

Resolution 2017-36

Resolution Regarding the Confidentiality of Public Records Related to the Election Infrastructure of Clay County

WHEREAS, on 6 January 2017, the United States Department of Homeland Security (DHS) designated election infrastructure as a subsector of the existing Government Facilities critical infrastructure sector; and

WHEREAS, the designation by DHS makes it easier for the federal government to have full and frank discussions with key stakeholders regarding sensitive vulnerability information; and

WHEREAS, under Iowa law, sensitive vulnerability information is subject to examination by the public unless it is classified as a confidential public record per Code of Iowa, Chapter 22, subsection 7; and

WHEREAS, Code of Iowa, Chapter 22, subsection 7, paragraph 50 identifies confidential public records as: Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

a. Such information includes but is not limited to information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack.

b. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record; and

WHEREAS, Iowa Administrative Rule 721-22.50(52) requires each county to maintain a written security policy which shall include detailed plans to protect election equipment and data from unauthorized access as well as describe methods to be used to preserve the integrity of the election and document the election process.

WHEREAS, the nature of the information contained in the required written security policy qualifies it as a confidential record as identified by Iowa Code 22.7(50) as outlined above.

WHEREAS, threats to election infrastructure through breaches of cybersecurity may be initiated by any number of sources including, but not limited to hackers, disgruntled current or former employees, criminal enterprises, terrorists, and foreign governments; and

WHEREAS, the threat of a cyber-attack against election infrastructure cannot be eliminated, but actions can be taken to reduce the likelihood of successful attacks, to mitigate the harmful consequences of an attack, and to improve the County's ability to improve election infrastructure protection and restoration from future attacks, and thus enhance the resiliency of election infrastructure; and

WHEREAS, measures to prevent an attack or mitigate its consequences come with costs which must be balanced against the likelihood of the threat and the significance of the potential harm; and

WHEREAS, the Clay County Auditor and Commissioner of Elections shall have a duty to determine which, if any, members of the public and/or government officials have a need to know the results, findings, and recommendations of any firm or agency performing audits of election infrastructure, which include but are not limited to security procedures, emergency preparedness, vulnerability to threats from all extraordinary events (natural or man-made), and cyber-attacks designed to cause disruptions in elections, voting, or the reporting of election results, or to voter registration records; and

WHEREAS, the sharing of the results, findings, of future audits with members of the public not approved by the Clay County Auditor and Commissioner of Elections jeopardizes the County's election infrastructure and likely increases the taxpayer costs required to protect election infrastructure; and

WHEREAS, while the Clay County Board of Supervisors and the Clay County Auditor and Commissioner of Elections advocates 100% transparency in local government, has concluded that releasing public records related to the vulnerabilities of election infrastructure would be irresponsible and detrimental to the public / taxpayers / voters, and may allow bad actors to affect the integrity of the elections administered in the County; and

WHEREAS, the Clay County Auditor and Commissioner of Elections has complied with the Code of Iowa and the administrative rules promulgated by the Iowa Secretary of State, as well as, guidelines from the EAC (United States Election Assistance Commission) concerning election infrastructure; and

NOW, THEREFORE, BE IT RESOLVED, that the Clay County Board of Supervisors, a government body defined in Code of Iowa Chapter 22, section 1, paragraph 1, hereby

designates as a matter of public policy that any public records related to Clay County's Voting System Security policy and the protection, security measures, response plans, emergency preparedness, security codes / combinations / passwords, restricted physical area passes, keys, audio /video systems, emergency response protocols, vulnerabilities, and any information contained in records that if disclosed would significantly increase the vulnerability of the election infrastructure shall remain confidential public records unless such public records are approved for examination or release by the Clay County Auditor and Commissioner of Elections or his/her designee; and

FURTHER, BE IT RESOLVED, that this resolution is effective upon the date of approval by the Clay County Board of Supervisors.

The above and foregoing resolution was adopted by the Board of Supervisors of Clay County, Iowa, this 19th day of December, 2017 and the vote thereon being as follows:

AYES: Supervisors Matthews, Skelton, Swanson, Skow, and Anderson

NAYES: None.

/s/Burlin Matthews, Chairperson, Clay County Board of Supervisors

ATTEST: /s/Marjorie A. Pitts, County Auditor