

NOTICE TO REQUESTER

TO: Ralph Cushnie

FROM: Office of Elections, (808) 453-VOTE (8683), elections@hawaii.gov

DATE THAT THE RECORD REQUEST WAS RECEIVED BY AGENCY: February 19, 2025 (#1349)

DATE OF THIS NOTICE: March 4, 2025

GOVERNMENT RECORDS YOU REQUESTED (attach copy of request or provide brief description below):

Please send PDF copies of the Scanned Images of the Wet Ballots for District 37 2024 General Election.

THIS NOTICE IS TO INFORM YOU THAT YOUR RECORD REQUEST:

☐ Will be granted in its entirety.

☒ **Cannot be granted. Agency is unable to disclose the requested records for the following reason:**

☐ Agency does not maintain the records. (HRS § 92F-3)

Other agency that is believed to maintain records:

☐ Agency needs further clarification or description of the records requested. Please contact the agency and provide the following information:

☐ Request requires agency to create a summary or compilation from records, but requested information is not readily retrievable. (HRS § 92F-11(c))

☐ Will be granted in part and denied in part, **OR** ☒ Is denied in its entirety

Although the agency maintains the requested records, it is not disclosing all or part of them based on the exemptions provided in HRS § 92F-13 and/or § 92F-22 or other laws cited below.

(Describe the portions of records that the agency will not disclose.)

RECORDS OR
INFORMATION WITHHELD

APPLICABLE
STATUTES

AGENCY
JUSTIFICATION

Your request is denied as it falls into various categories of documents exempt from disclosure under HRS § 92F-13(1), (3), and (4) (i.e. "Government records which, if disclosed, would constitute a clearly unwarranted invasion of personal privacy," "Government records that, by their nature, must be confidential in order for the government to avoid the frustration of a legitimate government function," and "Government records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure."

Article II, Section 4 of the Hawaii State Constitution states that the "[s]ecrecy of voting shall be preserved." Further, state and federal law prohibit vote buying or similar conduct in which people waive their secrecy in conjunction with being paid to vote a certain way. 52 USC § 10307 and HRS § 19-3. Additionally, federal law provides for the retention and preservation of election records for twenty-two months. 52 USC 20701. Consistent with this, state law provides for the sealing of ballots and compliance with federal law. HRS § 11-154. The present records request seeks images of these very same ballots, some of which may be uniquely identified by voters, and hence would undermine these laws.

Further, elections have been designated “critical infrastructure” by the federal government. The critical structure designation entails “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” 42 USC § 5195c(e).

In general, in order to safeguard information on critical infrastructure, the state’s practice is to not disclose IT security methodology, activities and data, including equipment and software employed and remediation actions, if any, because doing so could advertise vulnerabilities, promote phishing, and/or expose or impede investigation activities. The present records request seeks IT data in the form of ballot images created by the voting system. Such data could be used by a bad actor to attempt to discover or exploit vulnerabilities in our voting system. Additionally, bad actors could seek to alter or manipulate ballot images outside of the voting system in an attempt to undermine our elections.

REQUESTER’S RESPONSIBILITIES:

You are required to (1) pay any lawful fees and costs assessed; (2) make any necessary arrangements with the agency to inspect, copy or receive copies as instructed below; and (3) provide the agency any additional information requested. **For questions about this notice or the records being sought, please ask the agency’s contact person named at the top of this form.** Also, please submit your payment, if any, to the agency at the address listed at the top of this form. **DO NOT SEND YOUR PAYMENT** to the Office of Information Practices (OIP) unless you are requesting records directly from OIP.

If you do not comply with the requirements set forth in this notice within 20 business days after the postmark date of this notice or the date the agency makes the records available, you will be presumed to have abandoned your request and the agency shall have no further duty to process your request. Once the agency begins to process your request, you may be liable for any fees and costs incurred. If you wish to cancel or modify your request, you must advise the agency upon receipt of this notice.

Please note that the Office of Information Practices (OIP) does not maintain the records of other agencies, and a requester must seek records directly from the agency it believes maintains the records. If the agency denies or fails to respond to your written request for records or if you have other questions regarding compliance with the UIPA, then you may contact OIP at (808) 586-1400, oip@hawaii.gov, or 250 South Hotel Street, Suite 107, Honolulu, Hawaii, 96813.

METHOD & TIMING OF DISCLOSURE:

Records available for public access in their entireties must be disclosed within a reasonable time, not to exceed 10 business days from the date the request was received, or after receipt of any prepayment required. Records not available in their entireties must be disclosed within 5 business days after this notice or after receipt of any prepayment required. HAR § 2-71-13(c). If incremental disclosure is authorized by HAR § 2-71-15, the first increment must be disclosed within 5 business days of this notice or after receipt of any prepayment required.

Method of Disclosure:

- ☐ Inspection at the following location:
- ☐ As requested, a copy of the record(s) will be provided in the following manner:
 - ☐ Available for pick-up at the following location:
 - ☐ Will be mailed to you.
 - ☐ Will be transmitted to you by other means requested:

Timing of Disclosure: All records, or the first increment if applicable, will be made available or provided to you:

- ☐ On _____, 20____.
- ☐ **After prepayment** of 50% of fees and 100% of costs, as estimated below.

For incremental disclosures, each subsequent increment will be disclosed within 20 business days after:

- ☐ The prior increment (if one prepayment of fees is required and received), or
- ☐ Receipt of each incremental prepayment, if prepayment for each increment is required.

Records will be disclosed in increments because the records are voluminous and the following extenuating circumstances exist:

- ☐ Agency must consult with another person to determine whether the record is exempt from disclosure under HRS chapter 92F.
- ☐ Request requires extensive agency efforts to search, review, or segregate the records or otherwise prepare the records for inspection or copying.
- ☐ Agency requires additional time to respond to the request in order to avoid an unreasonable interference with its other statutory duties and functions.
- ☐ A natural disaster or other situation beyond agency's control prevents agency from responding to the request within 10 business days.

ESTIMATED FEES & COSTS AND PAYMENT:

FEES: For personal record requests under Part III of chapter 92F, HRS, the agency may charge you for its costs only, and fee waivers do not apply.

For public record requests under Part II of chapter 92F, HRS, the agency is authorized to charge you fees to search for, review, and segregate your request (even if a record is subsequently found to not exist or will not be disclosed in its entirety). The agency must waive the first \$30 in fees assessed for general requesters, OR in the alternative, the first \$60 in fees when the agency finds that the request is made in the public interest. Only one waiver is provided for each request. See HAR §§ 2-71-19, -31 and -32.

COSTS: For either personal or public record requests, the agency may charge you for the costs of copying and delivering records in response to your request, and other lawful fees and costs.

PREPAYMENT: The agency may require prepayment of 50% of the total estimated fees and 100% of the total estimated costs prior to processing your request. If a prepayment is required, the agency may wait to start any search for or review of the records until the prepayment is received by the agency. Additionally, if you have outstanding fees or costs from previous requests, including abandoned requests, the agency may require prepayment of 100% of the unpaid balance from prior requests before it begins any search or review for the records you are now seeking.

The following is an itemization of what you must pay, based on the estimated fees and costs that the agency will charge you and the applicable waiver amount that will be deducted:

For public record requests only:

Fees: Search	Estimate of time to be spent: ____ hours (\$2.50 for each 15-minute period)	\$
Review & segregation	Estimate of time to be spent: ____ hours (\$5.00 for each 15-minute period)	\$
Fees waived	☐ general (\$30), OR ☐ public interest (\$60) (Only one waiver per request)	<\$ ____>
Other	Click or tap here to enter text. (Pursuant to HAR §§ 2-71-19 & 2-71-31)	\$

Total Estimated Fees: \$

For public or personal record requests:

Costs: Copying Estimate of # of pages to be copied: _____ \$

(@ \$ ____ per page, pursuant to HRS § 92-21)

Delivery Postage \$

Other Click or tap here to enter text. \$

Total Estimated Costs: \$

TOTAL ESTIMATED FEES AND COSTS from above: \$

☐ **The estimated fees and costs above are for the first incremental disclosure only. Additional fees and costs, and no further fee waivers, will apply to future incremental disclosures.**

☐ **PREPAYMENT IS REQUIRED** (50% of fees + 100% of costs, as estimated above) \$

☐ **UNPAID BALANCE FROM PRIOR REQUESTS** (100% must be paid before work begins) \$

TOTAL AMOUNT DUE AT THIS TIME \$

Payment may be made by: ☐ cash

☐ personal check payable to: Click or tap here to enter text.

☐ other

Submit your payment to the agency at the address listed at the beginning of this form, including the name of the agency's contact person.