



August 7, 2020

VIA EMAIL

Senator Kathleen Bernier
Chair, Committee on Elections, Ethics and Rural Issues
Wisconsin Senate
Room 319 South
State Capitol
P.O. Box 7882
Madison, WI 53707
Sen.Bernier@legis.wisconsin.gov

Re: Public Records Law Request

Dear Public Records Officer:

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”:¹

- A. All email communications (including email messages, complete email chains, calendar invitations, and attachments thereto) between (a) Senator Kathleen Bernier or her Chief of Staff, Nathan Duerkop, and (b) any of the external parties listed below:
 1. Rick Esenberg (including, but not limited to, at the email address rick@will-law.org)
 2. Anyone communicating on behalf of the Wisconsin Institute for Law & Liberty (WILL), including but not limited to, anyone communicating with an email ending in @will-law.org
 3. Andrew Hitt
 4. Mark Jefferson
 5. Anyone communicating on behalf of the Republican Party of Wisconsin, including, but not limited to, anyone communicating with an email ending in @wisgop.info or @wisgop.org

¹ Wis. Stat. § 19.35(4)(a).



6. Anyone communicating on behalf of the MacIver Institute, including, but not limited to, anyone communicating with an email ending in @maciverinstitute.com
7. Charles “CJ” Szafir (including, but not limited to, at the email address cj@reforminggovernment.org)
8. Anyone communicating on behalf of the Institute for Reforming Government, including, but not limited to anyone communicating with an email ending in @reforminggovernment.org
9. Leonard Leo (including, but not limited to, at the email address leonard.leo@fedsoc.org)
10. Jason Snead (including, but not limited to, at the email address JSnead@honestelections.org)
11. Jason Stuckey (including, but not limited to, at the email address jstuckey@bricker.com)
12. Jason Torchinsky (including, but not limited to, at the email address jtorchinsky@hvjt.law)
13. Anyone communicating on behalf of the Honest Elections Project, including, but not limited to anyone communicating with an email ending in @honestelections.org,
14. Anyone communicating on behalf of the Public Interest Legal Foundation, including, but not limited to anyone communicating with an email ending in @publicinterestlegal.org
15. Anyone communicating on behalf of True the Vote including, but not limited to anyone communicating with an email ending in @truethevote.org
16. Anyone communicating on behalf of the American Constitutional Rights Union, including, but not limited to anyone communicating with an email ending in @theacru.org
17. Justin Clark (including, but not limited to, at the email address jrclark@michaelbest.com)
18. Nathan Groth (including, but not limited to, at the email address ndgroth@michaelbest.com)
19. Stefan Passantino (including, but not limited to, at the email address spassantino@michaelbest.com or stefanpassantino@onebox.com)
20. Greg Mueller (including, but not limited to, at the email address gmueller@crccpublicrelations.com)
21. Anyone communicating on behalf of CRC Advisors, including, but not limited to anyone communicating with an email ending in @crcadvisors.com or crccpublicrelations.com
22. Anyone communicating on behalf of Judicial Watch, including, but not limited to anyone communicating with an email ending in @judicialwatch.org
23. James O’Keefe

24. Anyone communicating on behalf of Project Veritas, including, but not limited to, anyone communicating with an email ending in @projectveritas.com
25. Lane Ruhland (including, but not limited to, at the email address lane.ruhland@huschblackwell.com)

Please provide all responsive records from April 7, 2020, through the date the search is conducted.

Please exclude the initial mailing of any news clips or mass mailers generated from non-governmental services and emails distributed to a wide listserv of twenty or more email addresses. However, a news clips or mass mailer email that is forwarded to or from the listed officials with any additional message should be considered responsive.

- B. All email communications (including email messages, complete email chains, calendar invitations, and attachments thereto) between (a) Senator Kathleen Bernier or her Chief of Staff, Nathan Duerkop and (b) any of the following officials of the Wisconsin Elections Commission:
 1. WEC Administrator Meagan Wolfe
 2. WEC Commissioner Marge Bostelmann
 3. WEC Commissioner Dean Knudson
 4. WEC Commissioner Robert Spindell

Please provide all responsive records from April 7, 2020, through the date the search is conducted. Please provide all communications with the listed WEC officials in their personal or governmental capacities, including emails from personal and governmental accounts.

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,² and promotes their availability on social media platforms, such as Facebook and Twitter.³ 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.⁴

The public has a significant interest in government decision-making processes and priorities. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the Wisconsin government, including whether external parties have influenced decisions impacting the administration of elections in Wisconsin. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's 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

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.⁵

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.⁶ 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

² Documents, American Oversight, <https://www.americanoversight.org/documents>.

³ American Oversight currently has approximately 15,500 page likes on Facebook and 104,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited August 4, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited August 4, 2020).

⁴ News, American Oversight, <https://www.americanoversight.org/blog>.

⁵ 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>.

⁶ Wis. Stat. § 19.36(6).

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.

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 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