



ELECTRONIC PRIVACY INFORMATION CENTER

Statement
Lillie Coney
2007 Post Election Audit Summit
Why Audit for Transparency?
Minneapolis, MN
October 26, 2007

Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both.” -- James Madison

Auditing is typically used in relationship to financial matters. An independent body defines auditing in most settings as an official inspection of an individual or an organization’s accounts. The conditions for effective auditing is dependent on well defined and established rules for conducting reviews called audits. The challenge before the all of us is to create a process that will lead to the establishment of “Generally Accepted Election Auditing Procedures,” which will not compromise voter privacy and be meaningful in a public election.

Auditing is not just concerned with accountability or oversight of the processes and procedures that reports on the health of entity, it is most importantly about transparency. Transparency or open records laws ensure greater transparency, accountability and oversight over the activities of financial institutions, local, state, and federal agencies, and nonprofit organizations. Open records laws are used to support government accountability because we know that disclosure standards; increase accountability of public and private institutions. They are also an efficient and effective means for non-experts to have access to information of concern to the public.

The idea of open records access to the public is not new—it is as old as this great nation of ours. In 1776, the Swedish Parliament enacted the Access to Public Records Act that required that all government-held information be used for legitimate purposes.¹

¹ The Rachel affaire. Judgment of June 16, 1858, Trib. pr. inst. de la Seine, 1858 D.P. III 62. See Jeanne M. Hauch, Protecting Private Facts in France: The Warren & Brandeis Tort is Alive and Well and Flourishing in Paris, 68 Tulane Law Review 1219 (May 1994).

In 1966, the United States enacted its own open records law called the Freedom of Information Act. The law went into effect in 1967 and established for the first time a statutory right of access by any person to federal agency records. The Freedom of Information Act as a good government initiative that has successfully combated fraud, waste, and abuse of taxpayer resources. It has also been instrumental in creating uniform means by which the public can access federal agency records.

In 2006, most of the international developments in open government concerned new laws or regulations. Switzerland, Bulgaria, India, Taiwan and Germany all adopted new federal open government laws. All but three European Union countries now have data protection laws. New Zealand adopted a new public records law, and Jordan and Russia have pending open government legislation that has passed at least the first reading required for adoption.

Transparency

Transparency is a key component of a functioning healthy democracy. It can be translated into public policy decisions that allow citizens, policymakers, and the media to assure themselves that a local, state or federal government agency is functioning as intended. In this context, the process of providing transparency is referred to as "open government." Open government can be accomplished in a number of ways, which may include: public meetings, public rulemaking notices, reasonable public comment periods, access to rulemaking proceedings, official reports, and open records laws.²

Audit is a valuable means of providing transparency, but to be meaningful the data or information used as the basis of audits must be available to the public. We are routinely conducting elections on the local, state, and federal level, which do not provide access to election statistics by polling location and precincts. The aggregate total of poll book registrations, total votes cast in each race, total undervotes and overvotes, the machine model, type, and number assigned to the smallest political unit could be available to the public 24 hours following Election Day. Public disclosure of the rules regarding provisional ballots, the meetings schedule of election certification authorities, and the method of contesting elections by member of the public should not be mysteries. Some states and localities do a better job than others in providing access to election related statistics and information. The disparity in making information available online may be related to resources, expertise or routines that have been established over many years.

Historically, the election administration community, voting rights community, media, and partisan efforts looked closely at how elections were managed. This list of constituencies has grown to include technologists, election reform advocates, and concerned citizens.

² Lillie Coney, Testimony, Election Assistance Commission, April 26, 2005, available at http://www.epic.org/privacy/voting/register/eac_testimony42605.html

EPIC does not oppose the use of electronic voting systems, however, we do believe that there should be more care taken to be sure that when technology is adopted that functions as intended. We believe that electronic voting systems are here to stay and that they will improve overtime. However, electronic voting systems must go through a meaningful standards process that will weed out bad designs and flawed technology. Next electronic voting systems should have established audit procedures to be sure that they are functioning as intended before, during, and after elections. Machines can appear to be working--the screen comes on, but that does not mean that everything is functioning like it should. Finally election administrators, poll workers, and voters need more training on the use of electronic voting systems., and election audit data collection.

Audits

Audits are driven by the availability of information. Most individuals have bank accounts which must be reconciled or at a minimum the balance known by both the bank and the account holder. Should we have a disagreement with our financial institution we have access to information that we can rely on to make inquiries. Without the cooperation of financial institutions audits of individual bank accounts and financial services would be very difficult.

If we look at public elections from an auditing frame of mind we should ask do we have access to enough information in the proper format to reconcile the results of elections with our expectations of auditing in other settings. The process of auditing should be a series of review that encompass pre and post election activity. However, an important aspect of public election auditing is the cooperation of local and state election officials. Public election audits would be impossible without the full cooperation of local and state election administration professionals engagement.

Public election officials must also assist with the development of auditing protocol, make the case for public auditing of public elections among peers, and support the professional development of public election auditors. Election officials are indispensable in making the component of transparency of public elections a reality.

Election Administration has fundamentally changed with the introduction of electronic voting systems. However the problems and challenges that they face have not. How will poll worker training change with the requirements of election audits, such as chain of custody, accounting for marked and unmarked ballots, reconciling poll book registrations—both electronic and paper? How will records retention laws be impacted by the introduction of election audits? What resources will be available for training of staff, cataloging and retention of records?

Today it is not enough that vendors assure states that paperless voting systems retain vote information, those systems must be proven to do so. The ability to establish auditing as a routine part of election administration would go a long way in making the case for the reliability of electronic voting systems' use in public elections.

The process of audits should not be limited to the ballot casting, retention, and tabulating processes. It should also include an approach to transparency that supports an end-to-end audit of all electronic voting technology such as electronic poll books and statewide-centralized voter registration databases. For example, pre-election audits might focus on the design of ballots, investigation of statewide-centralized voter registration systems, and evaluation of the readiness of voting systems for use in the election. These audits should be focused on making more transparent the energy, efforts, and focus of making Election Day work for each voters. Demonstrating to voters that public elections are important and that their right to vote is valued may also help encourage greater participation in public elections.

Transparency in the management of voter registration lists is also a vital component of election integrity. Electronic voter registration and centralized registration databases present challenges to accuracy.³ Auditing procedures can facilitate the public knowing when and how voter registration records are created, amended, or active status is changed to inactive. Auditing can also serve the purpose of maintaining more accurate voter registration lists. Transparency would also support the retention of data on those voter registration applications that are rejected, deemed to be invalid or missing vital information related to a successful registration. Computerized voting systems make it possible to retain records related to public elections. The time when physical storage limitations made it necessary to destroy records has passed. Using computing systems to retain vital election statistics and make available to the public statistics and data on public elections can be of great benefit to transparency. However, it must be noted that election information should not violate the voters right to privacy or ballot secrecy. There are many impermissible uses for personal information that if made available in electronic form would be to the detriment of voters. Identity theft, stalking, sexual assault are only a few of the issues that might be of consequence if voter information is made available online without appropriate safeguards to protect voter privacy.⁴

States that have well defined accountability and authorization procedures will be better able to define and establish processes to ensure the security, integrity, availability, and confidentiality of voter registration information. Auditing of voter registration databases should include accountability and authorization procedures functional in a complex data structure. Database such as theses will require the appropriate and correct application of cryptographic techniques and validation that they are being used correctly. As an auditing tool when correctly applied cryptography can assist to create authentication, integrity, and nonrepudiation of database users.

Challenges of Developing Public Election Audits

³ Association for Computing Machinery's Public Policy Committee, USACM, Statewide Databases of Registered Voters, available at <http://usacm.acm.org/usacm/VRD/>

⁴ Electronic Privacy Information Center, available at <http://www.epic.org/privacy/voting/register/>, Public Records Online and Privacy, http://www.epic.org/privacy/dv/DC_Court_records.pdf,

When elections do not go as planned it is also important to study and record that history in the audit process. In any human endeavor we learn more from failure than success. For this reason, auditing should also include a record of systems failures that resulted in lost votes and inaccurate determinations on voter registration.⁵ Ballots lost from electronic voting systems used in North Carolina and Florida in 2004 attest to the need for more rigorous voting technology standards.⁶ There is also a need to ensure routine access to ballot images for recount and election audit purposes. In 2004, California Primary election resulted in a legal challenge, *Soubirous v. County of Riverside*, when a candidate lost an election contest by 45 votes. In 2006, Sarasota County Florida joined this ever-growing list of jurisdictions that have experienced electronic voting system related election failures.

Elections in the past have had difficulty with accounting for paper ballots--they have been lost, damaged, destroyed, manipulated, and forged. As we look at the introduction of paper ballot requirements in auditing of elections should we also engage these issues as well? We should take the best practices learned by the financial services industry and apply them where appropriate to the ballot accounting process. Money is paper with great value--just as ballots hold great value during and following a public election.

Conclusion

⁵ Lillie Coney, Testimony, Election Assistance Commission, August 23, 2005, available at http://www.epic.org/privacy/voting/eac-8_23.pdf

⁶ Voters Unite, Report, Myth Breakers: Facts About Electronic Elections, available at <http://www.votersunite.org/MB2.pdf>

“Electronic Voting Machines Lose Ballots Carteret County, North Carolina. November 2004. Unilect Patriot DRE A memory limitation on the DRE caused 4,438 votes to be permanently lost. Unilect claimed their paperless voting machines would store 10,500 votes, but they only store 3,005. After the first 3,005 voters, the machines accepted -- but did not store -- the ballots of 4,438 people in the 2004 Presidential election. Jack Gerbel, president and owner of Dublin-Calif.-based UniLect, told The Associated Press that there is no way to retrieve the missing data. Since the agriculture commissioner's race was decided by a 2,287-vote margin, there was no way to determine the winner. The State Board of Elections ordered a new election, 10 but that decision is being challenged in the court.

Palm Beach County, Florida. November 2004. Sequoia DRE Battery failure causes DREs to lose about 37 votes. Nine voting machines ran out of battery power and nearly 40 votes may have been lost. ... The nine machines at a Boynton Beach precinct weren't plugged in properly, and their batteries wore down around 9:30 a.m., said Marty Rogol spokesman for Palm Beach County Supervisor of Elections Theresa LePore. Poll clerk Joyce Gold said 37 votes appeared to be missing after she compared the computer records to the sign-in sheet. Elections officials won't know exactly how many votes were lost until after polls close.”

Routinized procedures that allow independent review of accounting information is the method that has developed over centuries. Financial auditing is not limited to counting cash, checks, and vouchers, but the method of accounting for resources held by an institution. The use of the word audit and elections is new and the field is not defined. The nearest approximation of an election audits are recounts, which are often irregular and dependent on contested close elections. We should take care that the work of the Election Assistance Commission to establish guidance on the conduct of elections should not lead to further confusion in the ability of the public, candidates, policy makers or the media to determine what is and is not appropriate in the conduct of public elections. Every phase of the process from the drafting of voting technology standards to the establishment of testing and certification policy should strive for the highest level of transparency and fairness by engaging these every level of the process as well as involving experts from a wide range of disciplines.

To be both efficient and effective audits must become routine. The more often they are conducted the greater the opportunity to perfect the process and ensure integrity in election outcomes. Because this is a new area of auditing it is in need of definitions and administrative procedures to account for the tools of elections and their products in such as way as to ensure the secrecy of ballots and voter privacy.

Thank you
Lillie Coney
Associate Director
EPIC,
Coordinator, National Committee for Voting Integrity
1718 Connecticut Avenue, NW, Suite 200
Washington, DC 20009

Lillie Coney is Associate Director with the Electronic Privacy Information Center (EPIC) in Washington, DC. She is the Public Policy Coordinator for the National Committee for Voting Integrity (NCVI), and has testified before the Election Assistance Commission. She served on the Brennan Center Taskforces on the Security and Usability of Voting Systems. She also served as a member of the ACM Committee on Guidelines for Implementation of Voter Registration Databases. She participated as a contributor in the academic paper "Towards a Privacy Measurement Criterion for Voting Systems." She has written several law journal articles on voting, and contributed to the development of the Election Incident Reporting System. She is a contributor to the New York Times Best Seller, 50 Ways to Love Your Country. She serves in an advisory capacity to several organizations, which include Verified Voting, ACCURATE, Voting System Performance Rating, and Open Voting Consortium. She is also on the board of Computing Professionals for Social Responsibility.