

January 13, 2006

Re: Diebold's Position on Releasable Materials for Open Records Requests

Diebold Election Systems, Inc ("DESI") submits documents to state agencies and customers for the purposes of the certification and sale of DESI's voting system products; however some of these documents are confidential, trade secret, and are not subject to Open Records Requests or Freedom of Information Act Requests ("FOIA"). Other proprietary documents are protected by copyright and if not confidential or trade secret, they can be viewed in the presence of a public official but not copied. There are some documents that can be released to a FOIA request if they are not confidential, trade secret or protected by copyright.

If confidential, or trade secret materials are accidentally or intentionally released by public officials and that release constitutes a violation of DESI's license agreement, confidentiality agreement or any other agreement which restricts the disclosure of DESI's trade secret, confidential or proprietary information, or such disclosure is a violation of state or federal law, DESI may seek all legal and equitable remedies available to it.

Any document that DESI has marked "Confidential" in its submissions to any state agency or customer, cannot be released to a FOIA request. Although there are variations in state laws regarding what can and can't be released through a FOIA request, any questions regarding these materials must be directed to DESI's Division Legal Counsel or Compliance Officer, since the burden of defending the confidentiality of these documents will likely fall on DESI. DESI will be glad to assist any state agency or customer in respect to identifying the grounds for not releasing the information.

Any proprietary documents that DESI has marked with a copyright notice in its submissions to any state agency or customer, if not marked confidential, such documents can viewed in the presence of a public official but not copied or distributed. Copying, distributing the material or allowing notes to be taken from the material may violate the Federal Copyright Protection Act. In most instances, DESI's express written permission must be given to authorize any materials protected by copyright, to be copied or distributed. Since the burden of defending the commercial value of these documents will likely fall on DESI, DESI will be glad to assist a state agency or customer in respect to identifying the grounds for not allowing the information to be copied.

Documents that pertain to a state certification or the sale of DESI voting system products and which are not confidential, trade secret, or are not protected by copyright can be released to a FOIA request. There may be cases where only a portion of a document can be released as the document may contain confidential, trade secret information or information protected by copyright. In those cases where a portion of the document contains confidential, trade secret or copy protected material, such protected language would have to be removed or redacted from the document before the balance of the information could be released to a FOIA request.



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The purpose of FOIA legislation is to allow the actions of governing authorities to be open to public inspection to ensure that the public's best interests are being served. However, the public's interest is not served by compromising a vendor's ability to compete or compromising the marketing viability of a vendor. When there is potential conflict between these points, then there needs to be discussion between the public officials and the vendor to ensure that no action is taken on a FOIA request that would violate DESI's legal rights, state or federal laws.

If a state agency or a DESI customer has any questions regarding DESI's position on releasable materials for FOIA requests, please contact DESI's Division Legal Counsel or Compliance Officer at 469.675.8990.