



April 10, 2020

**VIA EMAIL**

Senator Kathleen Bernier  
Chair, Committee on Elections, Ethics and Rural Issues  
Wisconsin Senate  
Room 319 South  
State Capitol  
PO Box 7882  
Madison, WI 53707  
[Sen.Bernier@legis.wisconsin.gov](mailto:Sen.Bernier@legis.wisconsin.gov)

**Re: Public Records Law Request**

Dear Senator Bernier:

Pursuant to Wisconsin's 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 your office produce the following records “as soon as practicable and without delay”<sup>1</sup>:

1. All email communications sent by the Senator, the Senator's chief of staff, or anyone serving as a health, elections, or coronavirus advisor to the Senator, that contain the following terms\*:
  - a. Safe\*
  - b. Health\*
  - c. Contagious
  - d. Infectio\*
  - e. Corona\*
  - f. Virus\*
  - g. Covid
  - h. “Covid-19”
  - i. Sick\*
  - j. Kelly
  - k. Karofsky
  - l. Court\*
  - m. justicedanielkelly.com
  - n. wisgop\*
  - o. GOP\*
  - p. Republican\*
  - q. RNC
  - r. DNC
  - s. Dem\*
  - t. Biden
  - u. Sanders
  - v. Bernie
  - w. Primar\*
  - x. “Executive order”
  - y. EO
  - z. Election\*

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<sup>1</sup> Wis. Stat. § 19.35(4)(a).



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|-----------------------|-------------------|
| aa. Vote*             | ss. POTUS         |
| bb. Voting            | tt. "White House" |
| cc. Absentee          | uu. Tuesday       |
| dd. Mail*             | vv. "April 7"     |
| ee. Ballot*           | ww. "July 9"      |
| ff. Signature*        | xx. Line*         |
| gg. Witness*          | yy. feet          |
| hh. WEC               | zz. foot          |
| ii. Confine*          | aaa. ft           |
| jj. poll*             | bbb. Distanc*     |
| kk. Death*            | ccc. Quarantin*   |
| ll. "Special session" | ddd. Isolat*      |
| mm. Emergenc*         | eee. PPE          |
| nn. "Turn-out"        | fff. Evers        |
| oo. "Turn out"        | ggg. Milwaukee    |
| pp. Turnout           | hhh. Madison      |
| qq. Guard*            | iii. "at home"    |
| rr. Trump             | jjj. vulnerable   |

Please provide all responsive records from March 20, 2020, through April 10, 2020.

In an effort to accommodate your office, to ensure the reasonableness of our request, and to reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both the Senator's response to an email and the initial received message are responsive to this request and should be produced.

\*Please note that American Oversight is using the asterisk (\*) to designate the standard use of "wildcards" in the search for responsive records. For example, by searching "infectio," emails that include "infectious," "infection," and "infections" would be returned. American Oversight is requesting emails that contain any of those or other variations of the listed root "infectio."

2. All records reflecting communications (including emails, email attachments, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by (a) the Senator, the Senator's chief of staff, or anyone serving as a health, elections, or coronavirus advisor to the Senator and (b) anyone communicating on behalf of the Republican

National Committee (RNC), including but not limited to anyone communicating with an email address ending in “gop.com.”

Please provide all responsive records from March 18, 2020, through April 10, 2020.

### **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. 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 website<sup>2</sup> and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>3</sup> 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.<sup>4</sup>

The public has a significant interest in understanding how elected officials planned for and thought about the state’s April 7, 2020 election.<sup>5</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public’s

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<sup>2</sup> *Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents>.

<sup>3</sup> American Oversight currently has approximately 15,400 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited April 7, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited April 7, 2020).

<sup>4</sup> *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>5</sup> *Wisconsin Primary Recap: Voters Forced to Choose Between Their Health and Their Civic Duty*, N.Y. TIMES, April 7, 2020, <https://www.nytimes.com/2020/04/07/us/politics/wisconsin-primary-election.html?action=click&module=Top%20Stories&pgtype=Homepage>.

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**

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.**

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.<sup>6</sup>

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.<sup>7</sup> 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.

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<sup>6</sup> 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>.

<sup>7</sup> Wis. Stat. § 19.36(6).

## 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](mailto:records@americanoversight.org) or 202.897.2465. 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 line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight