



December 23, 2019

VIA: EMAIL

Meagan Wolfe
Administrator
Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984
elections@wi.gov

Re: Public Records Law Request

Dear Ms. Wolfe:

Pursuant to Wisconsin public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

Requested Records

American Oversight requests that the Wisconsin Elections Commission produce the following records “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

1. All email communications (including emails, complete email chains, email attachments, and calendar invitations), regardless of subject matter, sent by (a) any of the Commission officials or employees listed in Column A below, to (b) any of the external individuals or entities listed in Column B below, including but not limited to at the email addresses and domains specified:

Column A: Officials or Employees	Column B: External Individuals and Entities
<ul style="list-style-type: none"> • Marge Bostelmann, Commissioner • Julie Glancey, Secretary • Ann Jacobs, Commissioner • Dean Knudson, Chair • Robert Spindell, Jr., Commissioner • Mark Thomsen, Commissioner 	<ul style="list-style-type: none"> • Rick Esenberg, President and General Counsel, Wisconsin Institute for Law and Liberty (WILL), (rick@will-law.org) • CJ Szafir, Executive Vice President, WILL, (cj@will-law.org) • Luke Berg, Deputy Counsel, WILL (luke@will-law.org) • Lucas Vebber, Deputy Counsel and Director of Regulatory Reform and



	<p>Federalism, WILL, (lucas@will-law.org)</p> <ul style="list-style-type: none"> • Anthony LoCoco, Deputy Counsel, WILL, (alococo@will-law.org) • Don Daugherty, Senior Counsel, WILL, (don@will-law.org) • Brian McGrath, Senior Counsel, WILL, (brian@will-law.org) • Mike Fischer, Senior Counsel, WILL, (mike@will-law.org) • Eric Searing, Director of External Relations, WILL, (eric@will-law.org) • Will Flanders, Research Director, WILL, (flanders@will-law.org)
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Please provide all responsive records from June 1, 2019, to November 13, 2019.

In an effort to accommodate the Wisconsin Elections Commission and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by the Commission officials listed in Column A above. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both Commissioner Bostelmann’s response to an email from Mr. Esenberg and the initial received message are responsive to this request and should be produced.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government procedures by the general public.

American Oversight’s work is aimed solely at serving the public interest. *Id.* As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. Rather, American Oversight’s mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website¹ and

¹ *Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents>.

promotes their availability on social media platforms, such as Facebook and Twitter.² American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.³

The public has a significant interest in the issue of a Wisconsin judge's order to the Wisconsin Elections Commission to remove over 200,000 voters from the rolls.⁴ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether the Elections Commission officials communicated with individuals relevant to the case. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

Please search all locations and systems likely to have responsive records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.⁵ Additionally, our request includes any attachments to these records.

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records.⁶

² American Oversight currently has approximately 14,800 page likes on Facebook and 87,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Dec. 17, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Dec. 17, 2019).

³ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁴ Molly Beck, *A Judge Ordered the State to Purge More Than 200,000 Voters from the Rolls. What Should I do if I'm One of Them?*, WISCONSIN JOURNAL SENTINEL (Dec. 16, 2019, 2:20 PM), <https://www.jsonline.com/story/news/politics/elections/2019/12/16/wisconsin-voter-roll-purge-what-do-if-youre-list/2662989001/>; Monica Davey & Mitch Smith, *Wisconsin Judge Says State Must Purge 200,000 Voter Registrations*, THE N.Y. TIMES (DEC. 13, 2019), <https://www.nytimes.com/2019/12/13/us/wisconsin-voter-rolls-purge.html>.

⁵ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

⁶ Wis. Stat. § 19.36(6).

If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Megan Field at records@americanoversight.org or 202.897.2456. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink, appearing to read "Austin R. Evers".

Austin R. Evers
Executive Director
American Oversight