



August 4, 2020

VIA EMAIL

Attorney General
Public Protection Section
NC Attorney General's Office
Mail Service Center 9001
Raleigh, NC 27699-9001
opengov@ncdoj.gov

Re: Public Records Act Request

Dear Public Records Officer:

Pursuant to the North Carolina Public Records Act, as codified at North Carolina General Statutes ch. 132, American Oversight, The League of Women Voters, and The League of Women Voters of Wake County (Requesters) make the following request for public records.

Requested Records

Requesters ask that the North Carolina Attorney General's Office produce the following as promptly as possible:¹

Records sufficient to show the costs your office has incurred and expended in connection with the lawsuit *Covington v. North Carolina* or *North Carolina v. Covington*, 581 U.S. __ (2017), 137 S. Ct. 1624, 137 S. Ct. 2262 (Mem), S. Ct. Nos. 16-649, 16-1023, 17A790, 17-1364

¹ N.C. Gen. Stat. Ann. § 132-6(a).



(S. Ct.) and No. 1:15-cv-00399 (M.D.N.C.), including but not limited to your office's representation of any of the following Defendants:

- i. Roy Cooper
- ii. Pat McCrory
- iii. Joshua B. Howard
- iv. Joshua D. Malcolm
- v. Maja Kricker
- vi. Paul J. Foley
- vii. Rhonda K. Amoroso
- viii. David R. Lewis
- ix. Philip E. Berger
- x. Robert A. Rucho
- xi. Timothy K. Moore
- xii. The North Carolina State Board of Elections
- xiii. The State of North Carolina

Specifically, Requesters seek records sufficient to show the following:

1. The number of attorney hours spent on the case;
2. The number of non-attorney (such as paralegal or legal assistant) staff hours spent on the case;
3. Costs incurred and expended in connection with time spent by state-employed attorneys on the case, including but not limited to:²
 - a. Alexander M. Peters, North Carolina Department of Justice
 - b. Katherine E. Murphy North Carolina Department of Justice
 - c. James Bernier, Jr., North Carolina Department of Justice
 - d. Any other attorneys in the North Carolina Department of Justice who worked on the case;
4. Costs incurred and expended in connection with non-attorney staff members' time spent on the case;
5. Costs incurred and expended for any outside counsel engaged to work on the case;
6. Agreements with outside counsel, including but not limited to engagement letters and/or cost sharing agreements;

² Requesters believe your office is in the best position to know how the cost of attorneys' time in your office is calculated and recorded. Responsive records would include, for example, records that show the number of billable hours attorneys spent on the case and their billable rates or annual salaries.

7. Costs incurred and expended for any experts and consultants associated with the case, including any who provided formal or informal analysis or reports, helped prepare for trial, who participated in and/or testified at hearings or the trial itself, or who were involved in the resolution of the case, including carrying out any remedial measures agreed to by the parties or ordered by the Court;
8. Any litigation costs incurred and expended, including but not limited to, filing fees, court costs, copies, and vendor expenses;
9. Agreements on cost-sharing with any state or local agency;
10. Any amounts paid to plaintiffs or other parties in connection with any resolution of this case, whether through settlement agreement or court order.

Requesters seek any records, to the extent they exist, reflecting total costs incurred for the categories of expenses listed above and other expenses your office may have incurred in connection with this litigation. To the extent any records aggregating all or some of the costs exist, Requesters specifically request those records.³ In addition, Requesters believe records such as time and/or billing records, budgets, appropriations or budget requests, engagement agreements, vendor contracts, invoices, receipts, or memoranda or reports discussing the cost of the litigation would be responsive to this request. Requesters are available to discuss this request and the categories of records your office may have in its possession, custody, or control and the most efficient means of identifying the most relevant records.

Please provide all responsive records from June 1, 2015, through the date the search is conducted.

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

Guidance Regarding the Search & Processing of Requested Records

Please search all records regarding official business. Please do not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.⁴

³ For instance, if information reflecting some or all costs is maintained in a spreadsheet or a database or other format that can be readily exported to a spreadsheet, such a spreadsheet would be responsive to this request.

⁴ 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.”).

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, Requesters welcome an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs.

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

We share a common mission to promote transparency in government. Requesters look forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Khahilia Shaw at records@americanoversight.org or 202.539.6507.

Sincerely,



Austin R. Evers
Executive Director
American Oversight



Dianna Wynn
President
League of Women Voters of Wake County

Jessica Jones Capparell

Jessica Jones Capparell
Policy & Legislative Affairs Senior Manager
League of Women Voters of the United States