Dear Chairman,

At your request during the January 18, 2022, State Board Of Elections meeting, I am submitting this appeal request over guidance on 24.2-658 and 24.2-668(B) issued on January 5 and January 6, 2022 by the Virginia Department of Elections. Both involve public inspection of Statement of Results (SOR’s) with machine tapes.

The State Department of Elections (ELECT) is attempting to circumvent Virginia Law to prevent access to Statements of Results and the critical supporting documents by mixing sections from different law sections to justify their opinions and guidance to Registrars. The guidance is very clear in 24.2-668. This should not be confused with 24.2-658 or 24.2-405. Failing to follow the guidance in 24.2-668 invokes 24.2-1015 for ELECT and the Registrars. Further, openness and transparency are essential to ensure confidence in the election process and the validity of the results. Interpretation of inspection should be very liberal to allow persons reviewing the documents to take photos or otherwise transcribe the results. As appropriate, photo copying at a nominal cost should also be considered. The rights in 24.2-668 should also not be confused with Freedom of Information Act (FOIA) laws although the intent of FOIA should also be observed and is appropriate for providing access.

On January 5, 2022, the VDE issued the following guidance to the General Registrars on 24.2-668(B):

“Email: registrars@manassasparkva.gov

**From:** Cronin, John <john.cronin@elections.virginia.gov>

**Sent:** Wednesday, January 5, 2022 12:13 PM

**Subject:** FOIA GUIDANCE - Public Inspection vs. Copying of SORs

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear General Registrars,

ELECT has received several inquiries regarding how to handle Statement of Results requests. In an effort to sustain consistency, please view guidance from ELECT's FOIA Policy Analyst, Ashley Coles:

§ 24.2-668(B) states the following regarding the Statement of Results (SORs): *"The general registrar shall retain for* ***public inspection*** *one copy of the statement of results.*" (emphasis added). Additionally, § 24.2-658 Machines with printed return sheets; disposition of sheets (which is often referred to as the "tapes" attached to the SORs) states the following: "*One copy of the printed return sheets shall be made available* ***by the clerk of the circuit court on the day following the election and for 60 additional days for inspection and***

***transcribing*** *information therefrom by the public.*" (emphasis added).

While SORs generally do not contain any sensitive information, unless the Code explicitly mentions copying when it refers to public inspection, our guidance is copying is not permitted; as a reference, 24.2-444(A) vs. 24.2-444(B) are great examples of the difference in the use of inspection vs. inspection and copying. Since 24.2-668(B) only states "public inspection" and not "public inspection and copying" it would be our guidance that copying and/or photos are not permitted by Code, but viewing the documents are. With respect to transcription of the tapes, 24.2-658 only references transcription in the clerk's office on the day following the election and for 60 additional days and makes no mention of transcription in the GR's office, so the assumption is that it is intentional.

Kindly,

**Ashley Coles**

Chief FOIA Officer and ELECT Policy Analyst

Virginia Department of Elections

1100 Bank St 1st Floor

Richmond, VA 23219

Ashley.Coles@elections.virginia.gov”

The guidance above was sent to me by General Registrar Patricia Brendel of Manassas Park, in response to my request to inspect a precinct tally tape noticed missing during a December public inspection. This tape which was mistakenly placed in the wrong envelope during the Electoral Board canvas. I then emailed her to request an inspection of the tape when she receives it in her office. She responded with an additional January 6, 2022, VDE guidance below:

Patricia Brendel <p.brendel@manassasparkva.gov>

To: Elizabeth Block

Ms. Block,

Thu, Jan 6, 2022 at 10:19 AM

Below is clarification from the State concerning copies, phone copies and transcription. You are only entitled to view my SOR, which you already have done. The Courts have different guidelines on what they provide and for how long. I provided you with the States findings on that yesterday. Regardless of when you made the request has no bearing on what you are allowed to have. For future elections I suggest you contact the Courts if you want copies since they are the only entity that can provide you with what you are looking for concerning tapes, and SOR.

Thank you for your time.

Patricia Brendel

General Registrar & Director of Elections

One Park Center Court Manassas Park, VA 20111

Office: (703) 335-8806 Fax: (703) 335-9042

Email: registrars@manassasparkva.gov

From: Coles, Ashley <ashley.coles@elections.virginia.gov> Sent: Thursday, January 6, 2022 9:59 AM

To: Patricia Brendel <p.brendel@manassasparkva.gov>

Subject: Re: Please clarify

Hi Patricia,

Hope these first few days of your New Year are off to a great start!

The length of time records must be available is contingent upon the records and retention schedule set by the Library of Virginia, unless our Code says otherwise. Here is a link to the GS-01 Schedule for Localities: https://www.lva.virginia.gov/agencies/records/sched\_local/GS-01.pdf. SORs fall under Series 000510, which has a 2-year retention period.

Since 24.2-668(B) only states "public inspection" and not "public inspection and copying" as it pertains to SORs it would be our guidance that copying and/or photos are not permitted by Code, but viewing the documents are. With respect to transcription of the tapes, 24.2-658 only references transcription in the clerk's office on the day following the election and for 60 additional days and makes no mention of transcription in the GR's office, so the assumption is that it is intentional.

Both of the above encourages General Registrars to completely restrict public inspection and to shorten the legally required 60-day public inspection to an arbitrary period according to the convenience of the Registrar’s office.

During a follow-on phone call, Patricia indicated that when her office allowed photos of the SOR’s and tally tapes it was “wrong” and that she waited to get the missing tally tape until the Risk Limiting Audit on January 10. However, she made no arrangements with the volunteers to inspect the tape despite knowing when she would go to the court later than the 60-day inspection period and get it. In addition, she explained that her office will not get the SOR’s and tape to the court until after the Electoral Board canvas, and possibly retain them longer due to a close election, staff vacations, or office closures. When I told her this did not live up to the 60 days, she told me to “take that to the court.”

Code 24.2-668 has no time limit for the registrar office to have the public inspect. The VDE guidance arbitrarily references of other parts of the code to apply it to 24.2-658 or 24.2-668, again to restrict public access and to violate the law.

Please let me know if I can be of further assistance. Kindly,

On Thu, Jan 6, 2022, at 8:48 AM Patricia Brendel <p.brendel@manassasparkva.gov> wrote:

I have a woman who wants to view and take pictures of the sor and tapes. So does public inspection for SOR stay open for us with no end date and please confirm

Can she 1. take pictures, 2. copy or 3. transcribe what is on the tapes. Thank you for your time.

Patricia Brendel

General Registrar & Director of Elections

One Park Center Court Manassas Park, VA 20111

Office: (703) 335-8806 Fax: (703) 335-9042

Email: registrars@manassasparkva.gov

Patricia Brendel further told me in person that she keeps telling them (meaning staff of the State Electoral Board is assumed) that the SOR forms are not needed, just the tapes. What good does it do to “look” at the tapes when she has been led to believe by the VDE that all we can do is make sure the tapes match the SOR, which she believes she does not need? Plus, SOR’s are different for each locality.

The word “inspection”[[1]](#footnote-1) is a noun meaning the “act of examination”[[2]](#footnote-2). It is also an organized evaluation exercise. According to the VDE we are apparently relegated to evaluating whether our eyes work when we “look at “the SOR’s and tapes. What if I am blind? Are we also to evaluate our memories and how much information we can retain? If we cannot transcribe or photo the tally tapes or SOR forms, then there is no exercise of inspection. Additionally, the public does not need to provide a reason for an inspection. The VDE assumes it is to be sure the tally tapes match the SOR, but this may not be the public’s need.

Perhaps Patricia Brendel and other registrars and staff can memorize the tally tapes and SOR contents and recite them to us?

Further difficulties arise with Patricia Brendel’s statement to me that she gets the SOR’s to the court after the Electoral Board canvas, but sometimes if the race is close, she will retain them for a while. Then there are staff vacations and holiday office closures. Further, that a GR’s office is not conveniently next to the courthouse, or staff is not available, a close election, etc., cannot be an excuse to not honor the full 60 days under 242.-658. Then there are staff vacations and holiday office closures. When I questioned saying this does not meet the 60-day public inspection period, she responded saying, “take that to the courts”. This is also not complaint with the code that requires delivery to the Clerk of the Court by noon the day after the election unless the Clerk grants a delay. Intentionally not complying with this requirement of 24.2-668 A. is a legal issue subject to discipline or prosecution.

That a GR’s office is not conveniently next to the courthouse, or staff is not available, a close election, etc., cannot be an excuse to not honor the full 60 days under 242.-658. Why not extend the 60-day public inspection? Why not post them in the registrar’s office on the walls for the 60 day period and allow interested parties to review them. This is consistent with the requirement to post the zero tally tapes at each precinct. However, the remedy was codified by the Legislature under a separate and distinct section in 24.2-668 B. Their reading of public inspection is also capricious and designed to prevent a full public inspection. If there’s nothing wrong then why these efforts to deny access contrary to the law? The impact has been to further incite distrust in the results. Further, the State Elections Office and the Registrars are violating 24.2-1015 and subject to the penalties in that code section.

The State Elections Office appears to have some attorneys on staff who are writing these opinions and believe it’s appropriate to mix different statutes to achieve their purpose of preventing Virginia Citizens from accessing records to which they’re entitled. Would it be appropriate to use the elements of proof for jay walking but apply the penalties for murder? They’ve applied the same principle by mixing parts of 24.2.405, 24.2-658,

General Registrars should make clear copies of the SOR’s and machine tapes and place them on their website for the public to download after every election. They could certainly get election officers or public volunteers to assist. In addition, 24.2-668B should stand as a means for public transcribing, photos read aloud or what ever we need. They already use these materials for training. The VDE is grasping to find areas of the code to arbitrarily relate them back to 24.2-658 or 24.2 668B to obstruct inspection by the public.[[3]](#footnote-3)

The continued guidance by the VDE with some General Registrars to restrict access is a conspiracy against rights under 24.2-1015. The public should be able to audit their own election data using are supposed to be reliable sources: local machine data and the state website. While the reason for public inspection is none of the VDE affair, it happens that the data differs. The VDE does not want us to know or to find out.

We must remind ourselves that the government serves the people, as stated in the Virginia Constitution:

That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.- *Article I. Bill of Rights, Section 2. People the source of power*

Please overrule this arbitrary guidance. Thank you so much for your time.

Sincerely,

Elizabeth Block

1. https://www.wordnik.com/words/inspection [↑](#footnote-ref-1)
2. https://en.wikipedia.org/wiki/Inspection [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)