City Clerk's Office



210 Martin Luther King, Jr. Boulevard, Room 105, Madison, WI 53703-3342 voting@cityofmadison.com • licensing@cityofmadison.com • clerk@cityofmadison.com www.cityofmadison.com/clerk • www.cityofmadison.com/election Phone: 608 266 4601 • Fax: 608 266 4666

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January 16, 2025

State of Wisconsin Elections Commission 201 W. Washington Ave. P.O. Box 7984 Madison, WI 53707

Dear Commissioners,

The City of Madison Clerk's Office respectfully submits the following answers to the questions presented in the January 2, 2025, Commission Request for Information and Open Records. The training materials requested are online and linked at the end of this response. The Clerk's Office records custodian has provided some documents and is working gathering additional documents. Please note that this response anonymizes the names of part-time and frontline staff of the Clerk's Office in order to provide some level of privacy given the threats and harassment regularly received by election officials in recent years. The City will provide the names of those employees if the Commission believes it is necessary for its evaluation. This response does identify the Clerk and Deputy Clerk when their activities are included in a response.

- 1. As to the 67 ballots for Ward 65 and 1 ballot for Ward 68:
 - a. When did those ballots arrive in your office and in what manner did they arrive (mail, inperson delivery to clerk, in-person absentee vote, dropbox, etc.)?

These absentee ballots arrived at the Clerk's Office between October 21 and October 28, 2024. When the Clerk's Office scans the barcode on each absentee envelope as Returned, the status in WisVote is updated to Returned but WisVote does not reflect the manner in which the absentee ballot arrived back to the Clerk's Office. Most of these absentee ballots were issued to in-person absentee voters, though, so the Clerk's Office knows that most were cast at an in-person absentee voting site. Some of these absentees were recorded as issued by mail, but those voters could have returned them in a variety of manners.

b. Upon their arrival in your office, were they entered into WisVote?

Yes.

i. If they were entered into WisVote, when were they entered?

October 21 through October 28, 2024.

ii. If they were not entered into WisVote, why not?

N/A

c. When did you discover that these ballots were not included in the tally?

On November 12, 2024, the Clerk's Office suspected ballots were not included in the tally when an employee found a sealed courier bag. On November 26, 2024, the Clerk's Office discovered a discrepancy in WisVote indicating the ballots were not included in the tally. On December 4, 2024, the Clerk's Office confirmed that ballots were not included in the tally when they unsealed the carrier envelope located in the courier bag which had been resealed on November 13, 2024 after the courier bag was first opened.

i. Who discovered that?

Employee A discovered the sealed courier bag. Employee D discovered the discrepancy in WisVote. Employee D and Employee E confirmed the ballots had not been included in the tally when they unsealed the carrier envelope located in the re-sealed courier bag.

ii. How was it discovered?

On November 12, 2024, Employee A discovered that the tamper-evident security seal was still in place on an absentee courier bag returned in the security cart for Ward 65. This indicated that the absentees sent to the polling place in the courier bag had not been processed at the polls. Employee F unsealed the courier bag on November 13 and saw a sealed carrier envelope inside. Employee F re-sealed the courier bag and put it in the Clerk's Office vault to await the recount the Clerk's Office thought was possible at that time. Employee D discovered the discrepancy of absentee ballots returned not matching the number of absentee ballots counted while completing reconciliation in WisVote. Employee D and Employee E confirmed the ballots had not been included in the tally when they unsealed the courier bag which had been re-sealed and then opened the sealed carrier envelope located in the courier bag.

d. How were the physical ballots discovered?

Among other employees, Employee A was sorting through election materials at the Clerk's Office storage facility. Employee A was organizing hardware supplies such as voting booths, signage, tables, and crowd control stanchions in each security cart. Employee A found the sealed courier bag inside the security cart for Ward 65 when organizing the contents of the security cart.

i. Who discovered them?

Employee A.

ii. Where had they been prior to their discovery?

Immediately prior to the discovery of this courier bag containing physical ballots, the bag had been locked in the security cart for Ward 65.

e. Who in your office was present when the two sealed EL-124 carrier envelopes (Seal #17142 and #29057) were opened?

The seal numbers listed in question 1.e. are for carrier envelopes that were inside the courier bag for Ward 56. The seal number for the one unopened carrier envelope for Ward 65 is #017034.

The Ward 65 courier bag had seal #22119703. Employee F opened the courier bag on November 13, 2024 and then re-sealed the bag with seal #22117341 in anticipation of a possible recount. Later, on December 4, 2024, Employee D and Employee E, employees who were reconciling election participation in WisVote, opened courier bag with the new seal #22117341 and then opened the sealed carrier envelope with seal #017034.

f. Did you notify the City of Madison Municipal Board of Canvassers (Madison Board) that the ballots had not been included in the tally?

Yes, the Clerk's Office has now notified the Madison Board.

i. When did you notify them?

January 2, 2025.

ii. How did you notify them?

The Madison Board was notified via e-mail, to schedule a Board of Canvassers meeting to tally these absentee ballots.

iii. If you did not notify them, why not?

Initially, we did not notify the Madison Board because the local canvass was complete, and the County was certifying the election results.

g. Did you notify the Dane County Board of Canvassers (Dane Board) about these uncounted ballots?

City Clerk Witzel-Behl believes that her office notified one member of the three-member Dane Board, the Dane County Clerk.

i. When did you notify them?

On November 12, 2024, Employee F, a full-time member of the Clerk's Office team, went to the Dane County Clerk's Office in person after the courier bag was discovered.

ii. How did you notify them?

In person. Employee F told Clerk Witzel-Behl that he would speak with the County Clerk, and then he went to the County Clerk's Office in person.

iii. If you did not notify them, why not?

N/A

h. Did you notify the Dane County Clerk or his office (collectively, the Dane County Clerk) about these uncounted ballots?

Yes; City Clerk Witzel-Behl believes that her office notified the Dane County Clerk.

i. When did you notify the Dane County Clerk?

On November 12, 2024, Employee F, a full-time member of the Clerk's Office team, went to the Dane County Clerk's Office in person after the courier bag was discovered.

ii. How did you notify the Dane County Clerk?

In person. Employee F told Clerk Witzel-Behl that he would speak with the County Clerk, and then he went to the County Clerk's Office in person.

iii. Please detail the substance of all communications with the Dane County Clerk regarding these ballots.

Employee F believes he spoke to the Dane County Clerk in his office but cannot remember what the Dane County Clerk said. Employee F is certain that he spoke with someone in the County Clerk's inner office on the afternoon the ballots were discovered, November 12, 2024. While Employee F does not remember what specific direction he received from the Dane County Clerk, City Deputy Clerk Verbick and another Clerk's Office employee, Employee B, recall a conversation with Employee F after he spoke with the Dane County Clerk. In this conversation, City Deputy Clerk Verbick and Employee B recall a general sense that the County would not want the Ward 65 ballots for the County canvass.

i. At any time prior to November 29, 2024, the date of completion of the state canvass, did anyone from your office contact or notify the Wisconsin Election Commission (WEC) regarding these ballots?

No. While Clerk Witzel-Behl gave two separate instructions to two employees to contact the WEC, that contact never occurred. On November 12, 2024, Clerk Witzel-Behl instructed Employee D to notify WEC that the numbers were off in this ward because these absentee ballots should have been counted. In a separate conversation on November 12, 2024, Employee C asked Clerk Witzel-Behl if the absentee ballots should be recorded as rejected in WisVote. That same day, Clerk Witzel-Behl responded that the ballots should not be recorded as rejected in WisVote, but instead to have the reconciliation team inform the WEC that the numbers were off if ballots that should have been counted were not counted.

i. If yes, please detail who contacted the WEC, who they spoke to, when the contact was made, and the substance of the contact.

N/A

ii. If no, please explain in detail why the WEC was not notified and who made the decision not to contact the WEC, and when that determination was made.

On November 12, 2024, Clerk Witzel-Behl gave instructions to two employees to contact the WEC, but that contact did not occur until December 18, 2024. Unbeknown to the Clerk, the employees working on reconciliation saved this task for the end of reconciliation instead of contacting WEC immediately.

2. As to the 125 ballots for Ward 56:

a. When did those ballots arrive in your office, and in what manner did they arrive (mail, inperson delivery to clerk, in-person absentee vote, dropbox, etc.)?

The Clerk's Office received these absentee ballots between September 19 and October 29, 2024. When the Clerk's Office scans the barcode on each absentee envelope as Returned, the status in WisVote is updated to Returned but does not reflect the manner in which the absentee ballot arrived back to the Clerk's Office. Most of these absentee ballots were issued to in-person absentee voters, though, so the Clerk's Office knows that most were cast at an in-person absentee voting site. Some of these absentees were recorded as issued by mail, but the voters could have returned them in a variety of manners.

b. Upon their arrival in your office, were they entered into WisVote?

Yes.

i. If they were entered into WisVote, when were they entered?

Between September 19 and October 29, 2024.

ii. If they were not entered into WisVote, why not?

N/A

c. When did you discover that these ballots were not included in the tally?

December 2, 2024.

i. Who discovered that?

Employee D, one of the Clerk's Office hourly lead workers.

ii. How was it discovered?

Through the reconciliation process, Employee D noticed that there were absentee

ballots marked as Returned in WisVote that were neither counted nor rejected at the polls.

d. How were the physical ballots discovered?

On December 2, 2024, after Employee D realized a discrepancy in WisVote during reconciliation, he searched through materials related to Ward 56. Employee D discovered a sealed courier bag in the supply tote that the Chief Inspector had returned to the Clerk's Office on election night.

i. Who discovered them?

Employee D.

ii. Where had they been prior to their discovery?

Immediately prior to their discovery, the ballots were in two sealed carrier envelopes that were inside a sealed courier bag which was in the Election Day supply tote for Ward 56. This tote remained stored at the Clerk's Office after it was returned by the Ward 56 Chief Inspector on election night.

e. Who in your office was present when the sealed courier bag (Seal #21183883) was opened?

Employee D and Employee E were present when the courier bag with Seal #21183883 was opened on December 2, 2024. After opening the courier bag, Employee D notified Deputy Clerk Verbick. Employee D and Employee E were also present when the carrier envelopes which were inside the courier bag were opened on December 17, 2024. The seal numbers on those carrier envelopes were Seal #17142 and #29057.

f. Did you notify the City of Madison Board of Canvassers (Madison Board) that the ballots had not been included in the tally?

Yes, the Clerk's Office has now notified the Madison Board.

i. When did you notify them?

January 2, 2025.

ii. How did you notify them?

The Madison Board was notified via e-mail, to schedule a Board of Canvassers meeting to tally these absentee ballots.

iii. If you did not notify them, why not?

The Clerk's Office did not notify the Madison Board sooner because it seemed too late for the Madison Board to take any actions regarding these ballots. The County Clerk's Office and the State had already certified the results before the ballots were discovered on December 2, 2024.

g. Did you notify the Dane County Board of Canvassers (Dane Board) about these uncounted ballots?

The Clerk's Office does not believe it notified the Dane Board regarding the uncounted ballots from Ward 56.

i. When did you notify them?

N/A

ii. How did you notify them?

N/A

iii. If you did not notify them, why not?

The Clerk's Office did not notify the Dane Board because it seemed too late for the Dane Board to take actions related to these ballots. The County Clerk's Office and the State had already certified the results before the ballots were discovered on December 2, 2024. Additionally, based on the County Clerk's response to the uncounted ballots discovered in November from Ward 65 and 68, the City Clerk's Office did not believe the County would be interested in the ballots discovered in December from Ward 56.

h. Did you notify the Dane County Clerk about these uncounted ballots?

The Clerk's Office does not believe it notified the Dane County Clerk regarding the uncounted ballots from Ward 56.

i. When did you notify the Dane County Clerk?

N/A

ii. How did you notify the Dane County Clerk?

N/A

iii. Please detail the substance of all communications with the Dane County Clerk regarding these ballots.

N/A

i. At any time prior to November 29, 2024, the date of completion of the state canvass, did anyone from your office contact or notify the Wisconsin Elections Commission (WEC) regarding these ballots?

No.

i. If yes, please detail who contacted WEC, who they spoke to, when the contact was made, and the substance of the contact.

ii. If no, please explain in detail why the WEC was not notified, and who made the decision not to contact the WEC, and when that determination was made.

The Clerk's Office did not contact the WEC prior to November 29, 2024 because the discrepancy was not discovered until December 2, 2024. Although Deputy Clerk Verbick believed that the employees working on reconciliation notified the WEC when the issue was first discovered, that notification did not happen until on December 18, 2024.

- 3. Please describe the existing policies and procedures in your office for each of the topics below, and provide your assessment as the City of Madison Municipal Clerk regarding whether the established policy was properly followed:
 - a. What is the policy or procedure when absentee ballots are received in the clerk's office?

The barcode on each absentee ballot envelope is scanned on the day it is received and the absentee ballot is marked as Returned in WisVote. This procedure was properly followed.

b. Are absentee ballots entered into WisVote prior to being sent to polling places?

Yes. The status of an absentee ballot is marked as Returned in WisVote before it is sent to the polls. This procedure was properly followed.

i. If the answer is no, please explain why not.

N/A

c. What is the policy or procedure for transporting absentee ballots to the polling places?

Absentees received before equipment is delivered to a polling location are sealed in carrier envelopes and placed inside the tabulator cart for delivery. Alternatively, if not every sealed carrier envelope can fit into the tabulator, they are placed inside a sealed courier bag and placed in the same locked rolling security cart as the tabulator. Absentee ballots received after equipment is delivered to the polling places, but prior to Election Day, are scanned and sorted, and absentee carrier envelopes are sealed in courier bags for each polling place to be delivered on Election Day morning.

Once mail is delivered to the Clerk's Office on Election Day and the absentee envelopes are scanned and sorted, absentee carrier envelopes are sealed in courier bags for each polling location to be delivered on Election Day afternoon. A poll worker courier delivers the absentee courier bags to the polls. The Clerk's Office triple checks to ensure no absentees remain in the Clerk's Office or storage facility on Election Day.

The ballots found from Ward 56 and 65/68 were delivered to the polling places for Ward 56 and 65 in sealed courier bags inside locked rolling security carts. All returned absentees are placed

in carrier envelopes, but those carrier envelopes are only placed inside courier bags if they are delivered in the security cart outside of the tabulator. Given the dates on the absentees, the Clerk's Office knows that the ballots in question were delivered to the polling places in advance, and not the day of the election through a poll worker courier. This procedure was properly followed.

d. What is the policy or procedure for receiving absentee ballots at the polling places and ensuring they are all properly processed?

Receiving absentee ballots hand-delivered to polling locations by individuals: If someone hand-delivers an absentee ballot to a polling place, poll workers ask if the person delivering the absentee is the voter. If they are not the voter, the poll workers ask if they are delivering the absentee for a voter who has determined that they need help delivering the absentee due to a disability. Poll workers record the names of voters whose absentees were hand-delivered to the polls on the third page of the absentee portion of the Inspectors' Statement. While not related to the absentee ballots found in courier bags after the election, the Clerk's Office believes this procedure was properly followed.

Receiving absentee ballots delivered to polling locations by the Clerk's Office: Poll workers document the seal number of each carrier envelope on the second page of the absentee portion of the Inspectors' Statement, along with the time the carrier envelope was opened and whether the carrier envelope was in the tabulator cart on election morning or was delivered to the polls by a poll worker courier. In Wards 65 and 56, the poll workers did not document the carrier envelopes with seals numbers #017034, #17142 and #29057 because they did not open the courier bags containing those carrier envelopes at the polls. This procedure was properly followed by Wards 65 and 56 for the carrier envelopes that they did open on Election Day.

Before the polls open, each polling location takes its absentee log (printed from WisVote) and highlights the names of voters on the poll book who should be asked if they returned their absentee. Voters who returned an absentee are highlighted pink. Voters who were issued an absentee that was not yet returned to the Clerk's Office are highlighted orange. This procedure was properly followed.

The turnout spreadsheet used by the Clerk's Office on Election Day and available to each polling location through Teams on their iPad lists the number of absentees issued for each ward, and the number of absentees returned as of the Sunday before the election. These numbers are also shared with Chief Inspectors through an e-mail message the day before the election. This procedure was properly followed.

When polling places contact the Clerk's Office with their turnout numbers at 11 a.m. and 4 p.m. on Election Day, the Clerk's Office also asks how many absentees have been processed so far. Ward 65 had processed 20% of its absentees by 11 a.m., but did not provide its numbers at 4 p.m. Ward 56 had processed 11% of its absentees by 11 a.m. and 40.57% of its absentees by 4 p.m. However, the percentages that these Wards provided were not vastly different from other polling locations, so they did not flag a cause for concern at that time. This specific procedure was properly followed in Ward 56, but not in Ward 65.

Chief Inspectors are trained to process all absentee ballots. The end of night Check List for

closing the polls specifically has a section on making sure all ballots are counted including verifying that absentee ballot courier delivery bags and carrier envelopes are empty. <u>This procedure does not appear to have been properly followed in Wards 65 and 56.</u>

e. What is the policy or procedure for storing courier bags, certificate envelopes, and other containers used to transport absentee ballots after the election?

After the courier bags are returned by Chief Inspectors on the night of the election, the courier bags are stored in the storage room at the Clerk's Office in the City-County Building. Certificate envelopes are stored in Used Absentee Certificate Envelopes in the Election Day supply tote for each ward, in the Clerk's Office storage room. In a busy election, if there is not enough space in the Ward's supply tote for all Used Absentee Certificate Envelopes, some are stored in additional bags or boxes near the Ward's supply tote in the Clerk's Office. These Used Absentee Certificate Envelopes are referenced throughout the reconciliation process. Once reconciliation is complete, the certificate envelopes are placed in boxes and either delivered to the County Clerk's Office or sent to the State Records Center. This procedure was properly followed.

f. After an election does your office account for and/or examine the courier bags to ensure all have been returned to your office?

No.

i. If yes, please detail that policy or procedure for doing so.

N/A

ii. If no, please explain why not.

The Clerk's Office typically only sends one courier bag to each polling location. On election night, Chief Inspectors use that bag to return the materials needed for canvass (poll books, results tapes, registrations, Inspectors' Statement, write-in tally sheets, provisional ballots, small security bag containing election memory sticks, etc). The Clerk's Office uses a checklist on the Inspectors' Statement to make sure the Inspectors provide the materials needed for canvass, but that checklist does not include the courier bag itself. Under current procedure, receiving the canvass materials from the Chief Inspector necessarily meant receiving the courier bag from that Ward.

g. After an election does your office account for and/or examine the tabulator bins to ensure all ballots have been removed?

Yes.

i. If yes, please detail that policy or procedure for doing so.

The Clerk's Office empties and restocks every tabulator cart and security cart to prepare for the next election. For federal elections, the City Clerk's Office coordinates with the County Clerk to establish a date that the County will be willing to accept delivery of the

ballot bags which are stored in the tabulator bins. That date dictated when the City Clerk's Office would clean out the tabulator bins to transfer the ballots to the County Clerk. The City Clerk's Office current procedure did not dictate that cleaning out tabulator bins and security carts should occur before the municipal canvass. <u>Current policy was followed properly</u>.

ii. If no, please explain why not.

N/A

4. Please provide the mailing IDs for each of the uncounted ballots.

9068473, 10051235, 10057631, 10057907, 9718730, 10020513, 10075197, 10070142, 10032408, 9413499, 10065638, 10020370, 10047172, 10040530, 10004447, 10037220, 10073246, 10027054, 10065438, 9069271, 10011770, 10079085, 9959680, 10041230, 10017123, 9921596, 9958893, 10058447, 10044442, 10065411, 10028352, 10015247, 10075816, 10036618, 10025620, 10041308, 10028128, 10067603, 10058292, 10076187, 10045529, 10073900, 10005698, 9069344, 10052150, 10022832, 10023411, 10030119, 10082118, 9068433, 10076329, 9959160, 10023439, 10017236, 10044136, 10043307, 10049144, 10065128, 10062810, 10051831, 9069365, 9990759, 10045268, 10059813, 9959581, 10061394, 9070310, 10076086, 9895606, 10137948, 10114551, 10144035, 10061641, 10168722, 10153205, 10165448, 9820835, 9377741, 10148071, 9378377, 9356442, 10140702, 10121431, 9779577, 10248615, 10162742, 10124157, 10166192, 10136894, 10135274, 10112037, 10130506, 10134779, 10142368, 10127746, 9047985, 9047649, 10153157, 9940186, 10157342, 10142353, 10169333, 9802833, 10175206, 10124634, 10179550, 9047375, 10262050, 10132489, 9360458, 10183548, 10157314, 10155355, 10244804, 10134222, 10035815, 10123428, 10277432, 9846364, 9476887, 10178560, 10164597, 10182985, 10267226, 10115167, 10179066, 9945045, 9911545, 10147590, 10170096, 10144027, 10143688, 10127585, 10180871, 9048027, 10250959, 10118602, 10152185, 9394919, 10121596, 9940260, 10168426, 10053291, 10060487, 10018525, 10007616, 10017004, 9685713, 9688513, 10074149, 10041257, 9720280, 10028914, 10075339, 10039242, 10042466, 10078728, 10076413, 10012007, 10016379, 10024099, 10008946, 10078282, 10060214, 10035025, 10056385, 10078759, 10076462, 10082541, 10041704, 10080896, 10035428, 10047503, 10077253, 10023963, 10022787, 10027381, 10009628, 10029514, 10011159, 10078803, 10030861, 10056764, 10040539, 10011935, 10039526, 10078132, 10053100, 10052992, 10039712, 10019013, 10079311, 10010594.

Training Materials:

Our records custodian is working on gathering the documents requested. The following training materials responsive to records request 6 are available on our website:

- Webinar training for all poll workers
- <u>PowerPoint slides</u> used in the webinar training
- PowerPoint slides used for the Chief Inspector training sessions via Zoom
- Quick Guide used by poll workers processing absentees at each polling place

- Quick Guide used by poll workers remaking absentees at each polling place
- <u>PowerPoint slides</u> sent to each polling place in the absentee processing binder that also contains an ineligible voter list and the absentee log for that ward
- Absentee Processing Observer Guide available at each polling place
- Flashcard Guide used by poll workers processing absentees at each polling place
- Questions submitted by poll workers and answers to those questions are posted on our website as poll
 workers submit questions about the webinar.

Reflections:

Although not specifically requested by the WEC, we are including some reflections that might be helpful for other clerks so they can learn from our experience and any errors.

- Keeping a log of carrier envelope seal numbers in our office did not help our poll workers. In the future, the poll worker who serves as an absentee courier will also bring each polling location a list of their carrier envelope seal numbers to be used as a checklist.
- Although the number of absentees issued for each ward is sent to our Chief Inspectors electronically, those numbers may not be readily available to the poll workers processing absentees. Chief Inspectors pick up their Inspectors' Statements the Saturday before Election Day. We may add a line to the Inspectors' Statement underneath the number of absentees processed, asking, "Does this number make sense, given X absentees were issued and Y absentees were returned as of last Friday?
- Although the "Chief Inspector Check List for Closing the Polls" already has reminders about making sure all ballots are counted, including checking any absentee ballot courier delivery bags to ensure they are empty, we may add a separate task sheet to our end-of-night checklist for the polls, specifically for making sure all absentees have been processed.
- Based on recommendations from our Municipal Board of Canvassers, we may adjust end-of-night
 procedures at the polls to include steps that all envelopes will be placed on a table for the Chief
 Inspector to review, and all supplies will be put away in an orderly fashion.
- On election night, we check each Inspectors' Statement for completeness. If the number of voters does
 not equal the number of ballots counted, we review the relevant incident to determine if that ward
 needs to be reconciled immediately. We will add a review of absentee numbers to that process.
- We learned from these incidents that we need to dig through all materials returned from every polling place before the municipal canvass. It currently takes over 100 hours to recombobulate the supply totes, so this may mean that each Chief Inspector needs to spend an hour in the Clerk's Office on Wednesday or Thursday of election week.
- We have been relying on seasonal employees for reconciliation tasks. In the future, we will have seasonal employees record voter participation but will have each full-time employee in the Clerk's Office responsible for reconciling 10-12 wards as quickly as possible.

- We will develop Standard Operating Procedures for this type of incident, including who to notify, how
 to notify everyone, what to document, and what to prioritize. We wish we would have included this
 scenario in a tabletop exercise. Given the exhaustion clerks experience the week after an election,
 having processes and procedures already in place would have made a world of difference.
- We need to get on the same page as the County Clerk regarding the appropriate time and place to count ballots that should have been counted at the polls on Election Day but were not counted.

Please let us know if you have any additional questions.

Sincerely,

Maibeth Witzel-Behl Maribeth Witzel-Behl City of Madison Clerk