



March 2, 2020

VIA ELECTRONIC MAIL

Texas Secretary of State
Office of the General Counsel
Capitol Bldg. 1E.8
Austin, TX 78701
generalcounsel@sos.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that the Office of the Secretary of State promptly produce the following records:

All communications (including emails, email attachments, calendar invitations/entries, letters, memoranda, or other communications) sent or received by any of the Texas state government officials listed below regarding the performance of any ES&S iVotronic voting machines (including, but not limited to, communications regarding ES&S iVotronic voting machine errors).

Texas State Officials:

- Former Secretary of State Rolando Pablos, or anyone communicating on his behalf
- Former Secretary of State David Whitley, or anyone communicating on his behalf
- Secretary of State Ruth Hughs, or anyone communicating on her behalf
- Deputy Secretary of State Jose Esparza, or anyone communicating on his behalf
- General Counsel Adam Bitter
- Executive Assistant/Scheduler Linda Payne
- Elections Division Director Keith Ingram, or anyone communicating on his behalf
- Election Administration & Voter Registration Manager Kristi Hart
- Legal Director Christina Adkins



- Anyone serving as Elections Attorney (including, but not limited to, Heidi Martinez, Jean Gill, Macy Cotton, Chuck Pinney, Melanie Best, and Lena Proft)
- Anyone serving as Election Trainer (including, but not limited to, David Padilla and Alexa Buxkemper)

Please provide all responsive records from October 1, 2018, to the date the search is conducted.

American Oversight seeks records related to the performance, accuracy, or inaccuracy of iVotronic voting machines. We do not seek publicly available records or summaries of the outcomes of any elections, nor do we seek any ES&S manuals, instructional materials, or other technical guides related to the operation or troubleshooting of the iVotronic voting machines. Accordingly, these materials should not be considered responsive to this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that the Secretary of State use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all 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 a governmental authority’s officer or employee constitutes a record for purposes of the Texas Public Information Act.¹

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. 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

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

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 your office 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.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 the Secretary of State can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the reliability of equipment used to determine the outcome of elections. These records have the potential to shed light on whether and to what extent the known issues regarding the reliability of touchscreen voting machines persist and whether and to what extent said problems have been addressed by state officials.² Election integrity, voting rights, and allegations of voter fraud are subjects of substantial and increasing public interest, both in Texas and nationally.³ Accordingly, release of records that may help the public to better understand the operations and activities of local election administrators is in the public interest.

² Sue Halpern, *How Voting-Machine Errors Reflect a Wider Crisis for American Democracy*, NEW YORKER, Oct. 31, 2018, <https://www.newyorker.com/news/news-desk/how-voting-machine-errors-reflect-a-wider-crisis-for-american-democracy>.

³ See, e.g., Robert T. Garrett, *From Choirboy to ‘Threat?’ Texas Secretary of State David Whitley Defends Scrutiny of Possible Noncitizen Voters*, DALLAS NEWS, Mar. 3, 2019, <https://www.dallasnews.com/news/texas-politics/2019/03/03/choirboy-threat-texas-secretary-state-david-whitley-defends-scrutiny-possible-noncitizen-voters>; Editorial Board, *The GOP Finds Yet Another Way to Suppress the Vote*, WASH. POST, Sept. 10, 2018, https://www.washingtonpost.com/opinions/the-gop-finds-yet-another-way-to-suppress-the-vote/2018/09/10/7cd2617e-b536-11e8-a7b5-adaaa5b2a57f_story.html?utm_term=.8321c34c5b87.

Release of the requested records will primarily benefit the public.⁴ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure 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 website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior United States Department of Justice (DOJ) attorney,⁶ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.⁷ As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.⁸ American Oversight similarly intends to engage with media outlets in Texas to ensure that the general public within the state has access to the information American Oversight obtains.

Accordingly, American Oversight qualifies for a fee waiver. If the Secretary of State denies a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with the Secretary of State on this request. If you do not understand any part of

⁴ Tex. Code § 552.267(a).

⁵ American Oversight currently has approximately 15,400 page likes on Facebook and 101,800 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 26, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 26, 2020).

⁶ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

⁷ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁸ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Emma Lewis at records@americanoversight.org or 202.919.6303. 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight