



State of Delaware
Department of Elections

September 16, 2025

Via Mail and Email

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Dear Ms. Riordan and Mr. Gates,

We write to further respond to your letter dated August 14. Your August 14 letter reiterated your prior demands pursuant to the National Voter Registration Act (the “NVRA”) for “the electronic copy of the statewide [voter registration list] [containing] *all fields* including the registrant’s full name, date of birth, residential address, [and] his or her state driver’s license number or the last four digits of the registrant’s social security number[.]” Your August 14 letter added a new basis for your request, citing the Civil Rights Act (the “CRA”). We responded to your letter with respect to the NVRA on August 21. This letter addresses your August 14 request pursuant to the Civil Rights Act, further emphasizes the importance of compliance with both federal and state privacy laws, and again requests information to ensure compliance with those laws.

For simplicity’s sake, we have organized our response and questions into two sections. As explained in Section I below, your August 14 letter does not pose a valid request for information under the CRA because it does not identify a proper purpose for inspection under the CRA and does not identify any basis for your request. As explained in Section II below, your August 14 letter’s invocation of the CRA does not address the questions that we have raised concerning whether the federal Privacy Act of 1974 (the “Privacy Act”) and Delaware laws permit us to provide sensitive personal information of individual Delawareans. We reiterate that Delaware remains willing to provide documents and to answer questions concerning our voter list maintenance process to the full extent required by the NVRA and permitted by Delaware and federal law (including the Privacy Act of 1974).

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I. Your August 14 Letter Does Not Pose a Valid Request for Information under the Civil Rights Act.

It is important to evaluate information requests within the statutory framework in which the request is made. This statutory framework clarifies the checks and balances instituted by Congress when extending the investigatory authority provided by that specific statute.

1. The Civil Rights Act Is Not a Mechanism to Investigate Compliance with Different Statutes, including the NVRA or HAVA.

A request for information pursuant to the Civil Rights Act must “contain a statement of the basis and the purpose therefor.” 52 U.S.C. § 20703. Your August 14 letter identifies the purpose for your request as assessing “Delaware’s compliance with the list maintenance requirements of the NVRA and HAVA.” This does not appear to be a valid purpose for inspection pursuant to the CRA.

The “purpose [of authorizing demands by the U.S. Attorney General for records under Title III of the Civil Rights Act of 1960] is to enable the Attorney General to determine whether [42 U.S.C.] § 1971 [currently codified as amended at 52 U.S.C. § 10101] suits or similar actions should be instituted.” *Kennedy v. Lynd*, 306 F.2d 222, 228 (5th Cir. 1962). Nothing in the CRA’s text or legislative history indicates that the CRA modifies the Attorney General’s authority to investigate or to enforce different laws, such as the NVRA or HAVA, both of which set forth enforcement mechanisms unique to their purposes.

The NVRA has a statutory provision specifically governing inspection for the purpose of assessing a state’s compliance with the NVRA’s list maintenance requirements. 52 U.S.C. § 20507(i). HAVA explicitly requires states to follow the voter list maintenance requirements of the NVRA. *See* 52 U.S.C. § 21083(a)(2)(A)(i) (citing the NVRA); *Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019) (“Nothing in HAVA broadens the scope of the NVRA’s list-maintenance obligations.”)

Delaware responded to your requests for information pursuant to the NVRA including detailed information about its list maintenance process pursuant to this provision through our August 15 response. We have offered to provide a copy of Delaware’s public voter registration list, pursuant to the NVRA, subject to resolving the concerns that we have articulated about how Delawareans’ sensitive personal information may be used and maintained in compliance with state and federal law. We await answers to the questions we have raised and remain available to discuss.

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2. Your Letter Fails to Articulate a Basis for the Information Demanded.

A request for inspection pursuant to the Civil Rights Act must articulate a basis for the request, in addition to specifying its purpose. 52 U.S.C. § 20703. Although the contours of this requirement have not been litigated in the context of the CRA, cases addressing analogous requirements in the context of administrative subpoenas have explained that such a requirement ensures that the information sought is relevant to the inquiry and not unduly burdensome. *C.f. F.D.I.C. v. Wentz*, 55 F.3d 905, 908 (3d Cir. 1995) (reciting requirements for investigation pursuant to an administrative subpoena). This analysis of basis takes individuals' privacy considerations into account. *C.f. Chao v. Community Trust Co.*, 474 F.3d 75, 79 (3d Cir. 2007) (remanding for reconsideration of scope of the subpoena in light of privacy statute).

Your August 14 letter fails to identify any basis for your request under the CRA. Absent a clearly articulated basis the request fails to comply with the CRA.

As a practical matter, it is unclear why individuals' sensitive personal information could be needed for the purpose of assessing Delaware's compliance with the NVRA or HAVA. On July 11, you posed eight questions about Delaware's voter list maintenance processes. Our responses on July 25 and August 15, carefully answered each of your questions. Our August 15 response in particular spanned ten pages and referred you to hundreds of additional pages of information concerning Delaware's voter list maintenance processes. You have not posed any follow-up questions about any of the information that we have provided.

Moreover, as explained in our August 15 response, Delaware's voter list maintenance process complies with the NVRA's safe harbor. Delaware's compliance with the NVRA's safe harbor provisions establishes Delaware's compliance with the NVRA as a matter of law. *Bellitto v. Snipes*, 935 F.3d 1192, 1206 (11th Cir. 2019) (reaffirming that compliance with the safe-harbor process satisfies the NVRA's requirements, regardless of the possibility that relocated voters may have been missed by this process). The purpose of an analysis of Delaware's voter registration list by individual within the enforcement authority of NVRA is not clear. *See Pub. Int. Legal Found. v. Benson*, 136 F.4th 613, 625 (6th Cir. 2025) (rejecting the argument that the adequacy of a list maintenance program should be judged by statistical indicia). In light of the information provided, sensitive personal information concerning every registered Delaware voter seems unnecessary to your stated purpose of assessing Delaware's voter list maintenance processes. We remain available to discuss.

We are proud of the work we continually undertake to evaluate, improve, and maintain Delaware's voter registration list. We are not aware of any basis to believe that Delaware is

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experiencing illegal voting.¹ If you have concerns about any particular aspect of Delaware’s voter list maintenance process, we would appreciate the information. Further, such information would allow us to identify records relevant to those concerns that we can permit you to inspect, pursuant to the NVRA, without jeopardizing the privacy interests of individual Delawareans.

II. The Issues We Have Raised with Respect to Providing Individuals’ Information Pursuant to the NVRA Apply Equally to the CRA.

We have posed questions and articulated concerns with respect to your collection and maintenance of Delawareans’ sensitive personal information, and our ability to provide that information, in light of Delaware and federal privacy laws. These questions have been detailed in our communications and letters to you on July 25, August 6, August 14, and August 21. The laws that we have cited are relevant to our ability to provide and your ability to collect this information, regardless of whether we act pursuant to the NVRA or the CRA. We cannot comply with your request for a list of Delaware voters, sortable by political party, locatable by address, and cross-referenceable by social security number and drivers’ license number, until we understand how we can do so in a lawful manner—regardless of the authority pursuant to which you pose the request.

1. The Privacy Act of 1974 Restricts Federal Agencies’ Collection of Individuals’ Information, Particularly Concerning First Amendment Activity.

The federal Privacy Act of 1974 was enacted to establish a code of fair information practices for federal agencies to protect against unconstitutional or inappropriate government surveillance of citizens. It was expanded by the Computer Matching and Privacy Act of 1988 (the “Computer Privacy Act”) to protect citizens’ information in the digital age and to ensure safeguards of citizens’ rights when information is compared between federal agency databases. These laws govern the collection, maintenance, use, and dissemination of information about individuals by federal agencies.² The Privacy Act’s application is not contingent upon the authority pursuant to which information is collected.

The Privacy Act requires federal agencies to publish a System of Records Notice (“SORN”) explaining how they will use, store, and dispose of individuals’ information. 5 U.S.C.

¹ Moreover, as a practical matter, studies concerning illegal voting have consistently found very few instances of illegal voting. The Brennan Center has collected links to 26 of these studies at: [Noncitizen Voting is Vanishingly Rare | Brennan Center for Justice](https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-vanishingly-rare). The full internet address for this article is: <https://www.brennancenter.org/our-work/research-reports/noncitizen-voting-vanishingly-rare>

² The Federal Department of Justice’s Office of Privacy and Civil Liberties has published an overview to the Privacy Act, which is available at: <https://www.justice.gov/opcl/privacy-act-1974>.

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§ 552a(f); *Maydak v. United States*, 363 F.3d 512, 515 (D.C. Cir. 2004) (“The Privacy Act imposes a series of substantive and procedural obligations on federal agencies that maintain what is known as a “system of records.”). The Privacy Act prohibits federal agencies from collecting information about first amendment activity, like voting or choosing a political party, outside of specific limited exceptions. 5 U.S.C. § 552a(e)(7); *Maydak*, 363 F.3d at 516 (“[T]he Act clearly prohibits even the mere collection of such a record, independent of the agency’s maintenance, use, or dissemination of the record thereafter.”) The Computer Privacy Act adds additional disclosure requirements and guardrails when a federal agency compares information with another agency. 5 U.S.C. § 552a(o); *Calvillo Manriquez v. Devos*, 345 F. Supp. 3d 1077, 1098 (N.D. Cal. 2018) (“Matching programs must satisfy several procedural requirements . . .”). The Privacy Act places unique restrictions upon federal agencies’ collection of information, which do not apply to organizations that are not federal agencies.

In your August 14 letter, you suggest that the Privacy Act does not govern your request based upon (1) 52 U.S.C. § 21083(c) of HAVA and (2) the Driver’s License Protection Act. The cited provision within HAVA states that “[t]he last 4 digits of a social security number described in subsections (a)(5)(A)(i)(II) and (b)(3)(B)(i)(II) [of HAVA] shall not be considered to be a social security number for purposes of section 7 of the Privacy Act of 1974 ([5 U.S.C. 552a](#) note).” Section 7 of the Privacy Act addresses the contexts in which individuals can be required to disclose personal information to a State or federal agency. Similarly, the Driver’s License Protection Act addresses permissible uses for which a DMV may disclose information. *See* 18 U.S.C. § 2721(b). Both of these statutes address whether a subject might be compelled to disclose information; neither of these citations addresses the questions that we have raised concerning whether the Privacy Act permits you, as a federal agency, to collect or maintain the requested information. Neither of these statutes address your collection of information related to first amendment activity. If you have authority for the proposition that the Privacy Act does not apply to your collection of this information, please provide it to us.

Moreover, recent news articles suggest that you may compare Delaware’s voter registration list to databases maintained by other agencies or may use the information for law enforcement purposes.³ Comparison of Delaware’s voter registration list to another agency’s database would implicate the specific requirements added to the Privacy Act by the Computer Matching and Privacy Protection Act of 1988. Please confirm that Delaware’s voter registration list will not be

³ For example, on September 9, Reuters reported that the federal Department of Justice was discussing comparing state voter registration lists to the Systematic Alien Verification for Entitlements (“SAVE”) system, which is maintained by the Department of Homeland Security. *See* <https://www.reuters.com/legal/government/us-justice-dept-considers-handing-over-voter-roll-data-criminal-probes-documents-2025-09-09/>

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used for any purpose other than assessment of Delaware’s compliance with the NVRA and HAVA. Please tell us whether you intend to use Delaware’s voter registration list in any computer matching program. And, if so, please explain how your use will comply with the relevant provisions within the Privacy Act.

We continue to stand ready to provide an electronic copy of Delaware’s voter registration list in the form directed by Delaware law, if these concerns can be resolved.

2. Delaware Law Specifies the Contents of Delaware’s Voter Registration List.

Your August 14 letter demands an “electronic copy of the statewide [voter registration list] . . . contain[ing] *all fields*, including the registrant’s full name, date of birth, residential address, his or her state driver’s license number or the last four digits of the registrant’s social security number as required under [HAVA] to register individuals for federal elections.” August 14 letter at 1 (emphasis in original, citing 12 U.S.C. § 21083(A)(i).) It is important to understand that, pursuant to Delaware law, no voter registration list meeting these specific parameters exists. The absence of such pre-existing voter registration list underscores the questions that we have raised with respect to why this information would be pertinent to evaluating Delaware’s voter registration list maintenance.

Delaware law specifies the information contained in Delaware’s voter registration list. Delaware law directs the Department to prepare three versions of Delaware’s voter registration list. First, “the version of the voter registration list provided to members of the General Assembly and state agencies or county or local governments . . . shall include voter names, addresses, political party affiliation, voting history, telephone numbers and dates of birth.” 15 *Del. C.* § 304(h). Second, the version of the voter registration list “provided to major and minor political parties . . . and to candidates for elective office . . . shall be limited to voter names, addresses, political party affiliations, voting history, legislative district information, telephone numbers and years of birth.” *Id.* Finally, the voter registration list “provided to the public shall be limited to voter names, addresses, political party affiliations, voting history, legislative district information, and years of birth.” *Id.* None of these lists include a driver’s license number or social security number (in whole or part). The Department has developed an information packet explaining the data fields contained in our voter registration file. A copy of the information packet is attached here for reference.⁴

⁴ The voter registration list information packet is also publicly available at [\[\[https://elections.delaware.gov/voter/pdfs/VoterFileDocumentation.pdf\]\]](https://elections.delaware.gov/voter/pdfs/VoterFileDocumentation.pdf).
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Delaware law is consistent with HAVA. The provision of HAVA that you cite for the proposition that a state is required to include driver’s license numbers or social security numbers in the state’s voter registration list states “[t]he computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.” See 12 U.S.C. § 21083(A)(i). The cited provision does not specify which fields of information a state must include in a voter registration list.

A provision of HAVA not cited in your August 14 letter, 52 U.S.C. § 21083(5)(A)(i)-(ii), does specify that *voter registration application* must contain a driver’s license number, the last four digits of the registrant’s social security number, or a unique identifier assigned by the state. However, the information needed to maintain a voter registration list may reasonably differ from the information necessary to evaluate an application to register. Delaware, by law, distinguishes between those two sets of information.

Delaware complies with section 21083(5)(A) of HAVA by accepting the federal voter registration form, which collects this information.⁵ Additionally, Delaware requests the same information through its state specific voter registration form.⁶ Delaware uses this information (if provided) when assessing eligibility to register to vote. Delaware retains all voter registration applications as required by 52 U.S.C. § 20701. And, the Department and the Commissioner safeguard and maintain the confidentiality of this information, pursuant to 15 *Del. C.* § 304(i).

HAVA, however, also requires states to accept a voter registration application submitted on the federal form that omits this information. See *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 4–5, 133 S. Ct. 2247, 2251, 186 L. Ed. 2d 239 (2013)(“The Federal Form developed by the EAC does not require documentary evidence of citizenship; rather, it requires only that an applicant aver, under penalty of perjury, that he is a citizen.”). In that case, HAVA directs states to assign a unique identification number to the voter. 52 U.S.C. § 21083(5)(A)(ii). Delaware complies with Section 21083(5)(A)(ii) of HAVA by registering those voters and by assigning them a unique voter registration number.

For purposes of its voter registration list, Delaware expands upon the requirement in subsection 21083(5)(A)(ii) of HAVA by assigning a unique identification number to *all* registered voters, not only those covered by 52 U.S.C. § 21083(5)(A)(ii). As further protection for voter privacy, all versions of Delaware’s voter registration list identify voters based upon these unique voter identification numbers. (See Voter List Information at

⁵ A copy of the Federal Voter Registration Form is available at [<https://www.eac.gov/voters/national-mail-voter-registration-form>].

⁶ Delaware’s state specific voter registration form is available at [<https://elections.delaware.gov/voter/pdfs/VoterRegApplication.pdf>].

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[[<https://elections.delaware.gov/voter/pdfs/VoterFileDocumentation.pdf>]].) Delaware does not include all or any portion of any voter's social security number or driver's license number in any version of Delaware's voter registration list. Thus, even the full version of Delaware's voter registration list does not contain all of the information fields that you have specified.

3. Delaware Law Specifies Which Version of Delaware's Voter Registration List to Provide.

In any event, as previously explained, Delaware law directs us to provide you with the public version of Delaware's voter registration list. *See 15 Del. C. § 304(h)*(specifying information to be provided); *15 Del. C. § 1305*(specifying information shielded from inspection). As explained in our prior responses on July 25 and August 21, courts have held that the NVRA does not preempt state laws specifying which information a state should provide in response to a request pursuant to the NVRA. If your request pursuant to the CRA were valid, we are unaware of any authority indicating that the CRA would preempt state law in this regard. Absent legal authority showing that Delaware law is preempted or that an exception applies, we cannot lawfully provide you with the non-public portions of Delaware's voter registration list.

III. Conclusion

Absent appropriate protections, Delawareans' information could be compromised or misused, or Delawareans could be deterred from exercising their first amendment rights to register to vote, to affiliate with a party, and to vote. We remain ready and willing to provide a copy of Delaware's public voter registration list, pursuant to *15 Del. C. 304(h)*, as soon as these critical privacy issues are resolved.⁷

As always, we also remain ready and willing to discuss any aspect of the information or positions provided in this letter. We respectfully request that you address the specific authority that we have identified and answer the specific questions that we have raised.

Sincerely,

Anthony J. Albence
State Election Commissioner

⁷ *15 Del. C. 304(h)* directs the Department to provide a public version of Delaware's voter registration list upon request. Thus, if the Privacy Act permits, we are prepared to provide a copy of Delaware's voter registration list consistent with this provision without regard to the issues that we have raised concerning your right to demand a copy of Delaware's voter registration list pursuant to the Civil Rights Act or even the NVRA.

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