Jan. 23, 2006

Whitney Brewster
Alaska Division of Elections
PO Box 110017
Juneau, AK 99811-0017

sent via email

Re: Public Records Request - Records from the November 2004 General
Election

Dear Ms. Brewster:

This is in response to your letter of January 19, 2006, in which you refuse
to provide the state's electronic database file that would enable us to verify
the 2004 election results on grounds that it is proprietary information
belonging to Diebold Election Systems, the Division's contractor. We
disagree with that conclusion and request that you immediately provide
these public records as required by Alaska law.

On Dec. 19, 2005, we requested the following public records:

> A copy of the "central tabulator data file" taken from the Diebold-
> supplied computer used to run the "GEMS" (Global Election
> Management Software) application as that filed existed immediately
> following the 2004 official canvas.

> This electronic data file will end in the extension "MDB" (Microsoft
> DataBase) or "GBF" (GEMS Backup File, a compressed version of
> MDB). This should be the version of the file containing all final vote
> tallies for the 2004 General Election. It will be located in the
> directory:

> C:\PROGRAM FILES\GEMS\LOCALDB

> The file will be significantly smaller than a standard blank CD-ROM
> disk of 650 megabytes. The computer on which the data file
> resides is equipped with a CD "writer" type drive mechanism, and
> we understand that Diebold routinely supplies the "Nero" CD-writer
> utility software on such computers. Therefore, "burning" the
> unedited data to a single CD-R disk worth less than 50 cents will be

a fast and easy process for any technician the division has available, with less than half an hour of labor.

In your letter of Jan. 19 you state that the structure of the database file from GEMS is proprietary information. "Releasing the .gbf or .mdb files compromises the protection of the vendor's proprietary information. The data contained within those proprietary database structures is public information. The Division is exploring methods to export the information into a common file format and if there are costs associated with providing this information in this format. Please confirm that this is the information you are seeking," your letter states.

The export of information in a common file format is not adequate and will not allow us to verify the state's posted elections results, which contain numerous errors and discrepancies. It has been documented that the GEMS software was programmed to contain a "double set of books" within it, and thus a print out from one file selected by Diebold will not enable a comprehensive understanding of what has caused the bizarre and inaccurate reports produced by the Diebold system for the state's 2004 election reports.

It is wrong that Diebold is trying to take possession of our votes and our public data by claiming that these are their proprietary information. This position is not acceptable or legally supportable for the reasons discussed below.

Although Diebold claims that their data structure is proprietary, it is publicly available on the Internet today and has been for several years.

The program and data files needed to "build your own GEMS box" (including GEMS itself, sample MDB/DBF data files and instructions on loading/testing them) can be viewed online at:

http://www.equalccw.com/dieboldtestnotes.html

This web site is owned by James "Jim" March, a computer technician and analyst with Black Box Voting, a non profit organization that monitors problems with electronic voting across the nation. The database structure available for download at March's site is the same structure in the central tabular data file we are seeking. No possible extra "proprietary information" beyond what can be learned at March's site can possibly be gleaned from examination of the Alaska 2004 election data as contained in the central tabulator data file.

Diebold has been on notice that these data files have been on March's site since late 2003 and has taken no legal action to have them removed. They can't now claim "proprietary information" status for similar material.

Even if the data structures were not already public and were deemed to provide some minimal clues as to how Diebold organizes its data, there is an overriding public interest in release of the central tabulator data file. The data contained therein is the property of the people of the State of Alaska, whose property interest in the data far outweighs Diebold's property interest in the data structure. Without this file it is impossible to verify whether the 2004 election results are accurate.

There is no valid reason for not releasing the data files requested. The files will not reveal how any voter voted. The "election layout information," such as the precincts, the candidates and issues, the ballot layouts, etc., already is public.

A second issue addressed in your letter of Jan. 19 deals with our request for a copy of the electronic voter file as it existed immediately following the entry of data from the 2004 General Election. You maintain that you are not able to provide this electronic file because it no longer exists and cannot be recovered. We have acquired a copy of this file that was purchased from the State as it existed on Jan. 11, 2005. We have compared the numbers of voters who are coded as voting in the 2004 general election with the official election totals supplied by the Division (see email from Tom Godkin and attached spreadsheet dated 1/4/05). We have found a large discrepancy regarding the absentee votes. Godkin's spreadsheet shows that there were 60,296 absentee votes cast, yet the filed dated 1/11/05 shows that 63,371 voters cast absentee ballots. Of those 63,371 voters who were recorded as having cast an absentee ballot, 1,058 registered after the deadline to register and be eligible to vote in that election (Oct. 3, 2004). From the data we have it appears that 2,020 valid absentee votes were cast but not counted in the official totals. These discrepancies further support our need to examine the central data tabulator file.

A third issue addressed in your Jan. 19 letter is our request for the total number of votes cast for each candidate in each House District in the US Senate race in 2004. You state that "this information is available on the Division of Election's web site at www.elections.state.ak.us under 2004 General Election Results." This statement is false. It is impossible to tell from the publicly posted data how many votes the U.S. Senate candidates received in each House district.

You further state that the number of questioned, absentee and early ballots that were cast for each candidate in each House district in the 2004

General Election "are listed within the Statement of Votes Cast report located on the Division's web site." Contrary to what your statement implies, the number of questioned, absentee and early ballots that were cast for each candidate in each House district in the 2004 General Election cannot be determined from the division's posted election reports, and that is why we are seeking the database of public records discussed above.

If the Division is unable to break down the results of early voting by House District, as you state in the Jan. 19 letter, how are you able to break those votes down for the State House races? If early votes cannot be broken down by House District, then the totals reported for the State House races are questionable. Further, you have not addressed the odd, multiple-district groupings of absentee and questioned ballots that appear throughout the District-by-District reports - are these grouped absentee and questioned ballots also impossible to break down by House District?

We note that you have failed to release the public records that would allow us to verify the 2004 elections results as required by Alaska law, and you have failed to follow the requirements in the state's regulations. Based on your response we conclude that you are delaying release of this public information and further that you are denying access to public information in violation of the law.

We hope that you will immediately provide the public records we have requested as required by law. To summarize, please provide the following public records as soon as possible:

> 1. A copy of the "central tabulator data file" taken from the Diebold-supplied computer used to run the "GEMS" (Global Election Management Software) application as that filed existed immediately following the official canvas.
>
> This electronic data file will end in the extension "MDB" (Microsoft DataBase) or "GBF" (GEMS Backup File, a compressed version of MDB). This should be the version of the file containing all final vote tallies for the 2004 General Election. It will be located in the directory:
>
> C:\PROGRAM FILES\GEMS\LOCALDB
>
> 2. The total number of votes cast for each candidate in each House District in the U.S. Senate race in 2004.

3. The number of questioned, absentee and early ballots that were cast for each candidate in each House district in the 2004 General Election.

Sincerely,

Jake Metcalfe, chair
Alaska Democratic Party

attachments
1. Email from Tom Godkin (1/4/05)
2. Godkin spreadsheet