



State of Delaware
Department of Elections

Via Mail and Email

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Dear Ms. Riordan and Mr. Gates,

We write to respond to your letter dated August 14, 2025 (“August 14 Letter”). Your August 14 Letter states that it addresses the Department of Elections response, dated July 25, 2025 (“July 25 Response”), which offered to provide a copy of Delaware’s voter registration list in the form specified in 15 *Del. C.* § 304(g) (“Customary Voter List”), and email, dated August 6, 2025, (“August 6 Response”) which requested information concerning the application of the federal Privacy Act of 1974 to your request. Your August 14 Letter also includes a new request for information pursuant to Section 303 of the Civil Rights Act. (August 14 Letter at 2.)

Your August 14 letter again imposes an extraordinarily short, seven-day deadline for Delaware to respond to both the ongoing issues and your new request. This deadline is unusually short and unsupported by legal authority or communicated practical necessity. As a courtesy we have provided this response within the requested timeframe. However, this response necessarily includes only such information that Delaware can reasonably and accurately provide within the time set. We reiterate that we remain willing to provide information in a manner consistent with federal law (including the 1974 Privacy Act), as well as Delaware law.

I. Your Request for Delaware’s Voter Registration List under the NVRA.

Your August 14 Letter restates your demand for an electronic copy of Delaware’s voter registration list that contains “*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”. (August 14 Letter at 1.) However, your August 14 Letter fails to address the Delaware law that we cited, which does not permit us to provide these fields. Your August 14 Letter declined to address the cases that we cited in our July 25 letter which held that the NVRA does not require states to provide individual citizen’s sensitive

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information when doing so would be contrary to state law. Finally, your August 14 Letter failed to respond to our August 6 request that you confirm that the Privacy Act of 1974 applies to the information and identify the systems of records under which the information will be stored. We cannot lawfully provide you with Delawareans' sensitive personal information unless these issues are resolved.

1. Delaware Laws Restrict Disclosure of Citizens' Sensitive Personal Information.

In our July 25 Response, we offered to provide a copy of Delaware's Customary Voter Registration List to satisfy your request under the NVRA for a voter registration list.¹ Delaware law specifies that the following information can be shared in a Customary Voter Registration List: (1) voter names, (2) addresses, (3) political party affiliations, (4) voting history, (5) legislative district information, and (6) years of birth. *See 15 Del. C. § 304 (h)*.

Delaware law requires Delaware's Department of Elections and Commissioner of Elections to safeguard voters' particularly sensitive personal information such as voters' social security number and drivers' license numbers. *See, e.g., 15 Del. C. § 304(i)*. Delaware law even restricts the Department from sharing this information within state government. *See, e.g., 15 Del. C. § 304(h)* (specifying that voter registration lists provided to members of the General Assembly, state agencies, and local or county governments shall not include any social security numbers or drivers' license numbers). We can only disclose this information where there is a clear legal basis for us to do so.

2. Courts Have Held that the NVRA's Disclosure Requirements Do Not Supersede Laws Protecting Citizens' Sensitive Personal Information.

We explained in our July 25 Response that caselaw interpreting the NVRA has consistently held that the NVRA does not supersede state privacy laws protecting sensitive individual information from disclosure, so long as those laws do not preclude the production of a voter registration list entirely. *See July 25 Response at 2*. In reaching these holdings, courts have reasoned that sensitive information about individual citizens is not necessary to assess a state's voter list maintenance protocols; thus, its disclosure is not required by the NVRA. *See, e.g., True the Vote v. Hosemann*, 43 F. Supp. 3d 693, 739 (S.D. Miss. 2014) ("There is no indication in the NVRA's legislative history that Congress intended to open up for inspection information within those records that is otherwise protected as personal information under other Federal or State laws."); *Project Vote, Inc. v. Kemp*, 208 F. Supp. 3d 1320, 1344 (N.D. Ga. 2016) ("Section

¹ In our subsequent response on August 15, 2025 ("August 15 Response") we also answered the remaining questions in your July 11 Letter concerning Delaware's voter list maintenance procedures in detail. We provided links to hundreds of pages of records reflecting the steps that we take to maintain Delaware's voter list. We included citations to public data from the Election Assistance Commission's Voter Registration Survey reflecting the success of Delaware's voter list maintenance processes.



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8(i) requires the disclosure of individual voter registration records, but it does not require the disclosure of sensitive information that implicates special privacy concerns.”). In our July 25 Response, we invited you to provide any authority supporting a different conclusion. You did not respond to our request either in your August 14 letter or elsewhere.² We remain available to receive, discuss and consider any such information you may have.

II. The Federal Privacy Act of 1974 Imposes Additional Protections When Citizens’ Personal Information is Collected or Maintained by a Federal Agency.

It is our understanding that the Privacy Act of 1974 governs your collection and maintenance of information concerning individual Delawareans, such as the information contained in Delaware’s voter registration list.³ On August 6, we asked for your position on the DOJ’s responsibilities under the federal Privacy Act of 1974, including the collection, use, and maintenance of the sensitive personal information of Delaware citizens that you have requested. (August 6 Response.)

Your August 14 Letter fails to address our concerns and causes further confusion by arguing that the Act does not apply to the information requested, while also stating that “all data received from you will be kept securely and treated consistently with the Privacy Act.” (August 14 Letter at 2.)

If it is your position that the Privacy Act does not apply to Delaware’s voter registration list in customary or expanded form, please provide the authority leading to that conclusion. If it is your position that the 1974 Privacy Act applies, please identify the system of records, as defined by 5 U.S.C. § 552a(f), under which you will maintain the information that you have requested concerning individual Delaware citizens.⁴

² Your August 14 Letter cites two sections of the Help America Vote Act (“HAVA”), 52 U.S.C. § 21083(a)(5)(A)(i) and § 21111, potentially as authority related to Delaware’s obligations under the NVRA. (August 14 Letter at 1.) However, these subsections of HAVA do not address a state’s obligations to provide information pursuant to the NVRA, nor do they address a state’s obligations to provide information to the DOJ. It is unclear whether these citations are in error. If a court has interpreted the cited provisions of HAVA as expanding or modifying a state’s obligations under the NVRA, please identify that authority so that we can consider it.

³ See generally <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition>.

⁴ On July 31, you provided a JEFS External User Agreement for the platform that you requested that Delaware use to upload the information you requested. The terms of use that we would need to sign to use that system require confirmation that the use of the JEFS system complies with all laws. This further underscores the need to understand the relevant legal obligations.



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III. Your New Demand Under Title III of the Civil Rights Act of 1960

Your August 14 Letter includes a new demand, pursuant to Section 303 of the Civil Rights Act of 1960, codified at 52 U.S.C. § 20701, *et seq.*, for a version of Delaware’s voter registration list that includes citizens’ sensitive personal information (August 14 Letter at 2.) Your August 14 Letter states that the purpose of this request is “to ascertain Delaware’s compliance with the list maintenance requirements of the NVRA and HAVA.” (*Id.*) Your August 14 Letter demands that we provide this information by August 21. Your August 14 Letter does not identify any legal or practical basis for this deadline.

Your seven-day deadline provides inadequate time to reasonably respond to your new request pursuant to the Civil Rights Act. As previously noted, both Delaware and the DOJ have legal obligations to ensure that sensitive information of Delaware citizens’ is both disclosed and received in full compliance with federal and state law. These are serious and important requirements from the legal perspective of the balance of authority and responsibility struck by the constitution and the legislatures. They are also serious and important requirements from the practical perspective of protecting Delaware citizens against identity theft or other fraud if their information is not adequately protected. We are committed to taking the appropriate time to ensure those obligations are met.

We anticipate responding to your new requests under the Civil Rights Act in your August 14 Letter by September 16.

IV. Conclusion

As always, we remain available to discuss these issues further.

Sincerely,

Anthony J. Albence
State Election Commissioner