

PRR 22-06 MINNEHAHA COUNTY
RESPONSE
EXHIBIT 1

Folsom, Amy

From: Sent:

Schwab, Jared <jared.schwab@essvote.com> Tuesday, April 5, 2022 9:00 AM Folsom,
Amy RE: FOIA request for DS 850 Audit Logs

To:

Subject:

Amy,

See below the response from our legal team:

Ms. Folsom,

We have received your request for information related to a public records request that your jurisdiction has received in regard to the audit logs for the DS850.

Please be advised that you should contact your attorney to determine what, if any, information being requested is required to be disclosed pursuant to applicable law. ES&S is unable to provide the Jurisdiction with any legal advice or other

guidance as to which records are required to be provided under applicable law. Your attorney will have to make this determination for the Jurisdiction.

In most instances, ES&S is not subject to the public records law and is not under a legal obligation to provide the requesting party with any of the requested information. Most public records laws only require the County to produce those records which are responsive to the public records request and which are in the possession of the county at the time of the request. The County will need to determine what records it has in its possession that may be responsive to the request and work with its attorney to determine what information must be disclosed or if any such information is subject to an exemption from disclosure as set forth under applicable law.

Once this determination has been made, ES&S will review such information to determine if it contains any ES&S proprietary and confidential information which may be exempt from disclosure under applicable law.

With that being said, audit logs to the DS850 (hereinafter "Materials") contain proprietary, confidential and trade secret information which derive potential independent economic value. The information is not readily ascertainable by proper means by competitors who could obtain economic value from its disclosure and is subject of reasonable efforts to maintain its secrecy. Additionally, the disclosure of the Materials should be exempt from disclosure under SDLRC Codified Law Section 1-27-1.5 (3).

In addition, the Materials should be protected from disclosure as the Materials contain sensitive information that if publicized could provide a roadmap to bad actors to attempt to compromise our systems. The disclosure of the response could create a security risk to ES&S and to the County. Pursuant to 42 U.S.C. §5195c(e), the United States Department of Homeland Security has designated election systems as part of the United States' critical infrastructure, and the disclosure of the information would create a security risk to the critical infrastructure. Such a disclosure would compromise the security of the State's devices and should be exempt from disclosure under SDLRC Codified Law Section 1-27-1.5 (8 & 9).

ES&S would request that you consult with your attorney regarding the request and we would request that ES&S's proprietary, confidential and trade secret Materials be withheld from disclosure. In the event the Jurisdiction determines that a document should not be withheld, ES&S requests the Jurisdiction provides ES&S

an opportunity to redact proprietary, confidential and trade secret information from the Materials. Thank you for your attention to this matter.

Thanks, Jared

ESS

Jared Schwab | Account Manager | Election Systems & Software 11208 John Galt Blvd. Omaha, NE 68137 | 0:402-810-2215 Jared.schwab@essvote.com / www.essvote.com

From: Folsom, Amy <afolsom@minnehahacounty.org> Sent: Tuesday, April 5, 2022 8:58 AM To: Schwab, Jared <jared.schwab@essvote.com> Subject: RE: FOIA request for DS 850 Audit Logs

Thank you Jared. Amy

From: Schwab, Jared <jared.schwab@essvote.com> Sent: Monday, April 4, 2022 3:50 PM To: Folsom, Amy <afolsom@minnehahacounty.org> Cc: Kyte, Ben <bkyte@minnehahacounty.org> Subject: RE: FOIA request for DS 850 Audit Logs

Hi Amy,

I'm going to send this off to our legal team for confirmation. I'll be in touch with their response.

Thank you, Jared

Jared Schwab | Account Manager | Election Systems & Software 11208 John Galt Blvd. Omaha, NE 68137 10:402-810-2215 Jared.schwab@essvote.com | www.essvote.com

From: Folsom, Amy <afolsom@minnehahacounty.org> Sent: Monday, April 4, 2022 1:43 PM To: Schwab, Jared <jared.schwab@essvote.com> Cc: Kyte, Ben <bkyte@minnehahacounty.org> Subject: FOIA request for DS 850 Audit Logs

Hi Jared My name is Amy Folsom. Tam a Deputy State's Attorney working with Minnehaha Auditor Ben Kyte on a number of election related FOIA's we have been

receiving. Ben gave me your name and contact information.

We have received a FOIA request for "audit logs" which is attached along with what would be responsive to the request.

My question for you is whether there is anything proprietary as to ES&S in the audit log?

Thanks in advance for your help. Please feel free to call me on my cell at 719.439.6129 if it is easier to visit by phone.

Kind regards, Amy

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