



July 6, 2020

VIA ELECTRONIC MAIL

Senator Phil Berger
North Carolina General Assembly
Legislative Building, Rm. 2007 LB
16 West Jones Street
Raleigh, NC 27601
phil.berger@ncleg.net

Re: Public Records Act Request

Dear Public Records Custodian:

Pursuant to the North Carolina Public Records Act, as codified at North Carolina General Statutes ch. 132, American Oversight makes the following request for public records.

Requested Records

American Oversight requests that your office produce the following records as promptly as possible:

All email communications (including emails, email attachments, calendar invitations, and attachments thereto) sent by (a) Senator Philip Berger to (b) any of the external parties listed below:

Honest Elections Project:

- i. Leonard Leo (including, but not limited to, at the email address leonard.leo@fed-soc.org)
- ii. Jason Snead (including, but not limited to, at the email address JSnead@honestelections.org)
- iii. Jason Suckey (including, but not limited to, at the email address jstuckey@bricker.com)
- iv. Jason Torchinsky (including, but not limited to, at the email address jtorchinsky@hvjt.law)
- v. Anyone communicating from an email address ending in @honestelections.org

CRC Advisors:

- vi. Greg Mueller (including, but not limited to, at the email address gmueller@crcpublicrelations.com)
- vii. Anyone communicating from an email address ending in @crcadvisors.com or crcpublicrelations.com

Election Integrity Project:

- viii. Anyone communicating from an email address ending in @eip-ca.com

Voter Integrity Project:

- ix. Anyone communicating from an email address ending in @voterintegrityproject.com

Minnesota Voters Alliance:

- x. Anyone communicating from an email address ending in @mnvoters.org



Judicial Watch:

- xi. Anyone communicating from an email address ending in @judicialwatch.org

True the Vote:

- xii. Anyone communicating from an email address ending in @truethevote.org

American Civil Rights Union (ACRU)

- xiii. Anyone communicating from an email address ending in @theacru.org

Public Interest Legal Foundation:

- xiv. Anyone communicating from an email address ending in @publicinterestlegal.org

Public Opinion Strategies:

- xv. Neil Newhouse (including, but not limited to, at the email address neil@pos.org)
- xvi. Bill McInturff (including, but not limited to, at the email address bill@pos.org)
- xvii. Glen Bolger (including, but not limited to, at the email address glen@pos.org)

Elections, LLC:

- xviii. Justin Clark (including, but not limited to, at the email address jrclark@michaelbest.com)
- xix. Nathan Groth (including, but not limited to, at the email address ndgroth@michaelbest.com)
- xx. Stefan Passantino (including, but not limited to, at the email address spassantino@michaelbest.com or stefanpassantino@onebox.com)

Other Individuals:

- xxi. Hans von Spakovsky (including, but not limited to, at the email address hans.vonspakovsky@heritage.org)
- xxii. Kris Kobach (including, but not limited to, at the email address kkobach@gmail.com or kris@kriskobach.com)
- xxiii. Cleta Mitchell (including, but not limited to, at the email address cmitchell@foley.com)

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

Please provide all responsive records from January 1, 2020, through the date the search is conducted.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

American Oversight insists that your office 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.**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 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 your office 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.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission 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.²

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

¹ See Atty. Gen. Josh Stein, *North Carolina Open Government Guide* at 22 (2019), <https://ncdoj.gov/download/141/files/17891/2019-open-government-guide> (“Emails about official business are public records even if they are sent using the personal email account of an employee or official.”).

² American Oversight currently has approximately 15,500 page likes on Facebook and 104,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 2, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 2, 2020).

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.

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