



**REPORT OF THE OFFICE OF THE  
ATTORNEY GENERAL ON THE INVESTIGATION  
CONDUCTED PURSUANT TO SECTION 4-61dd OF  
THE CONNECTICUT GENERAL STATUTES**

**ALLEGATIONS THE SECRETARY OF THE STATE  
USED STATE RESOURCES FOR POLITICAL  
ELECTION PURPOSES**

**AUGUST 2010**

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## **EXECUTIVE SUMMARY**

Susan Bysiewicz has served as Connecticut's Secretary of the State since 1999. Early in her tenure as Secretary of the State, her Office created a computer database to manage her schedule and the contact information of the multitude of citizens who interact with a statewide elected Constitutional Officer.

The Secretary's Office created this database in 1999-2000 as an "electronic rolodex" using a rudimentary database program included with the software package installed on office computers. In 2007, the Office of the Secretary of the State purchased a professional-grade database program that provided significantly greater functionality to the Secretary of the State and her Executive Staff. By 2010 this database included contact records for more than 35,000 individuals. Since mid-2007, the Office of the Secretary of the State has spent approximately \$35, 300 to purchase, upgrade and support this database, and to train staff in its use.

The Auditors of Public Accounts and the Office of the Attorney General received allegations concerning this database, beginning in the fall of 2009. These allegations generally claim that the Secretary of the State's database is a political election device masquerading as a legitimate aid to assist her office in carrying out the agency's constitutional and statutory responsibilities. They include allegations the Secretary has misused state employees and resources to purchase and maintain a political election database to support her in political partisan elections. New substantive allegations concerning the inclusion of campaign-created information in the state database were received in May 2010, delaying completion and release of this report.

This Office has examined both contact information databases, including the facts and circumstances of their creation, purchase and use by the Office of the Secretary of the State and Secretary Bysiewicz. We report on six specific uses of the database cited in support of the allegations that the database is a personal political election device paid for with state funds. Our investigation interviewed under oath 22 individuals, including current and former employees of the Office of the Secretary of the State, volunteers and paid campaign staff of Friends of Susan, 2010, Inc., and Secretary Bysiewicz. We obtained and examined numerous documents provided by these witnesses and the Office of the Secretary of the State.

Secretary Bysiewicz, her Office, her campaign and all witnesses cooperated with our investigation, providing information, sworn testimony and documents.

## **FINDINGS**

Databases serve a legitimate state purpose for state agencies and officials, allowing them to keep a record of groups or individuals who contact the agency or official for assistance or information, to establish lists of groups or individuals who may be participating in particular agency sponsored functions or events, to record the names of groups or individuals who may be assisting the agency's or the official's fulfillment of its statutory functions, and to note the names

of groups or individuals who have concerns or comments expressed at meetings or speaking engagements.

In some instances information in state agency databases may be useful to state officials as part of a campaign for elective office, even if it is not initially collected or retained for a political purpose. For example, the first whistleblower complaint was filed by an individual who contacted the Office of the Secretary of State and subsequently received campaign material from a Susan Bysiewicz campaign organization. Because the information in many state databases is a public record under the Freedom of Information Act (FOIA), subject to statutory or court determined exemptions from disclosure, campaign committees or any member of the public may legally obtain such databases by making a FOIA request.

State law prohibits state employees in the classified service from engaging in political activity on state time and from using state equipment for political purposes. Conn. Gen. Stat. Sec. 5-266a(b). The Chief State's Attorney's Office has determined that the prohibitions contained in Conn. Gen. Stat. §5-266a(b) do not apply to unclassified state employees.<sup>1</sup> This gap is particularly problematic because information that serves a state purpose could also serve the purposes of a political campaign. The State Elections Enforcement Commission has also stated that it does not have jurisdiction over the use by state employees of state equipment for political matters.<sup>2</sup>

In 2008, we strongly recommended a change in state law to prohibit all state employees from using state time and equipment for political purposes. Without such a statutory reform, it is extremely difficult if not impossible to prevent unclassified state employees from using the machinery of state government to greatly benefit political campaigns for elective office by, for example, creating databases of information specifically for campaign purposes. As we have urged before and we reiterate now, the law must be reformed and strengthened.

Two unchallengeable principles should underlie the law: It is legal and appropriate for state agencies and officials to create and maintain databases to perform their responsibilities to the public and the state. It is not appropriate or proper for state agencies and state officials to create and maintain databases for the purpose of assisting political campaigns or political activities or to include information in state databases that is only useful for campaign purposes. Current law fails to incorporate these principles clearly, explicitly and enforceably. The statutes are plainly inadequate to stop practices that may be improper and inappropriate. Indeed, there is no prohibition at all on unclassified state employees engaging in political or campaign activities on state time. Only actions taken for clearly political purposes that involve the work of classified state employees on state time or using state equipment or property violate Section 5-266a(b).

Based on the sworn testimony and evidence this office obtained in this investigation, we reach the following conclusions:

- The Office of the Secretary of State and Susan Bysiewicz created a state database using ACT!, a commercially available database

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<sup>1</sup> Ex 145

<sup>2</sup> Ex 13

product, for legitimate state purposes to enable the agency and the Secretary of the State to properly fulfill their duties and responsibilities to the public. By February 2010, this database included contact records for more than 35,000 individuals. Each was assigned a unique contact number and appears under column headings that describe the person's connection to the Office of the Secretary of State. Approximately 16,870 names appeared in column headings identifying elected officials, over 3000 in column headings identifying participants and others connected to the Office's small and minority owned business program and 1,241 appeared in a column heading identifying individual constituents.

- The Secretary and her Executive Staff used the ACT! database extensively to manage and track individual constituent inquiries and responses; to provide information, training and support to local elections officials, including the transition to new voting technology and implementation of federal election laws; to communicate with partner organizations, advocacy groups and individuals about agency business, including legislative updates, elections, business filings and official agency events.
- On February 3, 2009, the campaign organization known as Friends of Susan 2010, Inc. (FOS), made a Freedom of Information request for the Secretary of State's Act! database information in electronic format. This request for information was drafted by Michelle Gilman, the Secretary of State's Chief of Staff, using her own personal e-mail account during non-work hours. The FOIA request was transmitted by Jason Doucette, Secretary of FOS, to Lesley Mara, Deputy Secretary of the State. On February 9, 2010, Ms. Gilman delivered a compact disc with the information requested to Ellen Graham, Finance Director of FOS.
- The database information was requested and transmitted in accord with state law. Because she is an unclassified state employee, state law does not prohibit Ms. Gilman from engaging in political activity, even on state time. Conn. Gen. Stat. §5-266a(b). In drafting the FOIA request, Ms. Gilman did not use state equipment or state time for campaign purposes. To the extent she and other OSOTS employees used state time to comply with the FOS's FOIA request, use of state time for such purposes is authorized by FOIA. According to testimony, however, Ms. Gilman violated her agency's policy on FOIA record keeping by failing to make an agency record that she had delivered information to FOS in compliance with the FOS Freedom of Information request.

- Agency personnel testified that the agency did not charge FOS for complying with its FOIA request because the agency did not incur any expense in complying with the request. State law does not require agencies to charge fees for compliance with FOIA requests, but if such fees are assessed, they must be in accord with Conn. Gen. Stat. 1-212, which generally limits fees to the costs incurred in complying with a request for information.
- Although the Secretary of the State's database contained information that was an appropriate part of a state agency database, it also contained information that appears to have been created on a computer used in a Susan Bysiewicz political campaign for elective office -- information added from the campaign itself.
- A file titled "New List Excel.xls," created on October 27, 2006 on a "Susan Bysiewicz Campaign" computer was last edited on April 11, 2007 on a Secretary of the State computer. This file was entered into the Secretary of the State's database more than three years ago on April 12, 2007. The campaign computer on which this file was created cannot be found. This file contained 6,741 records of contact information for individuals, including addresses, telephone numbers and email addresses. There is no evidence indicating why this list was created, or how it was used by the "Susan Bysiewicz Campaign." While some individuals on the list appear to have been donors to the campaign, others were not. Although more than half of the names in this file were already on the Secretary of State's database when this file was uploaded into the state database in April 2007, there is no evidence demonstrating that the inclusion of this information in the state database was related to the official duties of the Office of the Secretary of the State.
- At the time this upload occurred, the Secretary of the State's database was installed on the desktop computer of the Executive Assistant who kept the Secretary's schedule. The database was not connected to other agency computers by a network. Data could be entered into the database only through this one computer. According to testimony, two additional Executive Assistants had the password needed to gain access to the scheduler's computer. One of these Executive Assistants, the Chief of Staff, supervised the other two. Under oath these three Executive Assistants each denied having uploaded the campaign records, or knowing who did. Under oath the Secretary and her Deputy denied having uploaded the campaign records or knowing who did.

- There is no apparent legitimate state purpose for these campaign records to have been stored in the Secretary of the State's state database and it was inappropriate for those records to be placed into that database. These records were a part of, and included in, the database produced by the Office of the Secretary of State to Friends of Susan 2010, Inc. in responding to its 2009 FOIA request.
- After extensive review of emails and after examining under oath numerous individuals who may have had information about the upload of the campaign file to the Secretary of the State's database, we were unable to develop sufficient information to substantiate who included these campaign records in the Secretary of the State's database or the purpose for including them. Secretary of the State Bysiewicz testified that she was not involved in uploading this information into the state database and had no knowledge or information as to who did.
- Because there is insufficient information to determine who included these campaign records in the state database and for what purpose, we are unable to conclude whether Section 5-266a(b) was violated. If a classified state employee participated in the upload of the campaign records, the provisions of 5-266a(b) could well have been violated.
- The Secretary of the State's database contains 5400 records under a column heading "holiday cards." According to the testimony presented, the Office maintains records of individuals who send holiday cards to the Office. The Office of the Secretary of the State does not send holiday cards. Keeping a record of individuals or groups who send holiday cards to the Office of the Secretary of the State is not illegal. This holiday card information was transmitted to Friends of Susan pursuant to the February 3, 2009 FOIA request. In December 2009, Friends of Susan paid a Norwich printing company to print, address and mail 11,850 holiday cards.
- The ACT! database includes column headings for race, ethnicity and religious affiliation. Our investigation received testimony and documents showing the Office used these column headings, not to classify specific individuals by their race, ethnicity or religion, but to identify persons connected to specific Office activities, such as voter registration drives intended to increase voter registration among minorities or ceremonies recognizing Jewish Cultural Heritage Day. The question is whether these column headings are appropriate in this type of state database. Clearly, they are not.

Maintaining general information on individuals or groups participating with the Office of the Secretary of the State in its official duties is a proper state function, but classifying or categorizing people based on race, ethnicity and religion is inappropriate.

- We examined 9 “special note” entries that include descriptions of the contact’s medical issues, choice of clothing and favored political candidates. Testimony shows Secretary Bysiewicz created some but not all of these entries. We confirmed that all of these entries were entered in the database prior to June 2007. These types of “special note” entries do not appear to be appropriately included in a publicly available state database because they possibly implicate personal privacy interests. The Office of the Secretary of the State has modified or removed some of these entries at the request of an individual, or the office determined the information was out of date or no longer accurate. The Office of the Secretary of the State should review all such “special notes” to determine if they are properly part of a publicly available database.
- The Office of the Secretary of the State provided the contacts data field of ACT! in response to various FOIA requests. The Office subsequently learned this field included the home addresses of persons the agency is prohibited by statute from disclosing such as firefighters and correction officers. In March 2010, after consultation with staff at the Freedom of Information Commission, OSOTS edited approximately 1,000 records to delete these home addresses. OSOTS should further review other column headings in ACT! to determine if they include information that is not properly part of a publicly available database.
- The ACT! database includes a check box to mark if a contact is a “delegate” or “federal delegation.” Our review of database records shows that for the years 1998, 2000, 2002, 2004 and 2008, many records are marked as Democratic Party delegates while few or none are recorded as Republican Party delegates. Witnesses, including Secretary Bysiewicz, testified the Office of the Secretary of the State routinely asks both political parties to provide their delegate lists, and testified that the Republican Party has not complied with these requests. The Office of the Secretary of the State’s efforts to obtain the list of Republican Party delegates appear to have been indirect and minimal.
- According to the testimony presented, the names of many delegates may appear in the ACT! database because they are also local elected officials or members of town committees. The

Secretary of the State's office has some statutory involvement in primaries of town committee members. Conn. Gen. Stat. §§ 9-435, 9-437(j)(1)-(5). Prior to 2004, the Secretary of the State also had some statutory involvement in convention delegate primaries. While Public Act 03-241 eliminated convention delegate primaries, in certain limited circumstances, the Secretary of the State continues to receive a list of the names and votes of each delegate of each town delegation. Conn. Gen. Stat. §9-385a.

- Compiling and including names of political party delegates in a state database is not illegal. Sworn testimony states that similar information was requested from the Republican Party, but was not provided. Efforts to obtain that information appear to have been indirect and minimal. The Office of the Secretary of the State was unable to produce any written requests for the names of Republican Party delegates. Considering sworn testimony that delegate information was requested from both the Democratic and Republican parties and the pre-2004 and current statutory role of the Secretary of the State relating to political party convention delegates -- although very limited--the evidence does not clearly demonstrate that the information on delegates in the Secretary of the State's database was solely obtained to benefit a Susan Bysiewicz campaign. To avoid the appearance of political favoritism, if delegates lists are included, stronger efforts must be made and documented to include the delegates of all political parties.

## CONCLUSION

The sophisticated database maintained by the Office of the Secretary of the State is a useful tool for the agency and the Secretary of the State in fulfilling their responsibilities to the state and public. As developed, it also contained information that would be very useful to a Susan Bysiewicz campaign organization, which presumably is why it was requested by Friends of Susan 2010, Inc. While much of the information placed in the database was related to legitimate state purposes, some of the information maintained, particularly the "special notes," was inappropriate -- even if not demonstrably a violation of law -- for a database subject to public disclosure.

Other information in the database, even if properly included in such a state database, reasonably raises the perception that the database was also maintained to assist in election campaigns by Susan Bysiewicz. Collecting and maintaining a list of holiday cards received by the Office of the Secretary of State is not illegal, but that information was transmitted to the Friends of Susan 2010, Inc. in February 2009, which sent out 11,850 holiday cards in December 2009. Also, the names of delegates relate to the function of the Office of the Secretary of State only in limited statutory circumstances. Even though the Republican Party may not have readily given its delegate list to the Secretary of the State when requested to do so, the efforts to obtain

the Republican Party list appear to have been minimal and indirect. Including only the names of Democratic delegates in the state database gives the reasonable perception that the state database was developed as a useful tool for political campaign purposes.

Additionally, while certain data entered into the database may have had a legitimate state purpose, data heading titles based on religion, race and ethnicity are not proper or appropriate for this type of state database.

While the Office of the Attorney General has no statutory authority to compel remedies administratively, we recommend that the Secretary of the State take prompt steps to remove certain data and categories or headings of information from the data base.

Finally, the perception that this database was created to benefit election campaigns of Susan Bysiewicz is heightened by incorporating information created on a 2006 Bysiewicz campaign computer into the state database, with no evidence indicating how it related to state business. While this office was unable to determine who entered this material or why it was included in the database, the practice demonstrates a lack of respect for the clear separation that must exist between campaign organizations and the Office of the Secretary of State. It also demonstrates a failure on the part of management at the Secretary of State's Office to ensure that its state database only contains information that serves a state purpose.

Most important, we repeat our recommendation from 2008 that state law be amended to prohibit all state employees, classified and unclassified, from engaging in political activity on state time and utilizing state equipment or resources to support or oppose any candidate in a political partisan election.

In addition to providing this report to the Governor and the Secretary of the State, we are forwarding this report to the Chief State's Attorney, the State Elections Enforcement Commission and appropriate legislative leaders for their consideration, most especially in the hope that it will support and advance reform in laws, regulations and practices. We will seek to consult and work with them in this effort to clarify and improve the legal framework.

If additional information comes to light, other remedies or recommendations may be appropriate.

## **REPORT**

Our investigation received testimony under oath from the following:

### **Friends of Susan, 2010, Inc.**

Richard Orr, Volunteer  
Ellen Graham, former Finance Director  
Robert Martino, Volunteer

David Makarewicz, Volunteer  
Jason Doucette, former Treasurer  
David Mason, former Campaign Manager

### **Office of the Secretary of the State**

Susan Bysiewicz, Secretary of the State  
Babette Mantilla, former Scheduler for the Secretary  
Tanya Meck, former Director of Education and Citizenship, former Assistant Secretary of the State, former Chief of Staff  
Maria Greenslade, former Deputy Secretary of the State  
Michelle Gilman, Chief of Staff  
Terry Babcock, Manager of Information Technology  
Michele Rys, Information Technology Analyst  
Lesley Mara, Deputy Secretary of the State  
Valeriano Ramos, Jr., Director of Constituent Services  
Tammy Marzik, Director of Civics Education and Scheduler for the Secretary  
Elizabeth Perfetto, former Executive Assistant  
David Killian, Executive Assistant  
Kristin Moreland, former Executive Secretary

### **Other**

Tom Najemy, Owner and President of Squad 16 Consulting, and an ACT! certified consultant  
Robert Fishman, Executive Director of Jewish Federation Association of Connecticut  
Pamela Sawyer, Member of the Connecticut General Assembly

## **FINDINGS**

### **1. Secretary Bysiewicz's Executive Staff created a contacts information database in 1999-2000**

- As Secretary of the State ("SOTS"), Susan Bysiewicz travelled extensively throughout Connecticut. She met with local officials, including registrars of voters, town clerks, mayors, and first selectmen, regarding voting procedures and laws her Office administers. She met with citizens who often sought assistance from her. She met with legislators and business owners. She attended events at which she was asked to speak. During her many contacts with these and other constituents, Secretary Bysiewicz attempted to make and keep a record of persons with whom she met and their connection to the business of the Office of the Secretary of the State ("OSOTS"), items on which she planned to follow-up and requests for assistance she received.

- Early in her tenure as SOTS, Ms. Bysiewicz’s preferred method of making and keeping these records was to write information on the back of business cards, on napkins, and on scraps of paper. She and her staff referred to these pieces of paper as “shreds.”
- Upon returning to her office, Secretary Bysiewicz would give these “shreds” to her staff, which manually placed them in folders, files or binders designed to hold business cards. Secretary Bysiewicz testified, “So I would come back with business cards, notes on napkins, things that people had handed me, and the first thing that I would try to do every morning when I came to the office was de-shred. That is, follow-up on the questions that were scrawled on napkins, the business cards where someone had written I would like a copy of this bill or please call this mayor, and I would de-shred.”<sup>3</sup>
- Secretary Bysiewicz further recalled, “And so depending on how long I had been out of the office and how many shreds I had accumulated, you know, that could cause some consternation among my staff, but that was the—the priority was to come to the office, de-shred first, because that was sort of my homework. That was shorthand for the homework and follow-up that I had to do with constituents.”<sup>4</sup>
- The Secretary’s staff soon determined they needed a better way to manage the information contained in the shreds. Tanya Meck, an Executive Assistant in the OSOTS from January 1999 through May 2004, recalled that managing shreds in part drove the decision to create an office database. “We called them shreds because that’s what they looked like. It could be a business card. It could be a corner torn off a notebook or a napkin, you know, not something that we could even conceivably put into a file folder and get any use out of it later on. And so, yes, so we would have piles of what we called shreds and we needed to do something with them.”<sup>5</sup>
- Maria Greenslade served as Deputy Secretary of the State from 1999 to December 2005. She explained, “what I recall is we discussed that we needed to do something with these pieces of paper because if Secretary Bysiewicz asked for Attorney John Smith, we would have to look through the stack of cards, we would have to look through a—you know, we had one of those booklets that had business card slots in it. And so we would have to look through there to find who this person was, and that seemed a little inefficient at the time.”<sup>6</sup> Ms. Greenslade recalled having conversations about these pieces of paper with others in the Office, including Secretary Bysiewicz, “within the first few months of being with the office, maybe two, three, four months. Because stacks were starting to pile up on a desk.”<sup>7</sup>

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<sup>3</sup> SB Tr. 31: 13-20

<sup>4</sup> SB Tr. 31: 21-25; 32: 1-2

<sup>5</sup> TMeck Tr. 15; 16

<sup>6</sup> MGreenslade Tr. 7: 8-16

<sup>7</sup> MGreenslade Tr. 9: 6-10

- Babbette Mantilla served as an Executive Assistant and Secretary Bysiewicz’s scheduler from January 1999 through July 2004.<sup>8</sup> She volunteered to assist Ms. Bysiewicz with her political work after she took office as SOTS in 1999<sup>9</sup>, which Ms. Mantilla testified she did during non-work hours.<sup>10</sup> Ms. Mantilla recalled that Ms. Bysiewicz and Ms. Meck explained their desire to have a way to keep track of people and the contacts Ms. Bysiewicz made with these people in her political campaigns. They wanted to “keep track of pieces of information that would be useful to her politically, such as whether they were her supporters, other connections they may have had, groups they belong to, things like that.”<sup>11</sup>
- Ms. Mantilla explained that she, being far more computer savvy than Ms. Bysiewicz or Ms. Meck, suggested making a campaign database.<sup>12</sup> She created on Ms. Bysiewicz’s campaign laptop computer a database using Microsoft Access to manage the contact information the Bysiewicz campaign had accumulated during the 1998 campaign. Ms. Mantilla recalled she created this database within her first year of employment with the OSOTS.<sup>13</sup> Ms. Bysiewicz supplied almost all of the data Ms. Mantilla put into the database.<sup>14</sup>
- Secretary Bysiewicz and Tanya Meck “were very happy” with the database.<sup>15</sup> They asked Ms. Mantilla if she could create a similar database for OSOTS to manage constituent contacts including the shreds, and keep track of the Office’s actions on request for assistance.<sup>16</sup>
- Ms. Mantilla created a database for the OSOTS using Microsoft Access. She estimated she completed this database within six months to one year after she created the Bysiewicz political database.<sup>17</sup> She started with the “shell” from the database she had created for the Bysiewicz campaign, which she described as the column headings or fields and “table relationships that would allow a database to do things like link journals with people, because it was a relational database.” At this point in time the Office database showed column headings copied from the campaign database, but no data.<sup>18</sup>
- Ms. Mantilla and Ms. Meck testified they then went through the contact records in the campaign database and determined which were appropriate to include in the Office database. People or groups who did not have a “natural official business connection to the office” were not included. For example, Ms. Mantilla would not include a numerical entry indicating whether a person was a supporter of Ms. Bysiewicz or a donor to her

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<sup>8</sup> BM Tr. 6: 1-2; 16

<sup>9</sup> BM Tr. 12: 17-19

<sup>10</sup> BM Tr. 13; 14; 16

<sup>11</sup> BM Tr. 15: 9-15

<sup>12</sup> BM 16: 1-7

<sup>13</sup> BM Tr. 17: 9

<sup>14</sup> BM Tr. 20: 12-15

<sup>15</sup> BM Tr. 21: 6-9

<sup>16</sup> BM Tr. 21: 20-24

<sup>17</sup> BM Tr. 45: 19-20

<sup>18</sup> BM Tr. 27: 14-21

campaign. Where the entry reflected a natural official business connection to OSOTS, such as identifying a person as a member of a town political party committee, Ms. Mantilla would include this entry only where she included in the database a record for all town committee members of all political parties. Where OSOTS did not have this information on file, Ms. Mantilla, Ms. Meck or Ms. Greenslade would follow a procedure for requesting this information to include in the Office database.<sup>19</sup>

- Ms. Meck recalled Secretary Bysiewicz “talking about needing a way to access data and manage the constituent requests in her office. And I remember both her and her deputy being very clear that this was a different database than the campaign’s and it needed to be state appropriate.”<sup>20</sup>
- Ms. Greenslade, explained that it was appropriate for the office database to include information for registrars of voters because they were clients of OSOTS. She testified that because it was a state database, it was important to include the registrars of both political parties.<sup>21</sup> Ms. Mantilla and Ms. Meck extensively vetted these records before including any in the Office database, according to their testimony.
- Secretary Bysiewicz instructed her staff to include only data records that were appropriate for an official state agency database. She recalled “having a detailed discussion with Maria Greenslade, my Deputy at the time, about what kinds of information would be helpful and appropriate for our office...because I wanted to make sure that whatever it was that we would put into that database would be appropriate.”<sup>22</sup>

## **2. Secretary Bysiewicz and her Office used the Access database for official agency business from 1999-2000 until mid-2007.**

- The Secretary’s Executive Assistants used the Access database to keep track of people who contacted the Secretary and to prepare the Secretary for meetings, events and speaking engagements. Her scheduler would print out sheets containing information for those contacts that might be present at an official Office function, or those who had asked the Secretary to return their calls. The Secretary used these “call sheets” to prepare, and would write information on the call sheets reflecting conversations, requests or events that occurred.<sup>23</sup>
- Lesley Mara, Deputy Secretary of the State since January 2006, recalled Secretary Bysiewicz “receives calls every day from mayors, first selectmen, registrars, clerks, and she used the system as a way of tracking her discussions, commitments she might have made about things to follow up on, as an office.”<sup>24</sup>

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<sup>19</sup> BM Tr. 27-35; TMeck Tr. 14-19

<sup>20</sup> TMeck Tr. 15: 9-13

<sup>21</sup> MGreenslade Tr. 12; 13

<sup>22</sup> SB Tr. 22: 13-22; 23: 13-15

<sup>23</sup> BM Tr. 42: 15-25; 43:12-25; TMarzik Tr. 11: 2-15

<sup>24</sup> LM Tr. 39: 13-20

- Secretary Bysiewicz explained the call sheets “were convenient because whenever I went, I could be making calls, you know, from the car or from other locations, and making notes. And then, you know, on any particular day, I would finish making calls. And often my staff would, when someone calls my office, instead of giving me a pink message slip, they hand me a call sheet so that I could look at the call sheet and be reminded of the different issues that we have worked with that person on and then make appropriate notes. And when I’m done at the end of the day, I hand back all the call sheets and Tammy [Marzik] or Babette [Mantilla] would input that information.”<sup>25</sup>
- The Access database made the Secretary and her Executive staff employees more efficient in their work. The Access database, however, had significant limitations. It resided only on the computer of the Executive Staff person whose duties included being the Secretary’s scheduler. The Access database was not tied into a network that would allow Executive Staff to use the database from their own desktop computers.<sup>26</sup>
- OSOTS’s Information Technology (“IT”) division did not support the Access database. OSOTS’s IT manager learned of its existence only when called in to recover data when the computer on which it resided crashed.<sup>27</sup>
- OSOTS could not send e-mails to targeted groups, such as newsletters or mass e-mailings regarding legislative matters and issues regarding the switch to new voting machine technology.<sup>28</sup>
- The Executive Assistant responsible for constituent services kept track of his correspondence on an Excel spreadsheet that was not included in the Access database.<sup>29</sup>

### 3. OSOTS replaced the Access database with ACT! by Sage in June 2007

- Michelle Gilman started work as Chief of Staff to Secretary Bysiewicz January 22, 2007.<sup>30</sup> Ms. Gilman was familiar with the capabilities of computer databases to assist public officials in the performance of their duties from her constituent service work during more than twelve years of employment with Senator Dodd and Congressman Gejdenson.<sup>31</sup> She recognized the limitations of the Access database and recommended the Office consider upgrading its database capabilities.<sup>32</sup>

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<sup>25</sup> SB Tr. 25: 10-21

<sup>26</sup> LM Tr. 41: 6-10; BM Tr: 51: 13-18; 52: 11-12; TMeek Tr. 20: 4-5; TMarzik Tr. 4/28: 13: 8-25; 14: 1-2; Tr. 6/25 5: 10-25; 6: 13; MG Tr. 56: 14-25; TN Tr. 12: 17-22

<sup>27</sup> TB Tr. 6: 18-25

<sup>28</sup> LM Tr. 42:4-9

<sup>29</sup> VR Tr. 6: 21-25; 7: 1-6; LM Tr. 42: 11-21

<sup>30</sup> MG Tr. 6: 15

<sup>31</sup> MG Tr. 12: 2-8, 12-25; 13:1-2

<sup>32</sup> MG Tr. 57: 8-17; 58-62; LM Tr. 42: 2-4; 42: 22-25; 43: 1-11; SB Tr. 26: 9-24; 28: 1-3

- An OSOTS work group lead by Ms. Gilman studied the needs of the Office and the database options available to meet these needs.<sup>33</sup> By the end of March 2007, the work group had decided to purchase a database known as ACT!<sup>34</sup> Sage, the company that sells ACT!, targets this product to marketing and sales professionals as a tool to manage their contact information.<sup>35</sup>
- Michele Rys, an IT division member of the work group testified Ms. Gilman suggested ACT! She further recalled the “Capitol office, and Michelle Gilman is Chief of Staff” determined ACT! “would be the best solution for them.”<sup>36</sup> Terry Babcock, the IT manager and member of the work group, recalled that at some point “Michelle Gilman started to talk about how she had used this other product. She was very happy with it at her last place of employment. It worked very well for them. That happened to be ACT! made by Sage.”<sup>37</sup> Mr. Babcock also testified he recommended a Microsoft product that his division could support because ACT! would require the Office to obtain support from an outside vendor. “It was the Chief of Staff and the executive group. I pushed as hard as I could for the product that I thought we could support. They opted to go with the ACT! by Sage.”<sup>38</sup>
- Ms. Gilman testified the IT division “took the lead in assessing what products are out there.”<sup>39</sup> Ms. Gilman testified “it came down to really two programs that were suggested by Michele Rys...that would meet our needs...the Microsoft program and the ACT! program.”<sup>40</sup> Ms. Gilman testified that prior to the time when Ms. Rys or Mr. Babcock brought the program to her attention, she had never heard of ACT! and had never used ACT!<sup>41</sup>
- Ms. Gilman and Mr. Babcock recalled the decision to purchase ACT! was generally based on a determination that the Microsoft product under consideration could not accommodate the number of fields OSOTS needed at the time, or possible future growth of the database system. ACT! did accommodate these needs.<sup>42</sup> Ms. Rys stated she did not recall the reasons why OSOTS chose ACT! and was not involved in the decision making process.<sup>43</sup>
- OSOTS worked with the Department of Information Technology to achieve compliance with applicable rules for purchasing software products, and selected a vendor to provide

<sup>33</sup> MG Tr. 63-67; LM Tr. 41: 21-25; 42: 1-10, 22-24

<sup>34</sup> MG Tr. 68: 22-25; Ex 50; 51; 52; 53; 54; 55; 56; 58; 59; 60

<sup>35</sup> Ex 81; Ex 82

<sup>36</sup> MR Tr. 15: 23-25

<sup>37</sup> TB Tr. 11: 16-20

<sup>38</sup> TB Tr. 12: 15-18

<sup>39</sup> MG Tr. 63: 1-2

<sup>40</sup> MG Tr. 64: 3-8

<sup>41</sup> MG Tr. 64: 12-17

<sup>42</sup> MG Tr. 65; 66; 67: 1-5; TB Tr. 13: 2-13

<sup>43</sup> MR Tr. 18: 6-16

the ACT! database, customization for the Office's needs, migration of the data housed in Access to ACT!, and staff training.<sup>44</sup>

- The Office's transition to ACT! was completed in June 2007. The vendor migrated approximately 23,000 contact records from SOTS's Access database to the ACT! database he created for OSOTS on or about June 17, 2007.<sup>45</sup>
- Since mid-2007, the Office of the Secretary of the State has spent approximately \$35,300 to purchase, upgrade and support this database, and to train staff in its use.<sup>46</sup>

#### **4. Secretary Bysiewicz and her Office have used the ACT! database for official agency business from mid-June 2007 to the present day.**

- The Secretary and Ms. Marzik have used ACT! to keep track of contact information for people the Secretary deals with on official business and to maintain her schedule, including using call sheets displaying data kept in ACT!, creating new records and updating existing records. When the Secretary requests a call sheet, with ACT! she receives not only contact information, but also information of her office's dealings with the person including copies of correspondence and records of phone calls so she knows what her staff has done on behalf of the agency when she returns a call.<sup>47</sup>
- The Executive Staff has used ACT! to communicate with persons interested in the Secretary's Business Showcase, an agency program to assist small and minority owned businesses. OSOTS has used ACT! to send and record by e-mail invitations to events organized by the agency's Small and Minority Business Development Unit; to provide notification of fee and business entity tax increases; to provide notification about pending legislative proposals; to provide notification with the Department of Administrative Services of state contracts targeted to small and minority owned businesses.<sup>48</sup>
- OSOTS used ACT! to facilitate voter outreach, including in preparation for the change to optical scan voting machines. Secretary Bysiewicz conducted over 300 voting machine demonstrations across the state during 2007-2008. OSOTS used ACT! to identify persons, including local officials, who should be notified when the Secretary was coming to their town and to e-mail notification.<sup>49</sup>

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<sup>44</sup>Ex 31; 32; 45; 46; 47; 48; 104

<sup>45</sup>TN Tr. 43: 19-25; 44: 1-7; Ex 1

<sup>46</sup>Ex 104; 143

<sup>47</sup>LM Tr. 57: 8-22

<sup>48</sup>MG Tr. 71: 12-25; 72: 1-21; LM Tr. 56: 5-25; 57: 1-6; 58: 1-25; 59: 1-4

<sup>49</sup>LM Tr. 54: 3-22

- OSOTS used ACT! to identify and send notice to those interested in OSOTS's initiative to raise awareness, register voters and increase participation in the electoral process in 11 Latino communities throughout the state.<sup>50</sup>
- Using a program that works with ACT! known as Swiftpage, OSOTS has been able to send mass e-mails, including newsletters, something it could not do with the Access database.<sup>51</sup>
- Val Ramos, constituent services director, has used ACT! to track OSOTS's receipt of and response to the 400-500 individual constituents who contact OSOTS each year.<sup>52</sup> He uses ACT! every day in his job. He is able to attach to a person's record copies of correspondence received from that person, and copies of e-mail or letter responses he has sent to the constituent. He is also able to include notes regarding phone calls and requests for information or assistance he has made on the constituent's behalf, and any follow up regarding a referral he has made. The entire record of the Office's interaction with an individual constituent is included in the person's ACT! record and accessible to any of the Executive Staff with authorization to use ACT!<sup>53</sup>
- Mr. Ramos also uses the data he has included in ACT! to produce an annual report for 2007, 2008 and 2009 showing the types of issues raised by constituents and the frequency with which any particular issue has been raised. This assists the Secretary in forecasting what her office should be doing in the areas of voter education and outreach, and proposing legislation.<sup>54</sup>
- The Secretary and her Executive Staff produced additional information showing they have used the ACT! database extensively to manage and track individual constituent services inquiries and responses; to provide information, training and support to local elections officials, including during the transition to new voting technology and implementation of federal election laws; to communicate with partner organizations, advocacy groups and individuals about agency business including legislative updates, elections and business filings and official agency events.<sup>55</sup>
- According to Ms. Mara, as of February 2010, the ACT! database contained almost 37,000 contact records. Each is assigned a unique contact number and appears under applicable column headings that describe the person's connection to the Office of the Secretary of the State. Approximately 16,870 appeared in column headings identifying elected officials. Over 3,000 appeared in a column heading identifying participants and others connected to the Office's small and minority owned business program. 1,241 appeared in a column identifying individual constituents.<sup>56</sup>

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<sup>50</sup> LM Tr. 55: 11-19

<sup>51</sup> MG Tr. 74: 22-25; 75: 1-25; 76: 1-22

<sup>52</sup> VR Tr. 9: 5-15; 14: 17-25

<sup>53</sup> VR Tr. 17: 23-25; 18: 1-10

<sup>54</sup> LM Tr. 66: 11-25; 67: 1-25; 68: 1-8

<sup>55</sup> Ex 38

<sup>56</sup> Ex 38: 4; LM Tr. 62: 1-25

- The ACT! database is used only by the Secretary and her Executive Assistants. It does not share data with other OSOTS databases. We received testimony that, for example, a person's contact information will not be entered into ACT! because the person provided this information to the Commercial Recording Division as part of corporate activity. The person's contact information would reside in ACT! if, for example, the person was a local elected official.<sup>57</sup>
- As of June 30, 2010, OSOTS has paid the ACT! vendor \$31,689.90 for purchase, support, upgrade and related expenses.<sup>58</sup> OSOTS has paid Swiftpage \$3,602.62.<sup>59</sup>

**5. Secretary Bysiewicz's Office provided the ACT! database contact information records to her political campaign in February 2009 in response to a Freedom of Information Act request. Secretary Bysiewicz's campaign used this information for campaign related purposes.**

- In late 2008 and early 2009, Susan Bysiewicz and some volunteer advisors met to discuss her potential political campaign in the 2010 election cycle. Michelle Gilman attended some of these meetings. Attorneys Richard Orr, Robert Martino and David Makarewicz participated in some of these meetings.<sup>60</sup>
- Ms. Bysiewicz explained she wanted to obtain her Office's contact information from the ACT! database for use in the campaign. Some of the volunteers who are attorneys considered options for doing this. The volunteer advisors and Ms. Bysiewicz determined the ACT! database is a public record. They recommended submitting a request under the Freedom of Information Act ("FOIA") to ensure the campaign obtained the database properly. They further recommended submitting the request on behalf of the campaign, in order to create transparency that Ms. Bysiewicz's campaign was requesting her Office database.<sup>61</sup>
- Ms. Gilman drafted the FOIA request seeking in electronic format the contact records portion of the ACT! database, and circulated it to some of the volunteer advisors for review. Ms. Gilman then e-mailed it from her personal e-mail account during non-work hours to Jason Doucette, then Treasurer of Ms. Bysiewicz's recently registered exploratory committee known as Friends of Susan 2010, Inc. ("FOS"), with instructions to send the FOIA request to Deputy SOTS Lesley Mara.<sup>62</sup> Mr. Doucette made minor edits and then e-mailed a signed copy of this request to Ms. Mara on February 3, 2009.<sup>63</sup>

<sup>57</sup> LM Tr. 60: 9-25; 61: 1-6

<sup>58</sup> Ex 104

<sup>59</sup> Ex 143

<sup>60</sup> Orr Tr. 8: 2-25; 9: 1-4; Martino Tr. 5: 9-25; Makarewicz Tr. 4: 16-25; 5: 1-17; MG Tr. 14: 2-22; SB Tr. 5: 5-17

<sup>61</sup> SB Tr. 6: 14-25; 7: 1-17

<sup>62</sup> MG Tr. 18: 22-25; 19; 20; 21; Ex 77: 158-161

<sup>63</sup> JD Tr. 5: 9-25; 6-12; 13: 1-5; Ex 77: 158; Ex 75; Ex 12

- Ms. Mara assigned the FOIA request to IT manager Babcock and Michael Kozik, an OSOTS attorney who served as the agency’s FOIA liaison.<sup>64</sup> Because he was going to be out of the office, Mr. Babcock assigned Ms. Rys the task of exporting to an Excel spreadsheet the requested ACT! contact information records.<sup>65</sup>
- Ms. Rys and Mr. Babcock requested assistance from Ms. Gilman. Ms. Mara explained, “...it was my understanding that our internal IT people didn’t exactly know how to work with ACT! to get the data they needed into an Excel spreadsheet. And so, because Michelle Gilman had been the lead with respect to ACT!, the IT folks asked her for her assistance in figuring out how to get the Excel spreadsheet or Excel format from the particular database.”<sup>66</sup>
- Ms. Gilman recalled, “So our IT department didn’t necessarily know how to use the ACT! database. They weren’t active users of the system. While they provided some oversight of the system, they didn’t use it every day. Because I was in the building, and I was available, they asked me to assist Michele [Rys], showing her how to move the data to an Excel spreadsheet.”<sup>67</sup>
- Ms. Rys also testified she “contacted Michelle Gilman to see which of the tables inside the database we were to give to the person making the [FOIA] request...[s]he told me to use the contact table, which contained mostly names and addresses.”<sup>68</sup> Ms. Gilman did not recall Ms. Rys asking her what particular data or types of data should be included in the production to the campaign.<sup>69</sup> Ms. Gilman explained that the contact information field is the only field in ACT! that is exportable to an Excel spreadsheet.<sup>70</sup>
- After some difficulty, and obtaining assistance of the vendor under contract to provide support,<sup>71</sup> Ms. Rys successfully copied the contacts portion of the ACT! database to an Excel spreadsheet, which she then copied to a compact disc on Friday, February 6, 2009.<sup>72</sup> Ms. Rys wrote on a “post-it” note the words “contacts list Excel spreadsheet 26mg 2-6-09” and affixed the note to a plastic case in which she placed the disc.<sup>73</sup>
- Ms. Rys testified she delivered the disc to Ms. Gilman because Mr. Kozik was not then in the office, perhaps on vacation.<sup>74</sup> Ms. Rys believes she delivered the disc to Ms. Gilman the same day she created it.<sup>75</sup> However, it appears Mr. Rys created the disc on Friday, February 6 and delivered it to Ms. Gilman on Monday, February 9, 2009. Ms. Gilman e-

<sup>64</sup> LM Tr. 15: 18-25; 16: 1-4; Ex 88: 20

<sup>65</sup> TB Tr. 22: 14-18; MR Tr. 7: 3-15; Ex 88:20

<sup>66</sup> LM Tr. 17: 17-25

<sup>67</sup> MG Tr. 23: 24-25; 24: 1-5

<sup>68</sup> MR Tr. 7: 24-25; 8: 1-8

<sup>69</sup> MG Tr. 26: 5-8

<sup>70</sup> MG Tr. 27: 10-22

<sup>71</sup> MR Tr. 7: 21-24

<sup>72</sup> MR Tr. 5-7; Ex 2 “Content Created 2/6/2009 11:07 AM” “Date last Saved 2/6/2009 11:12 AM” “Author: MRys”

<sup>73</sup> MR Tr. 9: 11-25; 12: 1-4

<sup>74</sup> MR Tr. 11: 8-24

<sup>75</sup> MR Tr. 12: 6-15

mailed Ms. Rys at 11:12 a.m. on Monday, February 9, 2009, with copies to Mr. Kozik, Ms. Mara and Mr. Babcock: “In Mike’s absence this morning, thank you for forwarding me the CD to meet Jason Doucette’s FOI request. I will be sure to arrange delivery to him in keeping with the timely manner of the request.”<sup>76</sup>

- Our investigation was not able to confirm that Mr. Kozik was not in the office the morning of Monday, February 9, 2009. His time sheets for February 6 and February 9 recorded a full 8 hour day of regular work time.<sup>77</sup> Mr. Kozik has since retired, and told our investigator he has a very poor memory of work-related matters. Mr. Kozik said he sometimes did present off-site training to local municipalities and that a lot of this training took place in the spring, but he was unable to remember anything definitive about whether he was in the office February 6 or 9, 2009. Our investigators reviewed Mr. Kozik’s appointments calendar, which recorded no appointments in or out of the office on these dates.
- Ms. Gilman hand delivered the disc to FOS’s Finance Director, Ellen Graham on February 9, 2009, after work hours. They met near Ms. Gilman’s parking space outside the State Capitol.<sup>79</sup> Ms. Gilman did not attach any communication, such as a cover letter or transmittal letter, informing Mr. Doucette, Ms. Graham or FOS that the OSOTS was providing the CD to Ms. Graham as the agency’s compliance with Mr. Doucette’s FOIA request.<sup>80</sup>
- Ms. Gilman did attach to the plastic case containing the disc a “post-it” note on which she wrote: “For Ellen Do Not Lose” followed by a drawing of a “smiley face.”<sup>81</sup>
- Ms. Graham started work as the Finance Director of FOS on February 9, 2009. She testified she received a call on her cell phone from Ms. Gilman her first or second day at work in which Ms. Gilman arranged for Ms. Graham to meet her to “pick up some things from her.”<sup>82</sup> At our request, Ms. Gilman searched her office and personal phone records. She provided certain phone records to our investigation that show she placed a call from her cell phone to Ms. Graham’s cell phone on February 9, 2009 at approximately 5:35 p.m.<sup>83</sup>
- Ms. Graham recalled she met Ms. Gilman in the parking lot at the State Capitol and Ms. Gilman gave her a CD with a “post-it” note on the CD case that read “for Ellen do not lose.” Ms. Graham did not recall if another “post-it” note was on the case.<sup>84</sup>

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<sup>76</sup> Ex 88: 18

<sup>77</sup> Ex 140: 1

<sup>79</sup> MG Tr. 31: 4-25; 32: 1-5; EG Tr. 7: 6-14

<sup>80</sup> MG Tr. 36: 20-24

<sup>81</sup> MG Tr. 39: 4-18; EG Tr. 8: 18-25; 19: 1-14

<sup>82</sup> EG Tr. 7: 6-19

<sup>83</sup> MG Tr. 32: 6-25; 33: 1-25; 34: 1

<sup>84</sup> EG Tr. 7; 8; 9; 10: 1-11

- Ms. Graham stated Ms. Gilman instructed her to combine the data on this disc with existing contacts data from prior Bysiewicz campaigns, to eliminate any duplicates, and then upload the combined list to NGP, a web based software program used by political campaigns.<sup>85</sup> According to Ms. Graham, Ms. Gilman did not tell her what information was on the disc at that time. Through later conversations she had with Secretary Bysiewicz and Ms. Gilman, Ms. Graham learned the disc contained a database from OSOTS.<sup>86</sup> Ms. Graham testified that when Ms. Gilman called and asked her to meet, and gave her the disc and instructions, “to my understanding she was acting as a person on the campaign” and not as an employee of OSOTS.<sup>87</sup>
- Ms. Graham testified she followed Ms. Gilman’s instructions. She received by e-mail from an accountant lists of prior donors to Susan Bysiewicz.<sup>88</sup> She collected contact data that resided on a campaign computer.<sup>89</sup> She combined these sources of data with the data on the disc Ms. Gilman provided her.<sup>90</sup> Ms. Graham further compared the lists of prior donors to the contact information on the disc Ms. Gilman provided her and then eliminated duplicates and made sure she was working with current contact information.<sup>91</sup> In some cases she added notes included in the older campaign data to the donor list.<sup>92</sup> Some prior donors were included in the OSOTS contacts lists, and some were not. Ms. Graham explained, “I inferred that this was the information we were going to use to the— the addresses were current in the Secretary of the State’s database, so we were making sure the information we had was current for people, and, I mean, it also contained notes the donor information did not have.”<sup>93</sup> Ms. Graham then uploaded the combined and reviewed data to NGP.
- When she had finished uploading the information to NGP, Ms. Graham returned the disc to the plastic case with the “post-it” notes still attached, and placed the case in a drawer of a desk at FOS’s headquarters in Rocky Hill, where it remained at the time she left the employ of FOS.<sup>94</sup>
- On February 22, 2010, at our request, David Mason, then FOS’s Campaign Manager, opened this desk drawer. He found a CD in a plastic case. Affixed to the case were the two “post-it” notes “For Ellen Do Not Lose” and “Contacts List Excel Spreadsheet 26mg 2-6-09.” Mr. Mason delivered physical possession of this disc in the case with the “post-it” notes to our investigator.<sup>95</sup> During their testimony, Ms. Graham, Ms. Rys, Ms. Gilman and Mr. Mason authenticated these “post-it” notes. Based on our examination of

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<sup>85</sup> EG Tr. 10: 16-19

<sup>86</sup> EG Tr. 10: 12-15; 12: 1-18

<sup>87</sup> EG Tr. 8: 6-13

<sup>88</sup> EG Tr. 25: 16-24

<sup>89</sup> EG Tr. 21: 14-19

<sup>90</sup> EG Tr. 21-24

<sup>91</sup> EG Tr. 21: 25; 22: 1-3

<sup>92</sup> EG Tr. 19: 7-9

<sup>93</sup> EG: Tr. 14: 4-25; 15: 1-16

<sup>94</sup> EG Tr. 29: 1-11

<sup>95</sup> DM Tr. 7: 23-25; 8: 1-25; 9: 1-23

this disc and witness testimony, we conclude it is the disc Ms. Gilman provided to Ms. Graham on February 9, 2009, as OSOTS's compliance with FOS's FOIA request.<sup>96</sup>

- Ms. Graham recalled printing from NGP "call sheets" of donors who had given certain amounts in the past that Ms. Bysiewicz used to make phone calls from the campaign's office in Rocky Hill.<sup>97</sup> Ms. Bysiewicz recalled using these call sheets to contact political supporters.<sup>98</sup>
- Ms. Gilman made no OSOTS record memorializing the fact she had delivered the CD to Ms. Graham as her agency's compliance with Mr. Doucette's FOIA request.<sup>99</sup>
- The ACT! database changes each time an authorized user adds, deletes, changes or otherwise edits information stored in the database. Because neither Ms. Gilman nor Ms. Rys made a copy of the disc Ms. Gilman delivered to Ms. Graham, OSOTS was unable to produce to our investigation a record showing what it provided FOS.
- Ms. Mara testified Ms. Gilman failed to comply with OSOTS policy when she did not make and keep a copy of a transmittal document memorializing her delivery of the disc to Ms. Graham as the Office's compliance with Mr. Doucette's FOIA request.<sup>100</sup>
- On January 5, 2010, Mr. Mason sent Ms. Mara another FOIA request on behalf of FOS, seeking "an electronic list of all newly elected Democratic officials as maintained by your office." Ms. Mara assigned this request to Ms. Gilman. Ms. Gilman sent Mr. Mason an e-mail to which she attached the requested electronic file. Ms. Gilman's e-mail served as a written record that she had delivered this file in compliance with Mr. Mason's FOIA request.<sup>101</sup>
- OSOTS incurred no expense in complying with FOS's February 2009 FOIA request. The assistance provided by the vendor was covered by an existing support services contract. OSOTS's practice and policy is not to charge for compliance with FOIA requests for information produced in electronic format unless special programming is required to comply with the request. Consistent with this policy and practice, the Office did not charge FOS for complying with its FOIA request.<sup>102</sup>
- Geoffrey Fisher sent inquiries to the Secretary of the State in November and December 2008. He received no response to these inquiries, but beginning in March 2009, Mr. Fisher received unsolicited campaign e-mails from FOS and unsolicited newsletters from OSOTS. He received 20 such e-mails, including 12 he received from FOS between

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<sup>96</sup> Ex 2

<sup>97</sup> EG Tr. 16: 3-25; 17: 1-4

<sup>98</sup> SB Tr. 11: 23-25; 12: 1-13

<sup>99</sup> MG Tr. 35: 22-25; 36: 1-19

<sup>100</sup> LM Tr. 21: 1-25; 22: 1-8

<sup>101</sup> Ex 122: 13-14

<sup>102</sup> LM Tr. 137: 7-25; 138: 1-9; Ex 30

March and October 2009.<sup>103</sup> David Mason, then Campaign Manager for FOS, confirmed FOS sent these 12 e-mails to persons on FOS's contacts list during these months.<sup>104</sup>

- OSOTS created a contact record for Mr. Fisher in the ACT! database on December 5, 2008, when it received his second e-mail inquiry.<sup>105</sup> Mr. Fisher's contact information was included in the ACT! contacts records OSOTS provided to FOS February 9, 2009.<sup>106</sup>
- Mr. Fisher filed a complaint with the State Elections Enforcement Commission dated October 21, 2009, alleging that either the Secretary has used state employees' time and state resources to provide his contact information to her campaign, or someone had hacked into her Office computer system, obtained his contact information and provided it to FOS.<sup>107</sup>
- SEEC determined the complaint did not allege facts that, if true, would constitute a violation of law within the Commission's jurisdiction. SEEC referred the complaint to the Department of Administrative Services and the Auditors of Public Accounts.<sup>108</sup>
- Our investigation finds that OSOTS actions were not illegal or improper in using agency personnel and resources to provide Mr. Fisher's contact information to the Secretary's campaign in response to a FOIA request for a public record.

**6. Although the Secretary of the State's database contained information that was an appropriate part of a state agency database, it also improperly contained information that appears to have been created on a computer used in a campaign by Susan Bysiewicz for elective office.**

- A review of the ACT! database shows that on or about April 12, 2007, over 6,700 records were added to the Access database. These records were included in the Access records moved into the ACT! database when OSOTS purchased ACT!<sup>109</sup>
- Our investigators requested all copies of the Access database stored on OSOTS computers and servers. During a May 11, 2010 meeting among our investigators, Ms. Gilman and Ms. Mara, we examined Ms. Gilman's desktop computer. Ms. Gilman's desktop computer included a file titled "New List Excel.xls". Further inquiry determined the IT division had located this file on the agency's computer servers during a file search requested by our investigators, and then e-mailed the file to Ms. Gilman on March 17, 2010 as part of group of files IT had located.<sup>110</sup>

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<sup>103</sup> Ex 14

<sup>104</sup> Ex 29; DM Tr. 13: 8-25; 14: 1-13

<sup>105</sup> MG Tr. 49: 23-25

<sup>106</sup> Ex 2; MG Tr. 50: 2-12

<sup>107</sup> Ex 14-28

<sup>108</sup> Ex 13

<sup>109</sup> Ex 2; 126; 129; 132

<sup>110</sup> Ex 2; 126; 129; 132

- “New List Excel.xls” is a spreadsheet containing ten column headings: prefix, first name, last name, home address, city, state, zip code, home phone, work phone, e-mail address. The “properties” tab of this file shows it was created on October 27, 2006 on a computer using Microsoft Office software registered on that date to “Susan Bysiewicz Office” as “author” and “Susan Bysiewicz Campaign” as “company.” The “properties” tab further shows the file contained 6,741 complete records on April 11, 2007, and was last edited on April 11, 2007 on a computer registered on that date to “T. Marzik” as “author.”<sup>111</sup>
- OSOTS has never registered its computer software using “Susan Bysiewicz Office” as “author” and “Susan Bysiewicz Campaign” as “company.” OSOTS uses an employee’s first initial followed by a period followed by the employee’s last name to register the “author” of software installed on that employee’s computer.<sup>112</sup>
- “New List Excel.xls” was not created on an OSOTS computer, and appears to have been created on a 2006 Susan Bysiewicz campaign computer. OSOTS agreed with this conclusion.<sup>114</sup>
- Records of the Access database show that on April 12, 2007, someone uploaded the “New List Excel.xls” file to the Access database. Our investigators determined that on April 12, 2007, someone uploaded to Access between 6,733 and 6,739 contact records from “New List Excel.xls.” 3,894 of these contacts already existed in Access. Between 2,839 and 2,847 contacts were new additions to Access.<sup>115</sup> Some of the persons whose contact information was included in “New List Excel.xls” appear to have been donors to Bysiewicz campaigns, and many were not.
- Secretary Bysiewicz testified she had compared the names on “New List Excel.xls” to her lists of campaign donors. “I want to be very clear that of the 6,700 names that were uploaded, a relatively small portion of those are people who were contributors to our campaign.”<sup>116</sup> Secretary Bysiewicz further explained that several of the records that were not already in the Access database when the upload occurred were people her office had dealt with over the prior years. She identified some of these records.<sup>117</sup> She further explained that at her direction her office had attempted to determine the source of “New List Excel.xls” and who uploaded it to her state database, with no success.<sup>118</sup> “I am as puzzled about this as anyone because I know that our campaign list is much larger. And I look at the list of people and I see many people who have invited me to events.”

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<sup>111</sup> Ex 2; 126; 129; 132

<sup>112</sup> LM Tr. 107: 8-23

<sup>114</sup> LM Tr. 107: 8-23

<sup>115</sup> Ex 2; 126; 129; 132

<sup>116</sup> SB Tr. 73: 18-21

<sup>117</sup> SB Tr. 74: 12-25; 75-78; 79: 1-8; Ex 134-139; 146

<sup>118</sup> SB Tr. 68: 22-24; 80: 3-6

- Secretary Bysiewicz testified she does not know who uploaded “New List Excel.xls” into her Office’s Access database,<sup>119</sup> and was not aware of its existence until our investigation brought it to her Office’s attention.<sup>120</sup>
- Secretary Bysiewicz testified that at our investigators’ request, she caused a search to be made of her existing campaign computers to determine if any were in use in 2006. She testified that none of the 2006 campaign computers were located. She stated her campaign has replaced the computers used in 2006 with newer models.<sup>121</sup>
- Tammy Marzik is and was in April 2007 the Secretary’s Director of Civics Education and Scheduler.<sup>122</sup> In April 2007, the Access database resided on her desktop computer. Ms. Marzik testified that in April 2007, it was necessary to use her computer in order to add data, including contact records, to the Access database.<sup>123</sup> She further testified that anyone using her computer when she was not at work would need to enter her password to get onto her computer.<sup>124</sup> Ms. Marzik testified two other OSOTS employees knew her password in April 2007, Michelle Gilman and Kristin Moreland.<sup>125</sup>
- Tammy Marzik testified she did not upload “New List Excel.xls” into the Access database. She has no knowledge of how the upload took place or who did it.<sup>126</sup>
- Kristin Moreland was an OSOTS Executive Assistant from January 2005 to February 2009. Her title was Executive Secretary. Ms. Moreland testified she knew the password to Ms. Marzik’s computer in April 2007, and sometimes used Access on this computer when Ms. Marzik was not at work.<sup>127</sup> Ms. Moreland recalled being able to use Access at her desktop computer, but stated she might be remembering working with ACT! which all authorized users could use from their desktops.<sup>128</sup> Ms. Moreland further testified she has no knowledge or information concerning who uploaded “New List Excel.xls” into the Access database. She further testified she was not involved in uploading this file or causing it to be uploaded.<sup>129</sup> Ms. Moreland stated she did know how to upload to Access a file containing more than 6,700 contact records, and she would remember if she had participated in an upload of this size .<sup>130</sup>
- Ms. Gilman testified she has no personal knowledge who created the “New List Excel.xls” file and on what computer it was created. She has no personal knowledge who uploaded the file into Access, or when and using what computer someone uploaded this

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<sup>119</sup> SB Tr. 69: 19-21

<sup>120</sup> SB Tr. 68: 9-10

<sup>121</sup> SB Tr. 69: 4-18

<sup>122</sup> TM Tr. 4/28/10 8: 17-25; 9: 1-4; 18-23

<sup>123</sup> TM Tr. 4/28/10 13: 22-25; 14: 1-5; TM Tr. 6/25/10 5: 10-25; 6: 1-13

<sup>124</sup> TM Tr. 6/25/10 6: 24-25

<sup>125</sup> TM Tr. 6/25/10 7: 1-14

<sup>126</sup> TM Tr. 6/25/10 8: 20-25; 9: 1

<sup>127</sup> KM Tr. 9: 2-22

<sup>128</sup> KM: 7: 2-25

<sup>129</sup> KM Tr. 11: 1-25

<sup>130</sup> KM Tr. 11: 1-25

file to Access, according to her testimony.<sup>131</sup> Ms. Gilman testified she does not believe she knew Ms. Marzik's password in April 2007, and learned of it at a later date.<sup>132</sup> Ms. Gilman supervised Ms. Marzik and Ms. Moreland in April 2007.

- Our investigators obtained from the Department of Information and Technology e-mails sent to or from the work addresses of 16 OSOTS employees, including Secretary Bysiewicz, Michelle Gilman, Tammy Marzik, Kristin Moreland and other managers and Executive Staff from April 1 through April 15, 2007. We reviewed these e-mails for evidence any of these employees sent or received "New List Excel.xls" during this time period. We found none.<sup>133</sup> It appears that someone uploaded to Access the "New List Excel.xls" contact records from a disc or flash drive.
- Our investigation was unable to identify who uploaded to Access the contact records from "New List Excel.xls." Because there is insufficient evidence to determine who included these campaign records in the state database and for what purpose, we are unable to conclude whether Section 5-266a(b), prohibiting classified employees from engaging in political election activities on state time or using state resources, was violated.
- OSOTS has a Code of Ethics, Professional Conduct and Political Activity.<sup>134</sup> This Policy prohibits any political activity of any kind during office hours and while an employee is performing her job. It further prohibits the use of office personnel, equipment and facilities for political activity.<sup>135</sup> This policy appears to apply to all OSOTS employees, whether or not in the classified state service, and states "OSOTS has a zero tolerance policy for violation of the governing statutes or of the policy."<sup>136</sup> If any authority, including Secretary Bysiewicz, is able to determine who included the campaign records in her state office database and for what purpose, they should also determine whether violations of law or office policies and rules occurred, and appropriate action should be taken.
- There is no apparent legitimate state purpose for these campaign records to have been stored in the Secretary of the State's state database and it was inappropriate for those records to be placed into that database. These contacts records were included in the ACT! electronic files OSOTS produced to FOS in response to the campaign's February 2009 FOIA request.

**7. Our investigation determined that names of individuals who sent holiday cards were included in the OSOTS database.**

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<sup>131</sup> MG Tr. 156: 4-19

<sup>132</sup> MG Tr. 157: 1-25; 158: 1-5

<sup>133</sup> Ex 142

<sup>134</sup> Ex 103

<sup>135</sup> Ex 103: 4

<sup>136</sup> Ex 103: 4

- The ACT! database includes a column heading for “holiday cards.” ACT! includes approximately 5,400 records for this category.<sup>137</sup>
- The OSOTS uses this column heading to record the receipt of holiday cards sent to the OSOTS or to the Secretary at her official office address.<sup>138</sup> These records have not been updated. For example, if someone sent the Secretary a holiday card in 2000, that person’s record would include the fact she sent a card, whether she had sent cards in 6 previous years or never sent another card.<sup>139</sup>
- The column heading “holiday card” does not designate people to whom the Secretary has sent holiday cards. OSOTS uses this heading only as a way to record the Office’s receipt of a certain type of correspondence.<sup>140</sup>
- Witnesses, including Secretary Bysiewicz, testified the OSOTS has never sent holiday cards, and has never used office time, equipment or resources to send holiday cards. A search of agency records shows no such activity.<sup>141</sup>
- Keeping a record of individuals or groups who send holiday cards to the Office is not illegal.
- Secretary Bysiewicz produced records showing FOS paid a Norwich printing company to print, address and mail 11,850 holiday cards in December 2009.<sup>142</sup>

**8. The ACT! database includes column headings for race, ethnicity and religious affiliation. Although these types of column headings are not appropriate for a state database, maintaining information on an individual’s or a group’s participation with OSOTS in the agency’s official duties is a proper state function.**

- Our investigation received testimony and documents showing OSOTS used these column headings, not to classify specific individuals by their race, ethnicity or religion, but to identify persons connected to specific Office activities, such as voter registration drives intended to increase voter registration among minorities or ceremonies recognizing Jewish Cultural Heritage Day.<sup>143</sup>
- Robert Fishman, is the executive director of the Jewish Federation Association of Connecticut (“JFACT”). He served in this capacity in 2003. JFACT represents nine Jewish federations in Connecticut in governmental affairs and public policy issues.<sup>144</sup>

<sup>137</sup> Ex 3; 6; 115: 2-66; MG Tr. 109: 16-18

<sup>138</sup> MG Tr. 109: 10-15; 110: 8-11

<sup>139</sup> MG Tr. 110: 1-7

<sup>140</sup> LM Tr. 71: 13-14; 20-25

<sup>141</sup> LM Tr. 72: 1-25; 73: 1-2; SB Tr. 33: 10-18

<sup>142</sup> Ex 90

<sup>143</sup> MG Tr. 112: 5-25; 113-119; Ex 39

<sup>144</sup> RF Tr. 5: 15-25; 6:12

- Mr. Fishman testified he worked with OSOTS to organize a program centered on a tour of the United States made by Israeli high school students in 2003. Secretary Bysiewicz held an official ceremony referred to as Jewish Cultural Heritage Day at the State Capitol. The program included appearances by the Israeli students, and recognized certain residents of Connecticut. Secretary Bysiewicz spoke at the ceremony. The event occurred in June 2003.<sup>145</sup>
- Mr. Fishman recalled working with Beth Perfetto, then an Executive Assistant to Secretary Bysiewicz, on planning this event.<sup>146</sup>
- Ms. Perfetto provided testimony regarding her participating in planning this event, including working with Mr. Fishman, and the actual ceremony attended by Secretary Bysiewicz.<sup>147</sup>
- Mr. Fishman and Ms. Perfetto recalled that Mr. Fishman provided Ms. Perfetto with a list of names and contact information for people he suggested should be invited to the event. Ms. Perfetto stated this information was manually added to the Access database under the column heading “Jewish.”<sup>148</sup>
- Ms. Mara and Ms. Gilman provided information that the “Jewish” column heading in Access contained 192 records in 2007 and 208 records in February 2010 in ACT!<sup>149</sup> It appears that most of the records entered under this column heading were added in connection with the 2003 event.
- The column headings “African American,” “Greek,” “Jewish,” and “Polish” were created in Access and were moved into ACT! The “Native American” column heading was added after OSOTS purchased ACT!<sup>150</sup>
- Ms. Mara and Ms. Gilman explained that these column headings contain records for persons associated with 29 specific official partnerships, agency events and constituent services programs organized or participated in by Secretary Bysiewicz.<sup>151</sup> It appears the primary purpose in retaining records with these column headings after the event is to assist OSOTS in identifying and including persons in future events sponsored by the agency.<sup>152</sup>
- Ms. Gilman explained that OSOTS does not include a person in one of the race, ethnicity or religious affiliation column headings simply because the person creating the contact record knows this identifying information about the person. She pointed out that of the

<sup>145</sup> RF Tr. 11: 1-10; 13: 11-25; 14-16

<sup>146</sup> RF Tr. 14: 1-6

<sup>147</sup> BP Tr. 12-15; 19: 3-12; 21: 7-24; 22: 8-25; 23: 1-25; 24: 16-23

<sup>148</sup> RF Tr. 18: 8-21; 30: 4-25; 31: 11-17; BP Tr. 14: 24-25; 15: 1-25; 16: 1-24

<sup>149</sup> Ex 39: 1-3

<sup>150</sup> MG Tr. 112: 8-11

<sup>151</sup> Ex 39: 2-3

<sup>152</sup> Ex 39: 1

36,000 records in the ACT! database, the vast majority have no such notation. “We have no process within our staff or no direction to code individuals based on the system. It is really for project oriented work or if there is a particular reason to code somebody as such. In fact, as we were reviewing these codes in our response to the investigation, and press inquiries that we have gotten, it has become widely apparent there are a number of elected officials and others who may meet some of the –they may be Hispanic or African American, and it is certainly well known, but they are not coded as such in the system. It is not a process that we go through on a staff level, and designate individuals accordingly.”<sup>153</sup>

- These column headings are not appropriate for this type of state database, even if maintaining information on an individual’s or a group’s participation with OSOTS in the agency’s official duties is a proper state function.

#### **9. “Special Notes” may be inappropriate for a public database.**

- We examined 9 “special note” entries that were the subject of public attention from those who have obtained or reviewed the ACT! database.<sup>154</sup>
- “Notes” was a column heading in Access in which the database user could enter any comments, thoughts or information in a person’s contact record. When OSOTS moved to ACT!, the vendor created a column heading “special notes” to indicate information existing as “notes” in Access and moved over to ACT!<sup>155</sup>. Our investigation confirmed that the 9 “special note” entries discussed here were entered into the OSOTS database prior to June 2007, when the Office moved to ACT!<sup>156</sup> Secretary Bysiewicz testified she was the source of some, but not all of these “special note” entries.<sup>157</sup>
- Some of the 9 “special note” entries we examined include descriptions of the contact’s medical issues, choice of clothing and favored political candidates.<sup>158</sup>
- These types of “special note” entries do not appear to be appropriately included in a publicly available state database because they possibly implicate personal privacy interests. The database and these notes are publicly available under FOIA.
- There is no evidence that this information was entered to assist in a political campaign of Susan Bysiewicz instead of to assist the Office of the Secretary of State in its official state duties.
- The Office of the Secretary of the State has modified or removed some of these entries at the request of an individual, or the Office determined the information was out of date or

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<sup>153</sup> MG Tr. 118: 12-25; 119: 1-6

<sup>154</sup> Ex 64-70

<sup>155</sup> TN Tr. 49: 2-15

<sup>156</sup> TN Tr. 49: 16-20

<sup>157</sup> SB Tr. 49: 15-17; 50: 24-24; 51: 1-3; 53: 14-16; 23-25; 54: 1-10; 55: 5-20; 56: 15-23; 57: 21-23; 59: 7-13

<sup>158</sup> Ex 64-70

no longer accurate.<sup>159</sup> OSOTS should review all “notes” and “special notes” in ACT! to determine if they are properly part of a publicly available database.

- OSOTS provided the contacts data field of ACT! in response to various FOIA requests. The Office subsequently learned this field included the home addresses of persons the agency is prohibited by statute from disclosing this information, such as firefighters and correction officers. In March 2010, after consultation with staff at the Freedom of Information Commission, OSOTS edited approximately 1,000 records to delete these home addresses.<sup>160</sup>
- OSOTS should further review other column headings in ACT! to determine whether they include information that is not properly part of a publicly available database. Ms. Mara testified the agency has a policy of reviewing documents prior to making a disclosure responsive to a FOIA request for privileged information and information that under law should not be disclosed, and making appropriate redactions.<sup>161</sup> Even if appropriate, conducting such a review of a database with over 36,000 records and more than 130 column headings that changes each time records are entered or edited is a time consuming task. It would not be surprising for even the most diligent and well-intentioned reviewer to make an error. OSOTS should review existing column headings and data and remove any information that is not appropriate for a publicly available database. Going forward, the agency should consider adopting a policy that no data be entered in the database that should not be publicly disclosed or is not appropriate for a publicly available database. A supervisory level employee should be assigned the responsibility for implementing such a policy.

#### **10. The evidence demonstrates that the OSOTS recorded almost exclusively only Democratic Party delegates.**

- The ACT! database includes a check box to mark if a contact is a “delegate” or “federal delegation.”<sup>162</sup> Our review of Access and ACT! records shows that for the years 1998, 2000, 2002, 2004 and 2008, many contact records are marked as Democratic Party delegates while few or none are recorded as Republican Party delegates. No delegates are recorded for 2006.
- Our review of the records noting delegates shows the following where D indicates Democrat, R indicates Republican and O indicates another party affiliation:
  - 1998: 1,249 D; 2 R; 3 O
  - 2000: 1,226 D; 0 R; 1 O
  - 2002: 1,335 D; 2 R; 3 O
  - 2004: 1,388 D; 1 R; 2 O

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<sup>159</sup> Ex 80

<sup>160</sup> LM Tr. 122: 15-25; 123-133; Ex 80

<sup>161</sup> LM Tr. 130: 1-11; 132: 20-25; 133: 1-13

<sup>162</sup> Ex 3

o 2006: 0 D; 0 R; 0 O

- Ms. Mara stated that political party delegates generally are people who are subsets of people already included in ACT!, such as legislators, mayors, first selectmen and town committee members. Many are elected officials with whom OSOTS works on a regular basis. They are added to an additional column heading by a check box indicating if they are also delegates.<sup>163</sup>
- Witnesses including Secretary Bysiewicz, testified OSOTS policy is and always has been to request both major political parties to provide their delegate lists, and testified that the Republican Party consistently has not complied with these requests.<sup>164</sup>
- Our investigators requested a list of delegates from Connecticut's Republican Party. On June 25, 2010, a representative of the Republican Party left our investigator a voice message to the effect that the party delegate list was available for inspection at the party offices, and a copy is filed with OSOTS pursuant to General Statutes Section 9-385a. General Statutes Section 9-385a provides that in limited circumstances involving a demand for a roll call vote at a party convention, the record of the roll call vote is to be filed with OSOTS.
- This office requested OSOTS to review its records for any Republican Party delegate list filed with the OSOT pursuant to Section 9-385a. Ms. Mara stated she had made inquiries of the managers of OSOTS's division in charge of elections, and received a report that the managers found no evidence the Republican Party had filed a list of delegates under Section 9-385a at any time.
- Ms. Gilman was responsible for obtaining the list of party delegates for 2008.<sup>166</sup> She provided testimony and records showing that during family leave in June 2008, she used her home e-mail account to request the delegate list from the Democrats. She received an e-mail reply with an attached file containing the contact information of 1,584 Democratic delegates. Ms. Gilman recalled that this list was manually entered into ACT! in late September 2008, after her return from leave.<sup>167</sup> Ms. Gilman could not recall what event or thought process prompted her to ask for the Democratic delegate list during her family leave.<sup>168</sup>
- Ms. Gilman further testified that she asked David Killian, an Executive Assistant in the OSOTS, to determine if he could obtain the 2008 Republican delegate list from Representative Pamela Sawyer, a personal acquaintance of Mr. Killian. Ms. Gilman testified Mr. Killian initially reported Ms. Sawyer agreed to obtain the list for him, but subsequently informed him she would not be able to provide the list to Mr. Killian.<sup>169</sup>

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<sup>163</sup> LM Tr. 92: 2-17

<sup>164</sup> LM Tr. 4-13; MG Tr. 143: 17-21; SB Tr. 62: 5-20

<sup>166</sup> MG Tr. 145: 4-12; LM Tr. 94: 21-24

<sup>167</sup> MG Tr. 146: 1-25; 147: 18; Ex 91

<sup>168</sup> MG Tr. 147: 21; 148: 8-13, 21

<sup>169</sup> MG Tr. 144: 14-25; 145: 1-20

Ms. Gilman testified she assumes these events took place before she went on family leave.<sup>170</sup> She did not make another request for the delegate list to the Republican Party, assuming that if Ms. Sawyer could not provide it to OSOTS, further requests would produce similar results.<sup>171</sup>

- Mr. Killian testified that his family and Ms. Sawyer's family are friends.<sup>172</sup> He recalled encountering Ms. Sawyer walking from the Capitol to the Legislative Office Building and asking her if she would obtain a list of Republican delegates for him. He recalled Ms. Sawyer said she would, but later reported to him that she would not be able to provide Mr. Killian the list. Mr. Killian testified he reported this conversation to Ms. Gilman prior to her family leave.<sup>173</sup>
- Ms. Sawyer testified she had no recollection of Mr. Killian asking her to obtain a list of delegates for him, of telling him she would obtain such a list, or of later telling Mr. Killian she would not be able to provide the list. Ms. Sawyer stated the events could have happened, but she had no present recall of them when she testified.<sup>174</sup>
- Compiling and including names of political party delegates in a state database is not illegal. Sworn testimony states that similar information was requested from the Republican Party, but was not provided. Considering the sworn testimony that delegate information was requested from both the Democratic and Republican parties and the statutory role of the Secretary of State in political party conventions -- although very limited--the evidence does not clearly demonstrate that the information on delegates in the Secretary of the State's database was solely obtained to benefit a Susan Bysiewicz campaign. The evidence does indicate that the Secretary of the State's efforts to obtain the Republican Party delegate list appear to have been minimal and indirect and there is no evidence of written requests from the OSOTS for a list of Republican Party delegates.

## CONCLUSION

The sophisticated database maintained by the Office of the Secretary of the State is a useful tool for the agency and the Secretary of the State in fulfilling their responsibilities to the state and public. As developed, it also contained information that would be very useful to a Susan Bysiewicz campaign organization, which presumably is why it was requested by Friends of Susan 2010, Inc. While much of the information placed in the database was related to

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<sup>170</sup> MG Tr. 145: 13-20

<sup>171</sup> MG Tr. 149: 12-25

<sup>172</sup> DK Tr. 9: 6-7

<sup>173</sup> DK Tr. 8: 12-25; 9: 1-25; 10: 1-22

<sup>174</sup> PS Tr. 7: 4-5, 10, 20-21; 8: 1-3

legitimate state purposes, some of the information maintained, particularly the “special notes,” was inappropriate -- even if not a violation of law -- for a database subject to public disclosure.

Other information in the database, even if properly included in such a state database, reasonably raises the perception that the database was also maintained to assist in election campaigns by Susan Bysiewicz. Collecting and maintaining a list of holiday cards received by the Office of the Secretary of State is not illegal, but that information was transmitted to the Friends of Susan 2010, Inc. in February 2009, which sent out 11,850 holiday cards in December 2009. Also, the names of delegates relate to the function of the Office of the Secretary of State only in limited statutory circumstances. Even though the Republican Party may not have readily given its delegate list to the Secretary of the State when requested to do so, the efforts to obtain the Republican Party list appear to have been minimal and indirect. Including only the names of Democratic delegates in the state database gives the reasonable perception that the state database was developed as a useful tool for political campaign purposes.

Additionally, while certain data entered into the database may have had a legitimate state purpose, data heading titles based on religion, race and ethnicity are not proper or appropriate for this type of state database.

While the Office of the Attorney General has no statutory authority to compel remedies administratively, we recommend that the Secretary of the State take prompt steps to remove certain data and categories or headings of information from the data base.

Finally, the perception that this database was created to benefit election campaigns of Susan Bysiewicz is heightened by incorporating information created on a 2006 Bysiewicz campaign computer into the state database, with no evidence indicating how it related to state business. While this office was unable to determine who entered this material or why it was included in the database, the practice demonstrates a lack of respect for the clear separation that must exist between campaign organizations and the Office of the Secretary of State. It also demonstrates a failure on the part of management at the Secretary of State’s Office to ensure that its state database only contains information that serves a state purpose.

Most important, we repeat our recommendation from 2008 that state law be amended to prohibit all state employees, classified and unclassified, from engaging in political activity on state time and utilizing state equipment or resources to support or oppose any candidate in a political partisan election.

We are forwarding this report to the Chief State’s Attorney, the State Elections Enforcement Commission and appropriate legislative leaders for their consideration, most especially in the hope that it will support and advance reform in laws, regulations and practices. We will seek to consult and work with them in this effort to clarify and improve the legal framework.

If additional information comes to light, other remedies or recommendations may be appropriate.