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PARALEGALS  
SUSAN J. ADLER  
RHONDA L. DAVIS  
MANUEL LAMADRID  
PATRICIA M. MATA

June 18, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
**ARIZONA ATTORNEY GENERAL**  
400 West Congress Street, #S-315  
Tucson, Arizona 85701-1367

Dear John:

Thank you for your prompt response to my inquiry about SAIC. We believe SAIC does not fit the profile you suggest of a neutral corporation with a reputation that would be helpful in resolving the issues in this investigation. Their suggestion of a "risk assessment" is not what is required.

If the goal is to determine whether the RTA election results were manipulated, we have a couple of suggestions. Your office is no doubt aware of the multiple security holes in the Diebold product line and, if not, I have attached four reports that deal with those issues. You may not be aware that Pima County purchased a "hack tool" known as a "cropscanner" that would enable them to tamper data before it goes into the central computer.

The Diebold precinct optical scan machines can be "electronically pre-stuffed." The Black Box Voting Report of July 4, 2005 by Harri Hursti which is attached discusses this possible method. While the memory card format in the Diebold precinct optical scanner is very obscure, a card reader sold by Cropscanner, Inc. can be used to program the memory cards and "pre-stuff" them electronically so that they will produce fake records of both the electronic vote and end-of-day tally tapes. After the publication of that report, Pima County bought one of the machines that would allow them to program the precinct memory cards. We strongly recommend that your office identify the purchase orders for this device, determine where it was stored and whether or not there were any access controls for it. This device is essentially a burglary tool for elections.

You should also note that per the BBV/Hursti report, falsifying the end-of-day precinct scanner printouts by way of hand-editing the memory card contents with a cropscanner is unusually difficult. See Appendix D of the report for what the programming looks like. It is very easy to introduce typos into the output and a pattern of such typos is cause for concern. If you then have GEMS generate the cards normally via the pre-election RTA database and

create paper tape output based on those, you will be able to determine if the typos are simply due to mistakes in configuring GEMS. If not, (in other words, if the GEMS-based output looks good), typos in the actual election tapes would be evidence of hand-edits.

We have a specific suggestion for an examination of the database relating to the RTA. Our suggestion for testing the central tabulator data files is as follows:

- 1) Write a program in Visual Basic that takes all versions of a particular election's MDB data files and produces reports as to which items in which tables have changed between iterations. In other words, for every election there is a Logic & Accuracy test beforehand, then various "snapshots" of the data as scanning progresses, then the final data file containing all votes, then the post-election L & A. Some of these will, of course, legitimately change (vote totals and audit log, maybe more) but other tables should remain identical throughout: candidate information and IDs, ballot layouts, ballot rotation information and much more. The small custom program would scan through all variations of the data and report variations by table, field and line number ("record"). A human could then check each variation and determine whether or not it's an indicator of fraud. Flipping candidate ID numbers is the single easiest hack and might be caught quickly with this process if the pre-election L&A wasn't faked or edited to match later.
- 2) In December of 2006, the Pima Democratic Party obtained a public record we will be happy to share with you: a complete directory listing of both central tabulator stations. These tell you the date/time stamps and file sizes for all the data files. When you obtain access to the same thing, compare with our December 2006 data. If file date/time/size numbers related to the RTA race have changed between 12/06 and present, it means somebody tampered with the files between those dates, probably to cover up prior misconduct. We will supply any declarations from our tech people needed to establish chain of custody on the 12/06 date/time/size data.
- 3) Find the paper results from the original pre-election and post-election L&A tests on file with the office. Take the L&A data files and run what their results should be (summary reports and cards cast reports). Compare the paper from that time period with the electronic results today. If somebody was a very careful hacker and tampered with the main data files, they'd go back and make the L&A data files match. But then the current versions of the L&A files won't match the old paper. If the old paper isn't available, the election configuration file (GEMS data file) is supposed to be recorded with Secretary of State Jan Brewer's office – you might try locating that file to determine if the county L&A data file was modified later to conform with hacking of the main vote tally data.

- 4) For each iteration of the data throughout the election that contains votes, print the "cards cast" report and build a line graph showing the progression of votes taken in. Then do the same for summary reports and graph the rising swing of each candidate over time. What you're looking for are instances of candidates "spiking" outside the normal pattern. They should progress upward fairly steadily. "Spikes" are cause for concern-look carefully at what people are doing in the elections office at the moment a "spike" happens. Do the same for other elections just to note what the patterns look like. In our experience, they vary by no more than a percent or two throughout the election.
- 5) Tally the results for the mail-in vote as compared to precinct voting. The methods available for tampering with votes varies between them. Significant disparities can be indicators of trouble, or at least a starting point for further digging. As one example: Mail-in votes are never stored on an optical scan memory card of the type the "Cropscanner" can manipulate, so that whole class of tampering isn't available for mail-in votes. It would be very possible to see tampering in one vote pool or the other leading to big shifts between them, or tampering in both but with different techniques and hence different amounts and patterns of swing.

The suggested procedure we have outlined is quite simple and does not require a corporation like SAIC. The Arizona Senate last session hired Professor Douglas W. Jones of the University of Iowa Department of Computer Science to consult with them concerning the LD20 Republican Primary of 2004. He produced a report that I have not seen but should be available to your office and would serve as an example of the kind of independent review he is capable of.

The University of Connecticut, John Hopkins University, Princeton University and the University of California at Berkeley are all quite capable of the type of independent review you are seeking.

SAIC is a huge corporation with unsolvable conflicts of interest. In 1991, SAIC was charged with falsifying data submitted to the E.P.A. Ultimately the company plead guilty to ten counts of making false statements or claims and paid \$1.3 million in fines and restitution. With regard to the electronic voting industry, we feel that SAIC has too many conflicts of interest for them to perform a truly independent examination – they have consulted on electronic voting matters for both county clients and voting system vendors. They can be described as having a vested interest in the "status quo" of electronic voting. Any proof of fraud in an electronic voting system would harm the status quo within that industry.

I was unclear if your reference to a simulation project was what our experts refer to as a "red team attack," also known as a planned intrusion attempt. I have delivered with this letter a 200 page unredacted report prepared by SAIC for the State of Maryland. That report answers many of the risk assessment questions that their offer seems to contemplate and strongly indicates that no "risk assessment" is necessary. My experts assure me that Diebold's security issues have not changed significantly since 2003, with the exception of a hard-coded password for the touchscreen voting machines (formerly "1111" nationwide). The 2003 SAIC report is still



timely.

The Ohio report that I provided to your office is an example of another type of collaborative and independent examination of an entire election.

As you are aware it may be difficult to demonstrate the RTA election was manipulated or flipped. Based upon testimony we know that one person operated the computer during the RTA ballot counting process. We have reason to believe that data may have been exported from GEMS during the counting process. That same person has been in charge of the computer ever since including more than six months after the Democratic Party asked for copies of the database over six months ago. We know that he has in fact been testing the database. Whether alterations or deletions have been made we have not been able to check.

Christopher Straub claimed in a pleading filed with the Superior Court that everyone having anything to do with the county elections computer system had a real risk of criminal exposure. I'm sure he did not mislead the court and I do not want to misquote him, so I will quote the county's pleading.:

Indeed, during the Attorney General's investigation, any attempt by counsel for either side to elicit testimony from anybody involved with Pima County's Division of Elections or the Pima County elections computer system runs a significant risk of impacting that witness's constitutional rights and eliciting an assertion of the Fifth-Amendment privilege.

(P.4, Defendant's Reply in Support of Motion for Stay of Proceedings)

Accepting the truthfulness of that assertion to Judge Miller means that caution should be exercised in collaborating with the county on the scope of an examination. They have spent months analyzing their data base as they have opposed any examination by the Pima County Democratic Party. Furthermore, that examination has been conducted by the same persons who are expected to refuse to answer questions because it would incriminate them in criminal activity. You may take responsibility for the selection of SAIC, but we are concerned that Pima County may have suggested a known compromised potential examiner for an examination of their misconduct.

We think that serious consideration should be give to a full hand count of the RTA ballots which County Administrator Charles Huckelberry claims are still in a secured facility. A hand count could be done with volunteers or hired persons from the election pool of workers. The hand count could be done in public and certainly would give the public the re-assurance they need that the vote count was accurate. Such a count would be less expensive and much more certain than a computer data analysis. An expert such as Profession Jones who has seen a lot of ballots could examine the paper ballots and readily determine the likelihood that those are the genuine ballots.

In 1997, I was an attorney in a lawsuit concerning the City of Tucson General Election for the election of three council persons. The City joined us in requesting a hand re-count of all the City's ballots. The hand recount proceeded quickly and without incident. The problem in that election turned out to be defective paper that resulted in some 9,000 votes not being counted by the machine. I mention that example because the recount of three council races on punch cards



that required determining the voters intent from "dimples" was not difficult. Certainly a yes/no election like the RTA with filled in bubbles would be much easier to accomplish.

The Democratic Party and our experts are ready to assist in any way useful to your investigation. Neither the party nor its experts have any stake in the outcome of your investigation. We have identified serious anomalies that need to be investigated and we are pleased that they are being investigated. We do believe, however, that the result should have the confidence of the public that it was not a whitewash. That is why we have made specific recommendation to accomplish that result.

In any case: we ask that you hold this document in confidence and not allow the county to review it. If there is evidence of misconduct hidden within the databases or in the paper output tapes from the precinct scanners, it might still be possible to destroy data. My clients and I are handling this letter with extreme care and to a very limited audience for review.

Sincerely,

**RISNER & GRAHAM**

A handwritten signature in cursive script that reads "Bill Risner".

William J. Risner  
Attorney at Law

WJR/pmm  
Enclosures

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PATRICIA M. MATA

July 5, 2007

*Via Facsimile (628-6530) and U.S. Mail*  
John R. Evans, Esq.  
OFFICE OF THE  
ARIZONA ATTORNEY GENERAL  
400 West Congress Street, #S-315  
Tucson, Arizona 85701-1367

RE: *DPPC v. Board of Supervisors*

Dear John:

Thank you for your letter of June 26, 2007.

Our view of the SAIC proposal is that there is too much emphasis on the formatted disk of the older computer. We feel that whether or not Microsoft Access was on that computer and the Windows Event Log are the two pieces of evidence that can likely be found and be of use, considering reasonable and cost effective work.

We still feel there is too much emphasis on security risks when those risks are known. Those two aspects of the proposal seem likely to run up the price in our view.


We previously offered a copy of the directory given to us by Pima County. We feel that the size of those files would be a good check on whether or not those files have been manipulated since they were given to us.

In sum, we continue to view that the correct focus should be on whether there is evidence of manipulation of data. I must confess that I don't understand the term "consistent with normal election practice" that you used in your letter.

Will any report be made public or provided to us?

Sincerely,

RISNER & GRAHAM

  
William J. Risner  
Attorney at Law

WJR/pmm





Terry Goddard  
Attorney General

**Office of the Attorney General**  
State of Arizona

Main Phone: 520 628-6504  
Facsimile: 520-628-6530

**Criminal Division**

July 5, 2007

William Risner  
Risner and Graham  
100 N. Stone, Suite 901  
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:


Thank you for your letter of this date. It would be great if we can eliminate the vulnerability examination. That issue was placed into the project based upon the concern your group raised about whether there could be a field flip and how could it be discovered. If that is not a concern, then the first phase of the project is to find out whether there was any data manipulation of the RTA election..

In the near future, an initial decision will be made on which consultants to work with to finalize the contract. When the final scope of the project has been developed, I may contact you again.

As for release of the report, I assume that at some point the report will be available. When and under what circumstances, I don't know at this point.

Thanks for your input.

Sincerely,

  
JOHN R. EVANS  
Assistant Attorney General

JRE/ds  
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July 6, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
**ARIZONA ATTORNEY GENERAL**  
400 West Congress Street #8-315  
Tucson, Arizona 85701-1367

Via Facsimile: 628-6530

Dear John:

I am not sure that I understand your July 5, 2007, letter so let me restate our concerns.

A "flip" or other tampering with the contents of the election is a major concern of ours. That is why I questioned Mr. Bryan Crane about how a "flip" works and about the audit log that was inconsistent with the operation of the GEMS software but consistent to what one might see if a "flip" had occurred. Establishing whether or not a flip is possible is not a concern because it has already been done by SAIC in its Maryland study.

We think the best use of the limited funds your office will spend is to find out what did happen in the RTA election. I may be misunderstanding your use of the term "vulnerability examination" just as you may be misunderstanding my use of "data manipulation." In my view, a flip would be one form of data manipulation.

Our concern about SAIC's conflict of interest, that we previously expressed, was reinforced by our view that they were asking the wrong questions by focusing on threats which are known and not on evidence to show what happened.

Sincerely,

**RISNER & GRAHAM**



William J. Risner, Esq.

WJR/ml



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August 6, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
**ARIZONA ATTORNEY GENERAL**  
400 West Congress Street #S-315  
Tucson, Arizona 85701-1367

**Via Facsimile: 628-6530 and  
Regular United States Mail**

Dear John:

We have a "role" problem and I need your help in understanding what is going on. I was flabbergasted when you told me Friday that the Pima County Democratic Party could not get a copy of an investigative report on an examination of Pima County's Elections Division's computer data. Instead you suggested that we could get a copy from Pima County as your office would be prohibited from giving us a copy.

Here is how I see the Democratic Party's role. The Party has been actively pressing Pima County to increase its voting security. Party volunteers have analyzed audit logs to determine what county election personnel have done in the past. The Democratic Party is the first and only group to ever audit the Pima County Elections Department. It is the role of political parties to observe and audit elections in Arizona.

The Pima County Board of Supervisors has never audited the activity of its own division. The Secretary of State has never done so. Based upon sworn testimony no one has done so but the Pima County Democratic Party. The Party firmly believes that its work in ensuring election integrity is in the public interest. It believes its role and that of other political parties is to ensure honest elections.

The Pima County Board of Supervisors has strongly opposed our efforts to examine voting data. They have opposed our legal requests to take limited depositions but the court has approved some depositions. Those few depositions revealed a pattern of violations of criminal laws that we brought to the attention of your office. Your office then agreed to open an investigation into the early printing of tally reports. We urged that anomalies in the RTA election needed to be examined and your office has concurred.

August 6, 2007

**RISNER & GRAHAM**

I am not sure what term should be used for the "role" of the Democratic Party in your investigation. I am sure, however, that the "role" of the Pima County Board of Supervisors is "suspect." I am also sure that the "role" of the Attorney General is "prosecutor" or "investigative" agency. Given those roles, I am disturbed at the astonishing cozy relationship your office has with the suspects.

You personally attended a court hearing where Mr. Straub, the Board of Supervisors lawyer, claimed that "any attempt" by lawyers from either side to question "anybody involved with Pima County's Division of Elections or the Pima County elections computer system runs a significant risk of impacting that witness's constitutional rights and eliciting an assertion of the Fifth Amendment privilege." The Board's lawyer was asking for a stay of our civil case based on the proposition that no one in the Elections Division could answer questions without subjecting himself or herself to a real and appreciable risk of self-incrimination. That is an astonishing statement from the Board's own lawyer and unless you have contrary information we assume that his statement to the court that put his clients in such a bad light was truthful.

I recently deposed John Moffat, the Board of Supervisors designated person to oversee the Elections Division. Mr. Moffat said the County has made no inquiries of its personnel in order for the Board to know what happened in its elections department:

Risner: Is there an investigation going on in your office about whether wrongful conduct has occurred or criminal activities have occurred with your people?

Moffat: We're waiting - - well no.

Risner: So, whatever the Attorney General's doing, you are all waiting on the Attorney general; is that right?

Moffat: I don't control that, but I would say that's probably correct.  
(94:5-12)

John Moffat said he "has been asked not to talk to" Bryan Crane about his practice of printing election results from counted early ballots well before election day. Mr. Moffat had been personally provided with a report from the Democratic Party detailing those improprieties months before our lawsuit and any investigation began by your agency and, nonetheless, has never asked any questions of Mr. Crane.

So here is the posture today. Pima County has not asked any questions of its employees but believes that all its election division personnel have reasons to refuse to answer questions based upon their Fifth Amendment privileges. Pima County wants to first see the report that is being prepared by a company jointly hired by the "suspects" and the "investigators." Once Pima



August 6, 2007

**RISNER & GRAHAM**

County learns what the investigators have learned then, they can decide on what questions to ask, if any, of their own employees. In other words, once they see the cards they will decide how to play their hand.

Frankly, this seems like an upside down process to us. Does your office share information with other suspects in other criminal investigations? We think not.

If I understood you correctly, you said that after the County received a copy of your investigative report your office would then take some statements. We certainly would not want to tell your office how to conduct an investigation but I must confess that your outlined process seems quite wrong to me. I first defended a criminal case thirty-nine years ago in 1968. For decades I was primarily a criminal defense lawyer. This investigation is the first I have seen where the prosecutor and the suspect jointly finance an investigation and questions of witnesses are delayed until the suspect reviews the investigative report. However, since I became a personal injury specialist criminal investigative techniques may have changed.

The relationship between Pima County, the Secretary of State and the Attorney General is quite interesting from our perspective. Pima County has collaborated with the Secretary of State in its defense of the Democratic Party's pending public record lawsuits. The Pima County Board of Supervisors has formally requested that the Secretary of State intervene in those lawsuits as a party and not merely assist them in their defense. Pima County in its current defense is claiming that all "information" about elections is secret based upon a manual approved by the Arizona Attorney General.

The manual written by your client, the Secretary of State, and that your office approved, says, according to Pima County, that all election "information" in its database is secret. Mr. Moffat was quite clear about the County's legal position.

Risner: What would be in your database that wouldn't be covered by this paragraph?

Moffat: I don't - - I don't think there's anything that's not covered by the paragraph.

Last Thursday, August 2, 2007, I deposed in Phoenix the State Elections Director, Joe Kanefield, who was the Rule 30(b)(6) designee of that office. The Attorney General's office attempted to prevent the taking of that deposition but Judge Miller permitted us to proceed. We were interested in election tapes that Pima County sent to the Secretary of State's Office. We wanted to know what the Secretary did with these tapes and when and how they were returned. Mr. Kanefield gave us incorrect information that was later partially corrected by his attorney, Barbara

August 6, 2007

**RISNER & GRAHAM**

Bailey, Assistant Attorney General. She sent my office a letter later that same day which is partially quoted below:

Following the Rule 30(b)(6) deposition this morning in which Mr. Joseph Kanefield testified in the above-referenced matter, Mr. Kanefield checked again on the question of the significance of the "Return Date" column on Exhibit 1 to that deposition. Mr. Kanefield testified in his deposition that his understanding, which was based upon his research in preparing for today's deposition, was that the "Return Date" column reflected the date the Secretary of State's Office actually mailed the computer software back to the respective jurisdictions pursuant to A.R.S. § 16-445.

Although Mr. Kanefield testified based upon his preparation for the examination, he has since determined that his testimony regarding the information reflected in the "Return Date" column was not accurate. Upon further checking, Mr. Kanefield determined that the "Return Date" column of Exhibit 1 reflects the Secretary of State's determination of the date on which the computer software may be returned to the respective jurisdictions. You asked specifically about the return of computer software submitted by Pima County and Town of Oro Valley for a May 16, 2006, election. That software was mailed by the Secretary's Office via U.S. certified mail on November 27, 2006.

The letter artfully omitted to whom the tape had been returned. It took me all day Friday to find out who received the tape that the Secretary's Office returned to "Pima County." After a letter and a couple of phone calls I received around 5:00 p.m. a copy of a certified mail receipt showing that the tape had been returned not to the Pima County Elections Department but instead to the Pima County Recorder, an office that had not sent the tape nor was supposed to receive it. Due to the lateness of the disclosure by the Office of the Attorney General I was unable to follow-up on the whereabouts of a potentially important piece of evidence. This morning I learned that the tape had promptly been delivered by the Recorder's Office to the Pima County's Elections Division. You may or may not be aware that Pima County has denied having possession of this potentially critical piece of evidence.

I have some understanding of your office's built-in conflicts because of your role as a lawyer for the Secretary of State. Your cozy collaboration with the same Board of Supervisors that you are investigating befuddles me, however.

At a minimum, I request that the Pima County Democratic Party receives the same material you are intending to provide to the suspects. Finally, I wish to be clear that I think it is fundamentally

John R. Evans, Esq.

**OFFICE OF THE**

**ARIZONA ATTORNEY GENERAL**

Page 5

August 6, 2007

**RISNER & GRAHAM**

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wrong for your office to provide investigative reports to the County before you investigate them.

Sincerely,

**RISNER & GRAHAM**

William J. Risner, Esq.

WJR/ml

c: Terry Goddard, Esq.  
Arizona Attorney General



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August 9, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
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400 West Congress Street #S-315  
Tucson, Arizona 85701-1367

Dear John:

For your information I previously sent you a subpoena, deposition notice and associated materials for the "RTA" tape returned by the Secretary of State's office to Pima County. Pima County has previously denied they have this tape but they may simply have not looked hard enough for the tape.

Chris Straub called me this morning and asked me what I wanted to do if they found the tape. I said the first thing I wanted was for him to tell me if they have it. My next step would be to let your office know of the tape's existence. It is potentially an important piece of evidence and I want it secured by either the judge or your office.

We have been denied access to computer data so we are shooting in the dark. Nonetheless, the audit log from the RTA is consistent with a "flip" where the position of yes and no votes could have been reversed. The "RTA" tape sent by the Election's Department to the Secretary of State before any votes were counted should show the original ballot layout that could be compared with the later data that you have.

We, of course, do not know what any of these answers are and we are fully aware that county personnel have had ample time to alter computer data. We also do not know if Pima County has destroyed that tape, misplaced it or altered it. All we are able to do is chase it down. If Pima County does let me know if it is in their possession, I will then let you know.

Sincerely,

**RISNER & GRAHAM**

William J. Risner, Esq.

WJR/ml



Terry Goddard  
Attorney General

**Office of the Attorney General**  
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**Criminal Division**

August 14, 2007

William Risner  
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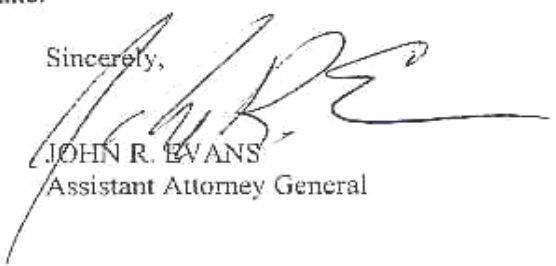
Re: Pima County Elections

Dear Bill:

Your letters of August 6 and 9 raise a number of issues which I hope to address. Obviously, an important part of the Attorney General's investigation is the report from iBeta. Since the Attorney General's office is conducting a criminal investigation, the report could not be disclosed until either charges have been filed or the office decides that it can not proceed and the case is closed. If charges are filed then disclosure of the report would be governed by Rule 15.1, Arizona Rules of Criminal Procedure. Should no charges be filed then most of the investigation documents would be subject to a public records request.

The "DAT" tape is of interest. If it is found, I expect I will have no difficulty getting control of the original. I understand the key use of this information would be to compare the election fields in the "DAT" with the fields found in the actual election data base to see if there was any field switching. Should Pima County find the tape and the Attorney General's office get control of it, I will have to decide what steps to take.

Sincerely,

  
JOHN R. EVANS  
Assistant Attorney General

JRE/ds  
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August 23, 2007

John R. Evans, Esq.  
**OFFICE OF THE  
ARIZONA ATTORNEY GENERAL**  
400 West Congress Street #S-315  
Tucson, Arizona 85701-1367

Via Facsimile: 628-6530  
& Regular U.S. Mail

**RE: Public Records Request**

Dear John:

Your letter of August 14, 2007, again makes the legal claim that you can not disclose the report from iBeta because the Attorney General's office "is conducting a criminal investigation." I previously expressed my dismay that your office intended to share the report with the suspects but not the Democratic Party. My astonishment at that unusual procedure has not abated.

The purpose of this letter, however, is to advise you that what you have said is not the law. There is no blanket exemption for a criminal investigation under the public records act. *Cox Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993); (The court held that reports of ongoing police investigations were not generally exempt from public records law and that it was incumbent upon the county attorney to specifically demonstrate how the production of the documents would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state. The court said that in this case, the county attorney had not even made an effort or attempt to partially comply as he had not provided the records to the trial court for an in-camera review. The county attorney just refused to give the records to anyone at all which was unacceptable under the court rules. Finally, the court said that because the state set itself up as sole judge and jury, it took the chance that its decision would be viewed as arbitrary and capricious, and it would be subject to sanctions it now faced.)

Another case in point is *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 434, 891 P.2d 899, 901 (App. 1994); ("The argument of the county attorney on appeal is that it ought to not be required to produce the tapes because of the material there recorded might not be a public record, might be protected by a deliberative process privilege, might be immune from disclosure in order to protect the public employee privacy rights, or might impede a pending criminal investigation. While these concerns might on occasion permit secrecy, no showing has been made on this record why they should preclude revelation. All that is offered is speculation. No one has examined the actual records in this case to demonstrate why any particular individual record ought not be revealed for one of these reasons. If we were to accede to the county attorney's argument, we would effectively repeal the public records statute. Because it is always



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**RISNER & GRAHAM**

possible to argue that public records contain nondiscoverable matter, argument alone would always allow nonrevelation. Our Supreme Court, however, has made it clear that public records are presumed open to the public for inspection unless the public official can further demonstrate a factual basis why a particular record ought not be disclosed to further an important public or private interest. *Cox Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993)."

I invite your office to specifically explain why the iBeta report is not a public record that should be provided pursuant to this request. In order to be quite clear please accept this letter as a public records request pursuant to A.R.S. § 39-121 *et seq.* I request:

1. Copies of all correspondence with iBeta concerning the investigation they are conducting for your office.
2. Copies of all documents relating to your office's communications with the Pima County Attorney's Office concerning this investigation.
3. Copy of the iBeta contract.
4. Copy of any iBeta reports.

Please accept this public records request as an ongoing request for such documents as they may be created or received in the future. See *West Valley View, Inc. v. Maricopa County Sheriff's Office*, 1CA-CV 06-0549, filed 8-16-07. This request has not been made for a commercial purpose and I will pay all copying charges.

If your office can explain why the provision of the report to the suspects before conducting any interviews would not interfere with your criminal investigation but the provision of the same material to those who have brought evidence of wrongdoing to your attention would interfere, we will consider your explanations. As we understand the law, that is your burden to explain.

Sincerely,

**RISNER & GRAHAM**



William J. Risner, Esq.

WJR/ml



Terry Goddard  
Attorney General

**Office of the Attorney General**  
State of Arizona

Main Phone: 520-628-8504  
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**Criminal Division**

August 28, 2007

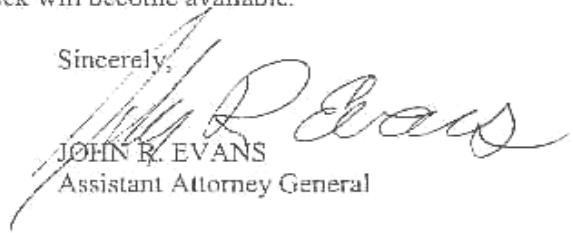
William Risner  
Risner and Graham  
100 N. Stone, Suite 901  
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:

In response to the letter of August 23, 2007 which was entitled a public records request, I respectfully disagree with your interpretation of the ability of the public to obtain information regarding pending criminal investigations. Only the *Arizona Publication Inc. v Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993) applies to the present situation. The key to the court's analysis was that the County Attorney Tom Collins had announced the indictment of several members of the Phoenix Suns. No where in the case is there a discussion of the circumstances of the present matter, which is a pending criminal investigation. My letter of August 14, 2007 describes the circumstances under which the materials you seek will become available.

Sincerely,

  
JOHN R. EVANS  
Assistant Attorney General

JRE/ds  
TUC-#5357-v1-OCT07-0044.DOC

**RISNER & GRAHAM**  
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August 31, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
**ARIZONA ATTORNEY GENERAL**  
400 West Congress Street #S-315  
Tucson, Arizona 85701-1367

**RE: Democratic Party of Pima County**  
**Public Records Request**

Dear John:

Your letter of August 28, 2007 agrees with us that Cox Arizona Publications v. Collins, 175 Ariz. 11 (1993) "applies to the present situation." After that agreement, however, you then fail to "apply" the case.

The Arizona Supreme Court in that case overruled the lower court decision of the Court of Appeals in Cox Arizona Publications v. Collins, 169 Ariz. 189 (app.). The Court of Appeals had accepted the argument of *amici*, including the Arizona Attorney General, that the media had no right to inspect criminal investigative files during an investigation and prosecution. In rejecting that argument, contrary to your view, the Arizona Supreme Court did not place any emphasis on the fact that an indictment had been announced and certainly that event was not a "key" to the case.

The opinion of the Arizona Supreme Court on this issue highlights a statement from the Court of Appeals with which they disagree and therefore they reverse the opinion of the lower court.

In upholding Collins' position, the court of appeals stated:

Neither reporters nor the public. . . are entitled to examine and photocopy police reports in an active ongoing criminal prosecution, because the countervailing interests of due process, confidentiality, privacy and the best interests of the state make disclosure inappropriate.



Mr. Evans  
Re: Democratic Party of Pima County  
August 31, 2007  
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169 Ariz. At 201, 818 p.2d at 186. We cannot support such a sweeping exemption from the public records laws of this state. Although the balancing scheme described in *Mathews*, 75 Ariz. at 80-81, 251 P.2d at 896, might, in a particular and exceptional case, lead to a conclusion similar to that reached by the court of appeals, the blanket rule advanced by that court contravenes the strong policy favoring open disclosure and access, as articulated in Arizona statutes and case law. The legislature has not carved out such a broad exemption, nor do we.

The burden fell squarely upon Collins, as a public official, to overcome the legal presumption favoring disclosure. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984). In his correspondence to the media and his arguments to the trial court, Collins argued in global generalities of the possible harm that might result from the release of police records. However, because reports of ongoing police investigations are not generally exempt from our public records law, it was incumbent upon Collins to specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be "detrimental to the best interests of the state." He did not attempt to make such a showing. Cf. *Arizona Board of Regents*, 167 Ariz. At 258, 806 P.2d at 352 (Board of Regents demonstrated specific instances where publicity proved detrimental to university president search process..)

The Court's opinion is not ambiguous. "The burden falls squarely upon you" to "specifically demonstrate how production of the" documents we have requested "would be detrimental to the best interests of the state."

Perhaps your office can explain why giving the report to the suspects serves the public interest whereas giving the report and other documents to the Pima County Democratic Party would harm the public interest. The law places the burden squarely upon your office, however.

Sincerely,

**RISNER & GRAHAM**

William J. Risner  
Attorney at Law

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September 7, 2007

John R. Evans, Esq.  
**OFFICE OF THE**  
**ARIZONA ATTORNEY GENERAL**  
400 West Congress Street #S-315  
Tucson, Arizona 85701-1367

**Via Facsimile: 628-6530**

Dear Mr. Evans:

I intend to file a lawsuit against the Attorney General if your office does not comply with my public records request for the iBeta report. I note that Mr. Moffat has been perusing Pima County's own copy.

As you know, the Pima County Democratic Party has been forced to file two lawsuits that are still pending against Pima County for their refusal to provide public records. To date you have suggested that we request documents you are obligated to provide from the very entity that flaunts its responsibilities under our public records laws. Such a cynical passing of the responsibility to another agency is not a defense with which I am familiar.

It is inexcusable that your office would refuse to follow your legal obligations.

Sincerely,

**RISNER & GRAHAM**



William J. Risner, Esq.

WJR/ml



Terry Goddard  
Attorney General

**Office of the Attorney General**  
State of Arizona

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Facsimile: 520-628-6530

**Criminal Division**

September 13, 2007

**Via Facsimile: 624-5583**

William Risner  
Risner and Graham  
100 N. Stone, Suite 901  
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:

The Arizona Attorney General's office has completed its investigation and determined that there was no basis to believe any criminal activity was involved in the RTA election of 5/16/06. As a result of this decision, this office is in the process of gathering all the materials necessary to respond to your public records demand.

The initial disclosure of materials will be available at 9:00 a.m. September 14, 2007 at our offices. There will be a 20 cent per page charge for copying, as there are 285 pages, please bring with you a check in the amount of \$57.00 made out to the Office of the Attorney General to cover the cost of reproductions.

Sincerely,

  
JOHN R. EVANS  
Assistant Attorney General

JRE/ds  
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