

Louise Spencer
3 Kent Street
Concord, NH 03301

June 23, 2020

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

William Gardner, Secretary of State
N.H. Department of State
State House, Room 204
107 North Main Street
Concord, NH 03301-4989

Re: Right-to-Know/Public Records Request

Dear Secretary Gardner,

Pursuant to the New Hampshire Constitution Part I, Article 8, and New Hampshire's Right-to-Know Law, as codified at RSA Chapter 91-A, I, Louise Spencer (a New Hampshire resident and registered voter), make the following request for records.

At a May 26, 2020 meeting of the Select Committee on 2020 Emergency Election Support, a committee member requested a presentation from the Secretary of State's office concerning "the \$15 million [Help America Vote Act (HAVA)] funds that I believe sit in their office, and whether if necessary we can tap those for this most important election during the COVID-19 crisis."¹ In response, Deputy Secretary of State David Scanlan made a statement along the following lines:

I did give a presentation early on, but the HAVA fund contains primarily the initial round of funding when HAVA was passed. We . . . have kept a fairly large balance for the purpose of paying for maintenance of the program moving forward. If we spend that money, we have to go back to the general fund every budget cycle for millions of dollars to fund those HAVA requirements. In addition to the initial balance, there was a \$3.2 or \$3 million additional payment to the HAVA fund to be used specifically for the cybersecurity component of elections. The feds have said we can spend some of that money for the COVID-19 situation, and to the extent that this committee has recommendations above and beyond the \$3.2 million, we can take a look at that.²

¹ Minutes, Meeting of the Select Committee on 2020 Emergency Election Support at 5, May 26, 2020, <http://sos.nh.gov/WorkArea/DownloadAsset.aspx?id=8589999138>.

² *Id.*

Requested Records

I request that the Office of the Secretary of State produce the following within five business days:

All records relied upon by or otherwise supporting the statements described above made by Deputy Secretary of State David Scanlan at the May 26, 2020 Meeting of the Select Committee on 2020 Emergency Election Support regarding HAVA funding and approximately \$3.2 million in HAVA cybersecurity funding, and the availability (or non-availability) of those funds to address 2020 elections-related issues and related concerns arising out of the COVID-19 crisis.

Pursuant to RSA 91-A:4(IV), if you are unable to produce the requested records within five business days, please provide written acknowledgement of this request and a statement of the time reasonably necessary to determine whether the request will be granted or denied.

Costs and Fees

Pursuant to RSA 91-A:4(IV), I ask that any charges in connection with processing this request for records not exceed the actual cost of providing the copies.

Please notify my counsel of any anticipated costs in excess of \$100 prior to incurring such costs. In addition, should any fees otherwise established by law apply to this request for records, please notify my counsel in advance. Contact information for my counsel is provided at the end of this letter.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, I provide the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, as the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- 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 a request is denied in whole, please state specifically why 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 in response to this request, please do not hesitate to contact my counsel to discuss this request. We welcome an opportunity to discuss this request with you before you undertake your search or incur duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

My counsels' contact information is as follows:

- Katherine Anthony, American Oversight
Telephone: (202) 897-3918
Email: katherine.anthony@americanoversight.org
- Paul Twomey
Email: paultwomey@comcast.net

If possible, where the requested records are maintained in electronic format, I ask that you please provide responsive material in an electronic format by email to my counsel. 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, please also provide responsive material on a rolling basis.

We look forward to working with your office on this request. If you do not understand any part of this request, please reach out to my counsel at the contact information listed above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Louise Spencer".

Louise Spencer

Telephone: (603) 491-1795

Email: lpskentstreet@gmail.com