

Public records--state owned computers

Number: INFORMAL

Date: September 25, 2001

Subject:
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The Honorable Katherine Harris
Secretary of State
State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Secretary Harris:

I am writing to correct whatever misconceptions may have arisen as a result of recent media reports pertaining to the 2000 presidential election. Specifically, I am referring to articles in the July 17 editions of The St. Petersburg Times and The Tampa Tribune, which touched on the issues of public records and absentee ballots.

In its article, The St. Petersburg Times cited your general counsel as saying that her counterpart in my office "initially" stated that any material in a state-owned computer is public record, but that a recent Pinellas County court ruling found that personal e-mail between public employees, even on government-owned computers, is not. Use of the word "initially" would suggest this office has retreated from its position that material on state-owned computers, unless specifically exempted by the Legislature, is a public record. Nothing could be further from the truth. While a circuit judge may have upheld a city's decision to withhold personal e-mail for certain employees, we consider that decision to be limited to that case and not applicable to other agencies. Moreover, that case is currently on appeal before the Second District Court of Appeal and thus is by no means dispositive on this issue. It remains the position of this office that material on state-owned computers is public record unless it falls under a specific legislative exemption.

In its article, The Tampa Tribune attributed to your spokesman the comment that your decision to count overseas absentee ballots postmarked after the November 7 election date was supported by me. To clarify the record, please note that my position on overseas ballots centered on the reported rejection of military ballots for failure to bear postmarks of any kind. In a November 20, 2000, letter to Florida elections supervisors, I stated that state and federal law supported the counting of overseas military ballots from qualified voters if the ballot was postmarked no later than the date of the election or the ballot was signed and dated no later than the date of the election. In essence, it was my position that envelopes bearing no postmark should not be immediately discarded, but rather should be opened to determine whether the ballot inside was signed and dated no later than election day. It was never my contention that overseas ballots postmarked after the November 7 election date should be counted, only that those military ballots bearing no postmark should be more closely scrutinized to determine whether a valid voting date could be determined.

Thank you for this opportunity to clarify this office's positions on these matters.

Sincerely,

Robert A. Butterworth
Attorney General

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