

# EXHIBIT 1a

Full Copy



April 23, 2008

**VIA FAX (517) 241-2784**  
**AND U.S. MAIL**

Mr. Ryan Anastor  
FOIA Coordinator, Bureau of Elections  
Michigan Department of State  
430 West Allegan Street, 1<sup>st</sup> Floor  
Lansing, MI 48918

Re: FOIA and NVRA Public Records Request

Dear Mr. Anastor:

Pursuant to Section 8(i) of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-6(i), and the Michigan Freedom of Information Act, Mich. Comp. Laws § 15.231 *et seq.*, we hereby request copies of the following public records:

1. The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter to whom a residency confirmation request was sent, and/or whose "cancellation countdown" status was activated, by or on behalf of the Department of State in accordance with the Department's August 8, 2006 "News You Can Use" Issue No. 244.
2. Any correspondence received from or sent to election officials, voters, or other persons relating to the Department of State's sending of residency confirmation notices and/or activation of "cancellation countdown" status for voters in accordance with the Department's August 8, 2006 "News You Can Use" Issue No. 244. (This request should not be construed to include copies of the individual residency confirmation notices sent to each voter.)
3. The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter

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Mr. Ryan Anastor (Cont'd)

April 23, 2008

Page 2

whose QVF voter status was changed by the Department of State to "Canceled" and to whom a "30-Day Notice of Cancellation (Out of State)" notice was sent or should have been sent by local clerks, according to Department of State policy or directive, as a result of quarterly purges or other actions taken by the Department (as referenced in the Department's October 11, 2006 "News You Can Use" Issue No. 255) at any time from January 1, 2006, through the present.

4. Any correspondence received from or sent to election officials, voters, or other persons relating to the Department of State's quarterly purge programs and other initiatives to remove and/or change the QVF status to "Canceled" of those voters whom the Department has determined have moved out of state, and relating to the "30-Day Notice of Cancellation (Out of State)" notice referenced in the Department's October 11, 2006 "News You Can Use" Issue No. 255, at any time from January 1, 2006, through the present. (This request should not be construed to include copies of the individual 30-day out-of-state cancellation notices sent to each voter.)
5. A copy of all rulemaking notices and other correspondence published or transmitted by the Department of State in accordance with the Michigan Administrative Procedure Act, relating to election-related rules, regulations, directives, and interpretations of general applicability issued by the Department of State or the Secretary of State from January 1, 2006, through the present.
6. The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter or voter registration applicant who was sent a notice of rejection and/or whose QVF status was changed to "Canceled," in accordance with Mich. Comp. Laws § 168.499(3), as a result of the return of such voter's or applicant's original voter registration identification card, at any time from January 1, 2006, through the present.
7. A complete copy of the current "QVF Desktop Reference" and other current reference guides related to the QVF File.

To conserve costs and paper, if you are able to provide these records to us in electronic PDF, TIF, or Excel format on a CD-ROM or DVD-ROM, we would prefer to have them in that format. Otherwise, you may produce the records in paper form. Pursuant to Section 4(1) of the Michigan FOIA and Section 8(i) of the NVRA, we hereby request that you waive or reduce any fees and costs relating to the production of these documents to an amount which does not exceed \$250.00. If you are not willing or able to do so and

Mr. Ryan Anastor (Cont'd)

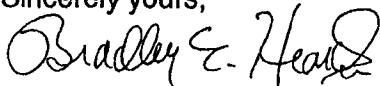
April 23, 2008

Page 3

the cost exceeds \$250.00, please contact me to confirm our ability and agreement to pay any such costs prior to incurring the same.

Should you have any questions or need additional information in regard to the above, please let me know. Otherwise, we thank you in advance for your prompt attention to this matter and look forward to receiving your response within five (5) business days following your receipt of this correspondence.

Sincerely yours,



BRADLEY E. HEARD

Senior Attorney

1730 M Street, NW • Suite 910 • Washington, DC 20036 • 202.728.9557 • 202.728.9588 [ap@advancementproject.org](mailto:ap@advancementproject.org) • [www.advancementproject.org](http://www.advancementproject.org)

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STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

April 30, 2008

Mr. Bradley E. Heard  
1730 M Street, NW  
Suite 910  
Washington, DC 20036

**FOIA NOTICE OF EXTENSION**

Mr. Heard:

This is a preliminary response to your Freedom of Information Act (FOIA) request, dated April 23, 2008 and received by our office via fax on April 23, 2008.

You have requested information regarding Qualified Voter File information, a copy of which is enclosed and incorporated herein.

The Department has begun to review its records for the information that you seek. However, in order to properly review your request we will extend our time for responding to your request by ten business days, as permitted by Section 5(2)(d) of FOIA (MCL 15.235). That response will either grant your request, deny your request, or grant your request in part and deny your request in part.

Sincerely,

A handwritten signature in black ink, appearing to read "Rayan Anastor", with a long horizontal flourish extending to the right.

Rayan Anastor  
Freedom of Information Officer  
Michigan Bureau of Elections  
Secretary of State



STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

May 15, 2008

Mr. Bradley E. Heard  
1730 M Street, NW  
Suite 910  
Washington, DC 20036

**FREEDOM OF INFORMATION ACT NOTICE**

Re: Public Records Request – Voter Cancellation and Removal

Dear Mr. Heard:

In correspondence dated April 23, 2008, you submitted a request for certain public records to the Department of State (Department) pursuant to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* The Department received your fax on April 23, 2008 and subsequently extended its time for responding to your request by ten business days, as permitted by MCL 15.235(2)(d), in a letter dated April 30, 2008. This notice is issued in response to your April 23, 2008 request, a copy of which is attached and incorporated herein. As explained in further detail below, your request is granted and denied in part.

1. *"The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter to whom a residency confirmation request was sent, and/or whose "cancellation countdown" status was activated, by or on behalf of the Department of State in accordance with the Department's August 8, 2006 "News You Can Use" Issue No. 244."*

This portion of your request is granted in part and denied in part. Specifically, your request for *"The complete Qualified Voter File ("QVF") record ... related to each voter to whom a residency confirmation request was sent, and/or whose 'cancellation countdown' status was activated ..."* is denied. I certify to the best of my knowledge, information, and belief that the Department does not possess public records matching the descriptions you have provided, or existing under other names that are reasonably known to the Department.

However, the Department maintains a listing of voters and their mailing address that were identified as eligible to receive the residency confirmation form, and the residency confirmation letters for some voters were sent to their mailing or forwarding addresses, if mailing or forwarding addresses were available. In the spirit of cooperation, the Department has provided with this notice a partial list that provides the names of voters who were sent a

letter, and includes the voters' residence, mailing, or forwarding addresses, whichever is applicable. Copies of these records are provided, free of charge, on the enclosed CD-ROM.

In addition, the Department grants your request for *"The complete Qualified Voter File record..."* as to existing, nonexempt public records that are determined to be responsive to your request. The listing of voters who were sent a residency confirmation form can be identified in the QVF file via the voter id. The FOIA authorizes the Department to charge a processing fee for the cost of reproducing and mailing copies of public records. MCL 15.234(1). The charge to obtain the entire QVF file with voting history is \$22.75. Your payment of \$22.75 must be made by check or money order payable to the State of Michigan before the Department will complete the processing of your request, and the "complete Qualified Voter File record" will be mailed to upon receipt of your payment in full.

2. *"Any correspondence received from or sent to election officials, voters, or other persons relating to the Department of State's sending of residency confirmation notices and/or activation of "cancellation countdown" status for voters in accordance with the Department's August 8, 2006 "News You Can Use" Issue No. 244. (This request should not be construed to include copies of the individual residency confirmation notices sent to each voter.)"*

You requested correspondence related to *"...the Department of State's sending of residency confirmation notices and/or activation of "cancellation countdown" status for voters ..."* The Department grants your request as to existing, nonexempt public records that are determined to be responsive to your request. The Department has provided copies of the following records with this notice at no charge to you:

1. Residency Confirmation Request for Voter Registration Purposes – Version 1
2. Residency Confirmation Request for Voter Registration Purposes – Version 2
3. News You Can Use Issue No. 255
4. News You Can Use Issue No. 271
5. News You Can Use Issue No. 272

In addition, the Department possesses approximately 126 pages of FOIA requests and responses that are subject to disclosure under this portion of your request. The records include the Department's previous responses to FOIA requests submitted by Ms. Alaina C. Beverly of your organization, which were mailed to her by the Department on September 27, 2006, January 18, 2007 and March 27, 2007. The FOIA authorizes the Department to charge a processing fee for the cost of photocopying and mailing these records to you. MCL 15.234(1). The Department charges a per-page copying fee of \$0.25 and estimates that the cost to provide copies of the responsive records is approximately \$31.50. If you wish to obtain copies of FOIA requests and responses "relating to the Department of State's sending of residency confirmation notices and/or activation of cancellation countdown status for voters in accordance with the Department's August 8, 2006 'News You Can Use'[,]" please advise this office. Payment must be made by check or money order payable to the State of Michigan.

3. *"The complete Qualified Voter File ("QVF") record (including name, registration, address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter whose QVF voter status was changed by the Department of State to "Canceled" and to whom a "30-Day Notice of Cancellation (Out of State)" notice was sent or should have been sent by local clerks, according to Department of State policy or directive, as a result of quarterly purges or other actions taken by the Department (as reference in the Department's October 11, 2006 "News You Can Use" Issue No. 255) at any time from January 1, 2006, through the present.."*

Your request for *"The complete Qualified Voter File ("QVF") record ... related to each voter whose QVF voter status was changed by the Department of State to "Canceled" and to whom a "30-Day Notice of Cancellation (Out of State)" notice was sent or should have been sent by local clerks [,]"* is denied. I certify to the best of my knowledge, information, and belief that the Department does not possess public records matching the descriptions you have provided, or existing under other names that are reasonably known to the Department.

4. *"Any correspondence received from or sent to election officials, voters, or other persons relating to the Department of State's quarterly purge programs and other initiatives to remove and/or change the QVF status to "Canceled" of those voters whom the Department has determined have moved out of state, and relating to the "30-Day Notice of Cancellation (Out of State)" notice referenced in the Department's October 11, 2006 "News You Can Use" Issue No. 255, at any time from January 1, 2006, through the present. (This request should not be construed to include copies of the individual 30-day out-of-state cancellation notices sent to each voter.)"*

Your request for correspondence related to *"...the Department of State's quarterly purge programs and other initiatives to remove and/or change the QVF status to "Canceled" of those voters..."* is denied. I certify to the best of my knowledge, information, and belief that the Department does not possess public records matching the descriptions you have provided, or existing under other names that are reasonably known to the Department.

5. *"A copy of all rulemaking notices and other correspondence published or transmitted by the Department of State in accordance with the Michigan Administrative Procedure Act, relating to election-related rules, regulations, directives, and interpretations of general applicability issued by the Department of State or the Secretary of State from January 1, 2006, through the present."*

Your request for *"A copy of all rulemaking notices and other correspondence published or transmitted by the Department of State in accordance with the Michigan Administrative Procedure Act [,]"* is granted as to existing, nonexempt public records that are determined to be responsive to this portion of your request. Copies of these records are enclosed with this notice and are provided to you free of charge.

6. *"The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter or voter registration applicant who was sent a notice of rejection and/or whose QVF status was changed to "Canceled," in accordance with Mich. Comp. Laws MCL 168.499(3), as a result of the return of such voter's or applicant's original voter registration identification card, at any time from January 1, 2006, through the present."*

Your request for *"The complete Qualified Voter File ("QVF") record...)"* related to each voter or voter registration applicant who was sent a notice of rejection and/or whose QVF status was changed to *"Canceled, [,]"* is denied. I certify to the best of my knowledge, information, and belief that the Department does not possess public records matching the descriptions you have provided, or existing under other names that are reasonably known to the Department. When Voter ID cards are returned, the Voter's QVF status is not changed until two federal elections with no voter activity occurs.

7. *"A complete copy of the current "QVF Desktop Reference" and other current reference guides related to the QVF file."*

You requested *"A complete copy of the Qualified Voter File Desktop Reference..."* The Department grants your request as to existing, nonexempt public records that are determined to be responsive to your request. An electronic copy of this record can be obtained online free of charge at [http://www.michigan.gov/sos/0,1607,7-127-1633\\_11976\\_12001-142329--\\_00.html](http://www.michigan.gov/sos/0,1607,7-127-1633_11976_12001-142329--_00.html). If you require paper copies of these records, please advise this office; copies will be provided at the per-page copying fee of \$0.25 per page.

Concerning the partial denial of your request, pursuant to Sec. 10 of the FOIA, MCL 15.240, you may take either of the following actions:

- Appeal this decision in writing to the Secretary of State's designee, the Director of the Legal and Regulatory Services Administration, Department of State, Richard H. Austin Building, 4<sup>th</sup> Floor, 430 West Allegan Street, Lansing, Michigan 48918. The writing must specifically state the word "appeal" and must identify the reason or reasons you believe the denial should be reversed. The Secretary of State's designee must respond to your appeal within ten business days of its receipt. Under unusual circumstances, the time for response to your appeal may be extended by ten business days.
- File an action in circuit court to compel the disclosure of records. The action must be filed within 180 days after the date of the final determination to deny your request. If you prevail in such an action, the court is to award reasonable attorney fees, costs, and disbursements. Further, if the court finds the denial to be arbitrary and capricious, you may receive punitive damages of \$500.00.

Sincerely,

A handwritten signature in black ink, appearing to read "Rayan Anastor", with a long horizontal stroke extending to the right.

Rayan Anastor, Freedom of Information Officer  
Michigan Bureau of Elections  
Secretary of State

Enclosures



STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

**DATE:**

**TO:** Michigan County, City and Township Clerks

**FROM:** Bureau of Elections, Elections Liaison Division

**SUBJECT:** *Residency Confirmation Request for Voter Registration Purposes*

In July 2006, the Bureau of Elections mailed post cards to all registered voters in the state to promote participation in the electoral process. Some post cards were returned due to the fact that the individual no longer resided at their mailing address. On August 8, 2006, the Department of State sent a forwardable residency confirmation request to the voters whose postcards were returned. The letter included instructions on how to proceed if the voter had not permanently moved as well as instructions on how to register in a new jurisdiction.

Many voters filled out the Residency Confirmation Request and mailed the request back to the Bureau of Elections. Enclosed with this letter are Residency Confirmation Requests returned by the voter indicating that they still reside at their registered mailing address. The cancellation countdown date of 8/8/06 was removed from the voter registration record in QVF.

Please update your records and the Qualified Voter File to include any needed changes based on the information provided to you via this letter.

If you have any questions, please feel free to contact the QVF Help Desk at 1-800-310-5697.



STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

**DATE:**

**TO:** Michigan County, City and Township Clerks

**FROM:** Bureau of Elections, Elections Liaison Division

**SUBJECT:** *Residency Confirmation Request for Voter Registration Purposes*

In July 2006, the Bureau of Elections mailed post cards to all registered voters in the state to promote participation in the electoral process. Some post cards were returned due to the fact that the individual no longer resided at their mailing address. On August 8, 2006, the Department of State sent a forwardable residency confirmation request to the voters whose postcards were returned. The letter included instructions on how to proceed if the voter had not permanently moved as well as instructions on how to register in a new jurisdiction.

Many voters filled out the Residency Confirmation Request and mailed the request back to the Bureau of Elections. Enclosed with this letter are Residency Confirmation Requests returned by the voter indicating that they live at an address other than their registered mailing address. The two categories of these types of address changes are:

1. Address change is within the state; (Noted with a #2)
2. Address change is outside of the state; (Noted with a #3)

If the voter has noted they have moved to an address outside of their previous jurisdiction, the voter can be cancelled. If the voter has noted they have moved to an address within their jurisdiction, then the voters address information needs to be updated in the Qualified Voter File.

Other categories included are:

3. Deceased; (Noted with a #12)
4. Incarcerated; (Noted with a #13)
5. Married; (Noted with a #14)

Please update your records and the Qualified Voter File to include any needed changes based on the information provided to you via this letter.

If you have any questions, please feel free to contact the QVF Help Desk at 1-800-310-5697.



May 23, 2008

**VIA FAX (517) 241-2784**  
**AND U.S. MAIL**

Mr. Ryan Anastor  
FOIA Coordinator, Bureau of Elections  
Michigan Department of State  
430 West Allegan Street, 1<sup>st</sup> Floor  
Lansing, MI 48918

Re: FOIA and NVRA Public Records Request

Dear Mr. Anastor:

We are in receipt of your May 15, 2008, response to our April 23, 2008, FOIA and NVRA public records request, and are writing to follow up on a few issues raised therein. It is my hope that we can come to a resolution of these issues within the next ten (10) business days, without having to go through a formal FOIA appeals process.<sup>1</sup>

As an initial matter, we are enclosing a check in the amount of \$54.25 to cover the cost of producing the items referenced on page 2 of your letter, in partial response to Request Nos. 1 and 2 in our April 23 letter. Please forward that information to us as soon as possible.

**Request No. 1:** Our first request asked for the complete QVF record related to each voter to whom a residency confirmation request was sent and/or whose "cancellation countdown" status was activated in accordance with the Department's August 8, 2006, "News You Can Use" Issue No. 244. Your May 15 response denied our request and certified that the Department did not possess public records matching those descriptions. We fail to see how such a denial and certification can be accurate. The August 8, 2006 "News You Can Use" issue specifically states, in pertinent part, **"On August 8 [2006], the Department of State sent a forwardable Residency Confirmation Request to the voters whose postcards were returned."** Obviously, then, the Department has to know the identity of the individual voters whose postcards were returned and to whom residency confirmation notices were

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<sup>1</sup> We reemphasize, as a matter of clarification, that the majority of our April 23 request was also made pursuant to Section 8(l) of the NVRA, which separately requires states to make public records relating to voter registration and list maintenance available for inspection and copying upon request and which contains no administrative appeal prerequisites. See 42 U.S.C. § 1973gg-6(i).

Mr. Ryan Anastor (Cont'd)  
May 23, 2008  
Page 2

sent. Likewise, given that each of those postcard recipients is or was a registered Michigan voter, there should be individual QVF records relating to each such voter.

Furthermore, Section 8(i) of the NVRA specifically requires states to maintain "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official list of eligible voters" for a minimum period of two years. See 42 U.S.C. § 1973gg-6(i). Specifically included within the records that the NVRA requires states to maintain are "lists of the names and addresses of all persons to whom [residency confirmation notices] are sent, and information concerning whether or not each such person has responded to the notice as of the date that the inspection of the records is made." *Id.* Accordingly, we request that the Department immediately produce, within the next ten (10) business days, the information requested in Request No. 1 from our April 23 public records request.<sup>2</sup>

**Request Nos. 3 and 4:** Our third request asked for the complete QVF record related to each voter whose QVF record was changed to "Canceled" and/or to whom a "30-Day Notice of Cancellation (Out of State)" notice was sent or should have been sent pursuant to the Department's policy or directive, as referenced in the Department's October 11, 2006 "News You Can Use" Issue No. 255, at any time from January 1, 2006, through the present. Our fourth request called for any correspondence sent by or received from the Department relating to the 30-Day cancellation notices, the Department's quarterly purge programs, and other Department initiatives to cancel the registrations of voters whom the Department has determined have moved out of state. The Department denied both of these requests and certified that the Department did not possess public records pertaining to these requests. Here again, we do not see how the Department's denials and certifications as to these records can be accurate.

The Department's October 11, 2006 NYCU Issue No. 255 specifically states, "**As you may have noticed from your QVF inbox on October 9, the Department of State ran a quarterly purge this past weekend resulting in the cancellation of deceased voters and voters who have moved out of state.**" The directive further instructed local clerks to send all such voters a 30-day cancellation notice and to record the cancellation to each affected voter's master card, along with the date and reason for the cancellation: "Voter Moved Out of State – 30-Day Cancellation Notice Sent." Clearly, then, the Department has to know the identity of the individual voters whose registration status was cancelled by reason of presumed out-of-state moves pursuant to the Department's quarterly purge

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<sup>2</sup> We acknowledge, with appreciation, receipt of the CD-ROM that accompanied your May 15 response, which you contend contains "a partial list that provides the names of voters who were sent a letter..." However, it is unclear from your description whether the information on the CD-ROM is responsive at all to our request and, if so, whether it is completely responsive. If the filenames on the CD-ROM correspond to dates and times, as we presume, then the information would appear not to be responsive to our request, since all of the dates on the CD-ROM precede the August 8, 2006, date that was indicated in the NYCU Issue No. 244.

Mr. Ryan Anastor (Cont'd)  
May 23, 2008  
Page 3

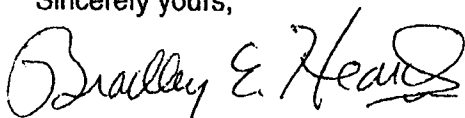
programs. As discussed above, Section 8(i) of the NVRA specifically requires states to maintain records of this type of list maintenance activity and to make such records available for inspection and copying upon request. Accordingly, we request that the Department immediately produce, within the next ten (10) business days, the information requested in Request Nos. 3 and 4 from our April 23 public records request.

**Request No. 6:** Our sixth request asked for the complete QVF record relating to each voter or voter registration applicant who was sent a rejection notice and/or whose QVF status was changed to "Canceled" in accordance with the requirements of Mich. Comp. Laws § 168.499(3), as a result of the return of such voter's or applicant's original voter identification card at any time from January 1, 2006, through the present. The Department denied our request and certified that it does not possess public records relating to our request. Again, we find this position to be implausible. The Department of State is the keeper of the statewide voter registration database known as the Qualified Voter File. Thus, the Department would be aware and in possession of any individual QVF record reflecting a "canceled" status as a result of a local clerk's cancellation of a voter's or applicant's record pursuant to MCL 168.499(3), as a result of the return of such voter's or applicant's original voter identification card.

Your response indicates that "[w]hen Voter ID cards are returned, the Voter's QVF status is not changed until two federal elections with no voter activity occur[ring with the voter]." That seems to contradict the express provisions of MCL 168.499(3) – at least as that section relates to *original* (as opposed to *duplicate*) Voter ID cards. Our understanding, both from reading MCL 168.499(3) and from other sources, is that clerks are canceling the registrations of voters or applicants whose original voter ID cards are returned, pursuant to the requirements of state law. We would appreciate a clarification of this issue. In particular, if your office or the Attorney General has issued some directive which indicates that clerks are *not* authorized to cancel registrations of voters or applicants whose original voter ID cards are returned, notwithstanding MCL 168.499(3), please provide a copy of that directive to me.

Should you have any questions or need additional information in regard to the above, please let me know. Otherwise, we look forward to receiving your response and the additional requested information within the next ten (10) business days following your receipt of this correspondence.

Sincerely yours,



BRADLEY E. HEARD  
Senior Attorney



STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

June 26, 2008

Mr. Bradley E. Heard  
1730 M Street, NW  
Suite 910  
Washington, DC 20036

**FREEDOM OF INFORMATION ACT NOTICE**

Re: Public Records Request – Voter Cancellation and Removal

Dear Mr. Heard:

In correspondence dated May 23, 2008, you submitted a check for the request of certain public records to the Department of State (Department) pursuant to the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* The Department received your letter and check on June 9, 2008. This notice is issued in response to your May 23, 2008 request, a copy of which is attached and incorporated herein.

Enclosed is a CD-ROM containing the entire statewide voter registration file from the Qualified Voter File (QVF) and the correspondences as related to your FOIA request numbers 1 and 2 in your April 23, 2008 FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Rayan Anastor".

Rayan Anastor, Freedom of Information Officer  
Michigan Bureau of Elections  
Secretary of State



STATE OF MICHIGAN  
TERRI LYNN LAND, SECRETARY OF STATE  
DEPARTMENT OF STATE  
LANSING

June 26, 2008

Mr. Bradley E. Heard  
1730 M Street, NW  
Suite 910  
Washington, DC 20036

Re: Public Records Request – Voter Cancellation and Removal

Dear Mr. Heard:

In correspondence dated May 23, 2008, you submitted a letter via facsimile requesting clarification of the Department of State's (Department) Freedom of Information Act Notice, which was issued on May 14, 2008 in response to your April 23, 2008 request, pursuant to the Michigan Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 et seq.

In your May 23, 2008 letter, you wrote the following:

We are in receipt of your May 15, 2008, response to our April 23, 2008, FOIA and NVRA public records request, and we are writing to follow up on a few issues raised therein. It is my hope that we can come to a resolution of these issues within the next ten (10) business days, without having to go through a formal FOIA appeals process. [FN1: We reemphasize, as a matter of clarification, that the majority of our April 23 request was also made pursuant to Section 8(i) of the NVRA, which separately requires states to make public records relating to voter registration and list maintenance available for inspection and copying upon request and which contains no administrative appeal prerequisites. See 42 U.S.C. § 1973gg-6(i).]

In accordance with your instructions, the Department issues this letter merely to provide the additional clarification requested in your May 23, 2008 fax outside of the "formal FOIA appeals process." We agree that this letter does not constitute a response under the FOIA. As you know, the Department granted in part and denied in part your April 23, 2008 request by issuing its May 14, 2008 Freedom of Information Act Notice. Thus, the Department's final determination to deny in part your April 23, 2008 FOIA request was issued on May 14, 2008, and the statute of limitations described in that notice and provided under MCL 15.240 was triggered on that date.

1. Your letter notes that “We fail to see how such a denial and certification can be accurate” regarding the Department’s partial denial, on May 14, 2008, of the following portion of your April 23, 2008 FOIA request: *“The complete Qualified Voter File (“QVF”) record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar’s jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter to whom a residency confirmation request was sent, and/or whose “cancellation countdown” status was activated, by or on behalf of the Department of State in accordance with the Department’s August 8, 2006 “News You Can Use” Issue No. 244.”*

The Department’s May 14, 2008 notice denied your request in part due to the fact that the Department does not maintain the data in the precise format you requested, and the FOIA “does not require a public body to create a new record,” or “make a compilation, summary, or report of information,” in response to a FOIA request. MCL 15.233(5), (4). The data you are requesting cannot be provided to you in the requested format because the QVF data is a snapshot in time (August 8, 2006). This data no longer exists in QVF as it did on August 8, 2006. For example: Voter A was marked in the cancellation countdown on August 8, 2006. However, Voter A voted in the January 15, 2008 election, and the QVF automatically removes the cancellation countdown marking from Voter A’s record. Therefore, when a voter has activity on their record, any previous denotation of the cancellation countdown is removed. As a result, the information requested cannot be extracted from the QVF due to potential daily changes.

However, the Department’s May 14, 2008 notice also granted your request. The Department provided as enclosures with the May 14, 2008 Freedom of Information Act Notice electronic copies of spreadsheets containing the names and addresses of these voters, free of charge. The May 14, 2008 notice also advised you that your request for the statewide QVF was granted, and that the Department was prepared to furnish an electronic copy of the statewide QVF upon receipt of your payment. We acknowledge receipt of your payment and will provide a FOIA response which will enclose the QVF data and copies of the related documents. In order to obtain the information you are requesting, the listing of voters marked in the cancellation countdown on August 8, 2008, you must match the voters in the spreadsheets already provided and their record in the QVF to obtain information regarding their voting history, precinct and polling place information, and so on.

In summary, the Department has made available to you the information that you seek, though not in the precise format you requested. We are confident our record keeping meets the NVRA requirements.

3. Your letter notes that “...we do not see how the Department’s denials and certifications as to these records can be accurate...” regarding the following FOIA request: *“The complete Qualified Voter File (“QVF”) record (including name, registration, address, mailing address (if any), date of birth, telephone number, registrar’s jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter whose QVF voter status was changed by the*

*Department of State to "Canceled" and to whom a "30-Day Notice of Cancellation (Out of State)" notice was sent or should have been sent by local clerks, according to Department of State policy or directive, as a result of quarterly purges or other actions taken by the Department (as reference in the Department's October 11, 2006 "News You Can Use" Issue No. 255) at any time from January 1, 2006, through the present.."*

The quarterly purge process is where driver license changes, such as moved out of state and deceased, are compiled from other states and the Michigan Department of Community Health over a 3 month period. After three months of compilation, the changes are automatically processed in the driver file and automatically update voter records where needed. Any voters marked as canceled via the quarterly purge process are voters who have surrendered their Michigan driver license to another state. This is grounds for removing the voter from the voter list without further action required by the registrar by the NVRA. Therefore, the cancellation does not require a 30-day Notice of Cancellation. The only time one cannot remove a voter's name from the voter list without confirming a change of address to a location outside the voter's jurisdiction is when the change of address information originates from the Postal Service.

4. Your letter asserts that "...we do not see how the Department's denials and certifications as to these records can be accurate..." regarding the Department's May 14, 2008 denial of this portion of your April 23, 2008 FOIA request: *"Any correspondence received from or sent to election officials, voters, or other persons relating to the Department of State's quarterly purge programs and other initiatives to remove and/or change the QVF status to "Canceled" of those voters whom the Department has determined have moved out of state, and relating to the "30-Day Notice of Cancellation (Out of State)" notice referenced in the Department's October 11, 2006 "News You Can Use" Issue No. 255, at any time from January 1, 2006, through the present. (This request should not be construed to include copies of the individual 30-day out-of-state cancellation notices sent to each voter.)"*

Any 30-day notices of cancellation correspondences, if they exist, would be maintained at the local clerk office as the local clerk coordinates this process for their voters. The Department does not have any other programs or initiatives to remove and or change the voter's QVF status to "Cancelled" for voters moving out of state where a 30 day notice of cancellation is required.

6. Your letter asserts that the Department's position is "implausible", with respect to the May 14, 2008 notice denying this portion of your April 23, 2008 FOIA request: *"The complete Qualified Voter File ("QVF") record (including name, registration address, mailing address (if any), date of birth, telephone number, registrar's jurisdiction, precinct and polling place information, voting history, cancellation countdown status history, and QVF status change history) related to each voter or voter registration applicant who was sent a notice of rejection and/or whose QVF status was changed to "Canceled," in accordance with Mich. Comp. Laws MCL 168.499(3), as a result of the return of such voter's or applicant's original*

*voter registration identification card, at any time from January 1, 2006, through the present."*

The wording of this portion of your April 23, 2008 request was ambiguous. For situations where a voter is cancelled due to returned mail and a notice sent by the clerk, the voter is placed in a cancellation countdown, and only if there is no activity after 2 federal elections, the voter is cancelled. There is a second scenario where an individual registers to vote, the final step to become a registered voter is to have the voter ID card mailed to the voter and received by the voter. If the voter ID card is returned, the clerk takes the appropriate steps to see if the voter ID card can be delivered. If the voter ID card cannot be delivered, the individual has not completed the voter registration process and the individual's request to register to vote is rejected (not cancelled) in accordance with MCL 168.499(3). *See Association of Community Organizations for Reform Now v. Miller*, 912 F.Supp. 976 (WD MI 1995). Your argument that a voter's status may be, in your words, "changed to 'Canceled' in accordance with ... MCL 168.499(3)," does not accurately reflect Michigan law.

It is our expectation that the foregoing provides the clarity you seek. Please note that the Department's final determination to deny in part your April 23, 2008 FOIA request was issued on May 14, 2008.

Sincerely,

A handwritten signature in black ink, appearing to read "Rayan Anastor", with a long horizontal stroke extending to the right.

Rayan Anastor, Freedom of Information Officer  
Michigan Bureau of Elections  
Secretary of State