject to complete transfer out of your possession or control.

According to the Affidavit of Probable Cause submitted in support of the charges against Clerk Hawkins, a “desk review” was performed of “all the ballots in question,” during which it was observed that “193 absentee voters QVF were altered in the computer system....”³ Each of the 193 absentee voters impacted will have records accessible by your office through the QVF. Those records were requested and they must be produced unless otherwise exempt. MCL § 15.233(1).

Regarding copies of the ballots themselves, Attorney General Opinion No. 7247 provides, “Voted ballots, which are not traceable to the individual voter, are public records subject to disclosure under the Freedom of Information Act, MCL 15.231 *et seq.* A person must be allowed to inspect or examine voted ballots, which are not traceable to the individual voter, and to receive copies of the ballots upon request subject to reasonable restrictions prescribed by the Secretary of State.”⁴ Copies of the absentee ballots were requested and must be produced.

For the foregoing reasons, the City of Southfield is violating the NVRA and the Michigan FOIA.

III. Inspection Visit

We will be in the Southfield area on **Friday, November 15, 2019** and plan to visit your office to discuss these matters further and inspect the requested records. If our plans change, we will notify you in advance.

² https://www.michigan.gov/documents/sos/VI_Michigans_Absentee_Voting_Process_265992_7.pdf at 11.

³ https://www.michigan.gov/documents/ag/2019-09-23_1_666447_7.pdf at 7.

⁴ <https://www.ag.state.mi.us/opinion/datafiles/2010s/op10324.htm>.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Logan Churchwell', with a stylized, flowing script.

Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lgchurchwell@publicinterestlegal.org

From: [Humphries, Nicole](#)
To: [King, Dawn](#); [Kaylan Phillips](#)
Cc: [Noel Johnson](#)
Subject: RE: City of Southfield FOIA Request for AV November 2018
Date: Tuesday, February 11, 2020 10:19:03 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[AV.ROLL.PDF](#)
[BOARD OF CANVASSERS.PDF](#)
[EMAILS.PDF](#)
[mcl-116-1954-XXXI.PDF](#)

February 5, 2020

Dear Mr. Phillips,

Please see the attached list of absentee voters for the November 2018 election. I have also attached the emails as requested. We are unable to provide you a time to review the 193 applications because they are being held as evidence in the pending litigation. The AV ballots, applications and the list that was dropped off with the board of canvassers on November 17, 2018 and November 18, 2018 were never returned to City of Southfield

Please see all attachments.

Sincerely,

Nicole M. Humphries
Deputy City Clerk
26000 Evergreen Road
Southfield Michigan 48076
Phone: (248)76-5161
Email: nhumphries@cityofsouthfield.com

From: King, Dawn
Sent: Friday, February 7, 2020 10:50 AM
To: Kaylan Phillips <kphillips@PublicInterestLegal.org>; Humphries, Nicole <nhumphries@cityofsouthfield.com>
Cc: Noel Johnson <njohnson@publicinterestlegal.org>
Subject: Re: City of Southfield FOIA Request for AV November 2018

Hi Mr. Phillips

I am in meetings [frequently] on Wednesday mornings; but perhaps in afternoon....

EXHIBIT A

From: Kaylan Phillips <kphillips@PublicInterestLegal.org>
Sent: Friday, February 7, 2020 9:50 AM
To: King, Dawn <dking@cityofsouthfield.com>; Humphries, Nicole <nhumphries@cityofsouthfield.com>
Cc: Noel Johnson <njohnson@PublicInterestLegal.org>
Subject: RE: City of Southfield FOIA Request for AV November 2018

Ms. King,

Thank you for your response. I do have a few follow-up questions. Are you available on Wednesday morning (Feb 12)?

It is my understanding that we have not yet received any records from the Clerk's office.

Thank you,

Kaylan

From: King, Dawn [<mailto:dking@cityofsouthfield.com>]
Sent: Friday, February 7, 2020 5:10 AM
To: Kaylan Phillips <kphillips@PublicInterestLegal.org>; Humphries, Nicole <nhumphries@cityofsouthfield.com>
Cc: Noel Johnson <njohnson@PublicInterestLegal.org>
Subject: Re: City of Southfield FOIA Request for AV November 2018

Mr. Phillips

As I review your January 27 2019 email I see that you still want confirmation about the 193 vote. As was communicated before, the City has no knowledge of what AVs comprise that "193" that Michigan Attorney General's office referenced in their complaint... The matter is still pending in the district court(Oak Park 45th Judicial District Court)

In regards to the other records and your deposit I will follow up with the Clerks office to determine what "granted records " have been sent to you

Get Outlook for iOS

From: King, Dawn <dking@cityofsouthfield.com>
Sent: Friday, February 7, 2020 4:49:24 AM
To: Kaylan Phillips <kphillips@PublicInterestLegal.org>; Humphries, Nicole <nhumphries@cityofsouthfield.com>
Cc: Noel Johnson <njohnson@PublicInterestLegal.org>
Subject: Re: City of Southfield FOIA Request for AV November 2018

Mr Philips

I am not available on Tuesday but the Clerks office will be open
I will follow up with Clerks office tppp

Can you state in this email what specific records you have not received

Thank you
[Get Outlook for iOS](#)

From: Kaylan Phillips <kphillips@PublicInterestLegal.org>
Sent: Thursday, February 6, 2020 5:18:33 PM
To: King, Dawn <dking@cityofsouthfield.com>; Humphries, Nicole
<nhumphries@cityofsouthfield.com>
Cc: Noel Johnson <njohnson@PublicInterestLegal.org>
Subject: [EXTERNAL] RE: City of Southfield FOIA Request for AV November 2018

Ms. King,

I have not received a response to my email below.

In order to avoid further delay, I have made arrangements to visit your office on Tuesday, February 11, 2020 for a follow-up meeting. I am available after 2:00 pm. Please let me know what time works best for you.

Thank you,

Kaylan Phillips

Kaylan Phillips
Litigation Counsel
kphillips@publicinterestlegal.org

New PILF Logo_resized



32 E. Washington Street, Suite 1675
Indianapolis, IN 46204
317-203-5599 ext. 102

www.PublicInterestLegal.org



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Internal Revenue Service regulations require that certain types of written advice include a

EXHIBIT A

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From: Kaylan Phillips

Sent: Monday, January 27, 2020 3:26 PM

To: dking@cityofsouthfield.com; nhumphries@cityofsouthfield.com

Cc: Noel Johnson <njohnson@PublicInterestLegal.org>

Subject: RE: City of Southfield FOIA Request for AV November 2018

Ms. King,

I am following up on your email, below, dated November 15, 2019.

First, as to a portion of our request, you stated that "upon accessing the list, the Clerk's office will put in PDF, scan and send to you electronically." To date, we have not received the contemplated records from the Clerk's office. Please provide those records as soon as possible.

Second, please confirm that the following statement in your email is still accurate:

Finally, the specific 193 AV that are at issue are not known to the City of Southfield or any of its employees, representatives or agents.

There is a court hearing scheduled next week at the Oak Park District Court. The Michigan Attorney General's office is in possession of the AV ballots that were delivered to the Oakland County Board of Canvassers in November 2018, but were not at any time returned to the City of Southfield or any of its employees, representatives or agents.

Third, as to our initial Michigan Freedom of Information Act request, we sent the requested good faith deposit per the communication from the City on October 21, 2019. The deposit was sent on November 6, 2019, nearly twelve weeks ago. To date, we have received no further communications about our request, nor have we received the requested records.

Thank you for your attention to this matter,

Kaylan Phillips

Kaylan L. Phillips

Litigation Counsel

Public Interest Legal Foundation

32 E. Washington Street, Suite 1675

Indianapolis, IN 46204

(317) 203-5599

kphillips@publicinterestlegal.org

www.publicinterestlegal.org



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From: "King, Dawn" <dking@cityofsouthfield.com>

Date: November 15, 2019 at 1:09:34 PM EST

To: "njohnson@publicinterestlegal.org" <njohnson@publicinterestlegal.org>

Cc: "Humphries, Nicole" <nhumphries@cityofsouthfield.com>

Subject: City of Southfield FOIA Request for AV November 2018

Good Afternoon,

This is a follow up email to our telephone discussion regarding your FOIA request for the City of Southfield 2018 AV ballots

The Southfield Clerk's Office is in the process of accessing the 2018 AV list from the State of Michigan's web based QVF site.

Unfortunately, there is a delay and the list has not been accessed, yet. The plan is that upon accessing the list, the Clerk's office will put in PDF, scan and send to you electronically.

Also, the City of Southfield does have the AV applications from 2018. The estimated number is 12,000. Pursuant to MCL 168.760 of the Michigan Election Law, Public Act 116 the applications and lists shall be open to public inspection at all reasonable hours.

Finally, the specific 193 AV that are at issue are not known to the City of Southfield or any of its employees, representatives or agents.

There is a court hearing scheduled next week at the Oak Park District Court. The

Michigan Attorney General's office is in possession of the AV ballots that were delivered to the Oakland County Board of Canvassers in November 2018, but were not at any time returned to the City of Southfield or any of its employees, representatives or agents.

Please contact my office and the Clerk's Office with further questions .

Thank you

/s/

Dawn M. King

City Attorney

City of Southfield

26000 Evergreen Road, P.O. Box 2055

Southfield, MI 48037-2055

(248) 796-5786 fax (248) 796-5775

dking@cityofsouthfield.com

www.cityofsouthfield.com

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PUBLIC INTEREST

— LEGAL FOUNDATION —

VIA EMAIL

September 26, 2019

Joseph Rozell
Oakland County Elections Director
1200 N. Telegraph Road
Dept. 417, West Wing
Pontiac, MI 48341
Email: elections@oakgov.com

RE: Request for Inspection of Records Pursuant to NVRA and MFOIA

Dear Director Rozell:

As you are aware, criminal charges against Southfield City Clerk Sherikia Hawkins were recently announced by Michigan Attorney General Dana Nessel and Secretary of State Jocelyn Benson.¹ According to probable cause affidavits filed by prosecutors, Southfield City Clerk Hawkins allegedly altered the Qualified Voter File (QVF) records of 193 absentee voters in the November 2018 General Election.²

We are writing to your office to request an inspection of public records relating to the charges against Clerk Hawkins and other official functions of the Oakland County Government. Our requests are made pursuant to the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. 20501 *et seq.*, the Michigan Freedom of Information Act (MFOIA), MCL § 15.231 *et seq.*, and statutory inspection rights provided for specific document types.

The NVRA requires your office to “make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters[.]” 52 U.S.C. § 20507(i)(1). Michigan law also provides that “[t]he registration records must be open for public inspection.” MCL § 168.516.

Pursuant to the NVRA and MFOIA, we request that you permit inspection or provide copies of the following records:

1. All records concerning the canvass or certification of the City of Southfield’s absentee ballots for the November 2018 General Election. In particular, we seek ballot summary

¹ Ferretti, Southfield city clerk charged with 6 felonies tied to November election, Detroit News, Sept. 23, 2013 <https://www.detroitnews.com/story/news/local/oakland-county/2019/09/23/southfield-city-clerk-charged-six-felonies-november-2018-election/2416101001/>.

² Michigan State Police (2019-09-23), *People v. Sherikia Lavette Hawkins*, Felony Complaint, available at https://www.michigan.gov/documents/ag/2019-09-23_1_666447_7.pdf (last accessed September 25, 2019);

sheets, reports of tabulated ballots, and complete absentee voter lists broken down by precinct. This Request includes all versions or editions of responsive reports received from the City of Southfield.

2. All absentee ballot records concerning the 193 absentee voters impacted by Clerk Hawkins' alleged alterations to their QFV records. This Request includes all information that must be made available for public inspection pursuant to MCL § 168.760, including
 - a. "the name of the applicant and the address to which the ballot or ballots are to be sent";
 - b. "the date of receiving the application";
 - c. "the date of mailing or delivering the ballot or ballots to such voter";
 - d. "the date of receiving the ballot from such voter"; and,
 - e. a copy of the absentee ballot application submitted by each of the 193 voters.

This Request also includes copies of the absentee ballot return envelopes for each of the 193 voters.

3. Copies of all written communications between your office and the Southfield City Clerk's Office for the time period between November 5, 2018 and the present.

If you wish to dispense with a public inspection and provide copies of these records instead, please send them to following address:

32 E. Washington Street
Suite 1675
Indianapolis, IN 46204

If any of the records or copies of the same sought in Requests 1 and 2 are no longer in your office's custody, please direct me to the appropriate custodian as soon as possible.

Should you need to contact me regarding this request, please contact me via email at lgchurchwell@publicinterestlegal.org.

Thank you for your service on this matter.

Sincerely,



Logan Churchwell
Communications & Research Director
Public Interest Legal Foundation
lgchurchwell@publicinterestlegal.org