



## OFFICIAL ELECTION BULLETIN

May 27, 2022

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**TO: County Election Officials and County Registrars**  
**FROM: Ryan Germany, General Counsel**  
**RE: Open Records Request for Ballot Images**

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Many counties have received a request for copies of physical ballots (as opposed to ballot images). Physical ballots are not subject to public disclosure and Georgia courts have held that such documents are by law prohibited from being open to inspection by the general public. Ballot images created by the voting system are public, and you should provide copies of ballot images once your election project (which contains the ballot images) has been certified and you are able to fulfill the request.

Physical ballots are not subject to open records. OCGA 21-2-574 makes possession of ballots by “any person, other than an officer charged by law with the care of ballots” a felony. Physical ballots should always be in your custody and control prior and required to be kept under seal. The argument made by the requestors that the ballots are not yet under seal is wrong and has been specifically rejected by Georgia courts. In an case seeking election records, the Georgia Court of Appeals concluded that when materials (such as ballots) are “statutorily designated to be kept under seal, it is by law prohibited or specifically exempted from being open to inspection by the general public and, therefore, is not an open record subject to disclosure.” *Smith v. DeKalb County*, 288 Ga. App. 574 (2007). Physical ballots are election documents that are by law to be kept under seal. The timing of the open records request does not change that designation or magically make documents that the law requires to be kept under seal open to public inspection.

The requestor also asks that instead of giving him access to the actual ballots, that you make a photocopy of the ballots. Under no circumstances should local election officials make copies of voted ballots as this would open you up to allegations of copying ballots or attempting to stuff the ballot box. It should not happen.

Georgia law has dealt with the issue of transparency regarding voted ballots by expressly making scanned ballot images created by the voting system subject to public disclosure. OCGA 50-18-71(k). Physical ballots other than the ballot images that will be part of your certified election project are not subject to public disclosure and are specifically prohibited by law from being open to public disclosure.