



# Washington State Conservation Commission

## Conservation District Elections

### Issue Advisory 01-18

## The Public Records Act and Lists of Absentee or Mail-in Ballot Requestors

*Date:* March 3, 2018

*Re:* Whether records kept by conservation districts, of voters who request absentee or mail-in ballots, are disclosable under the Public Records Act.

#### **Question:**

Are records kept by conservation districts of voters who request absentee or mail-in ballots disclosable under the Public Records Act?<sup>1</sup>

#### **Short Answer:**

Yes.

#### **Background:**

Under the state Public Records Act (PRA), each agency shall make records available for public inspection unless the record falls within a specific statutory exemption.<sup>2</sup> An “agency” includes local agencies, which are defined to include special purpose districts and local municipal corporations.<sup>3</sup> A “public record” includes any writing containing information relating to the conduct of government or the performance of any government function.<sup>4</sup> Conservation districts are governmental subdivisions of the state exercising public powers.<sup>5</sup>

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<sup>1</sup> [RCW Chapter 42.56](#)

<sup>2</sup> [RCW 42.56.070](#)

<sup>3</sup> [RCW 42.56.010\(1\)](#)

<sup>4</sup> [RCW 42.56.010\(3\)](#)

<sup>5</sup> [RCW 89.08.220](#)

Conservation district supervisor elections are conducted consistent with procedures established by the Conservation Commission.<sup>6</sup> Conservation district elections do not fall under the state statute for general elections<sup>7</sup> unless the Conservation Commission election procedures are silent.<sup>8</sup>

Conservation districts must provide a ballot to any person who requests a ballot<sup>9</sup> and to each person who wishes to vote in the conservation district election.<sup>10</sup> Ballots may be provided electronically if a suitable means of determining voter eligibility and preventing voter fraud are utilized.<sup>11</sup> Absentee ballots must be provided to eligible voters upon request.<sup>12</sup> Every individual requesting a ballot for any conservation district election must be verified as a qualified district elector before his or her ballot is counted.<sup>13</sup> Only one ballot per voter may be counted.<sup>14</sup> To receive a ballot, the voter must request a ballot.<sup>15</sup>

An eligible voter should declare their eligibility to the district before a request for an absentee ballot can be fulfilled by the district. The declaration by the voter can be done in writing, electronically, or orally. A request for an absentee ballot can be made in person, in writing, by telephone, or electronically, by the voter, a family member, or a registered domestic partner. Only one absentee ballot request per voter can be made.<sup>16</sup>

Conservation Commission election statutes and rules do not specifically address disclosure of voter lists and there is no statutory exemption for disclosure of such lists. General election law states that a record of all voters issued a ballot and all voters who returned a ballot shall be kept by the auditor and available to the public for inspection.<sup>17</sup>

General election law also states that *original voter registration records* are confidential, but the voter's name, address, political jurisdiction, gender, date of birth, voting record, date of registration and registration number are available for public review. No other information is available for public review.<sup>18</sup>

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<sup>6</sup> [RCW Chapter 89.08.190](#). See also generally [WAC Chapter 135-110](#) and the [Election Manual](#)

<sup>7</sup> See generally [Title 29A RCW](#) and specifically [RCW 29A.04.330 \(1\) \(b\)](#).

<sup>8</sup> "In circumstances where these rules and/or procedures are silent or in conflict, the Commission will look to general election law ([RCW Chapter 29A](#)) rules and procedures for guidance." [Election Manual, page 1](#).

<sup>9</sup> [WAC 135-110-515 \(1\)](#)

<sup>10</sup> [WAC 135-110-500 \(1\)](#)

<sup>11</sup> [WAC 135-110-515 \(3\)](#)

<sup>12</sup> [WAC 135-110-520 \(1\)](#)

<sup>13</sup> [WAC 135-110-610 \(1\)](#)

<sup>14</sup> [WAC 135-110-170](#)

<sup>15</sup> [Election Manual, page 22](#)

<sup>16</sup> [Election Manual, page 21](#)

<sup>17</sup> [RCW 29A.40.130](#)

<sup>18</sup> [RCW 29A.08.710](#)

## Analysis:

Both WAC [Chapter 135-110](#) and the Conservation Commission [Election Manual](#) are silent on whether the record of a voter who requests a ballot is confidential.

A conservation district's absentee ballot list or record of all voters issued a ballot is a "public record" under the state's PRA. The list is not an *original voter registration record* and therefore cannot be covered by the exemption in RCW 29A.08.710. Because there is no statutory exemption for disclosure of the absentee voter list, the information on such a list is available for public review. That includes email addresses and/or telephone numbers if such information is kept in conjunction with the list. As a result, the record of all voters issued a ballot is available for public review.

In summary, records of voters who are issued a ballot are disclosable and subject to disclosure under a public records request. Absentee ballot request lists are not protected by the exemption for voter registration information in RCW 29A.08.710. Therefore, there is not any prohibition for disclosing this information if requested to do under the Public Records Act.