



October 7, 2020

VIA EMAIL

Laura Dennis, Esquire
Luzerne County Office of Law
200 North River Street
Wilkes-Barre, PA 18711
laura.dennis@luzernecounty.org

Shelby Watchilla
Luzerne County Elections Director
Luzerne County Courthouse
200 N River Street
Wilkes-Barre, PA 18711
shelby.watchilla@luzernecounty.org

Re: Right-to-Know Law Request

Dear Ms. Dennis and Ms. Watchilla:

Pursuant to the Right-to-Know Law (RTKL), as codified at 65 P.S. §§ 67.101 et seq., American Oversight makes the following request for records.

On September 24, 2020, the U.S. Attorney's Office in the Middle District of Pennsylvania announced that it had opened an inquiry into nine ballots, all votes for candidate Donald Trump, that were found "discarded" by elections officials in Luzerne County, Pennsylvania.¹

American Oversight requests records with the potential to shed light on the actions taken by Luzerne County elections officials regarding these mail ballots and the subsequent announcement of an investigation by federal law enforcement.

Requested Records

American Oversight requests that the Luzerne County Bureau of Elections produce the following records within five business days:

Please provide all email communications (email messages, email attachments, complete email chains) sent by Luzerne County Election Director, Shelby

¹ Zach Montellaro, *DOJ Announcement on Pennsylvania Ballot Investigation Baffles Election Experts*, Politico (Sept. 24, 2020, 10:41 PM), <https://www.politico.com/news/2020/09/24/doj-announcement-on-pennsylvania-ballot-investigation-baffles-election-experts-421541>.



Watchilla, from her official email address, or from a personal email in an official capacity, containing any of the following specified key terms:

- | | |
|---------------|---------------------|
| 1. Salavantis | 12. District |
| 2. Stefanie | 13. Attorney |
| 3. Pedri | 14. Freed |
| 4. Naked | 15. usdoj.gov |
| 5. Discard | 16. fbi.gov |
| 6. Trump | 17. Police |
| 7. President | 18. Investigation |
| 8. UMOVA | 19. Inquiry |
| 9. Contractor | 20. "press release" |
| 10. Secrecy | 21. Ballot |
| 11. Privacy | 22. Ballots |

Please provide all responsive records from September 14, 2020, through September 24, 2020.²

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 Ms. Watchilla. 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 Ms. Watchilla's response to an email and the initial received message are responsive to this request and should be produced.

Fee Waiver Request

In accordance with 65 P.S. § 67.1307(f)(2), American Oversight requests a waiver of fees associated with processing this request for records, because disclosure of the requested information is "in the public interest."

The public has a significant interest in the administration of elections in Pennsylvania, especially given its anticipated importance as a populous swing state and concerns that through an investigation into discarded absentee ballots in Luzerne County, the Trump administration is seeking to undermine public confidence in voting by mail.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including clarifying the actions taken by Luzerne County elections officials.

² American Oversight believes this request for records with the listed key terms from a single custodian for a narrow timeframe is "sufficiently specific" (see 65 P.S. §§. 67.703). However, we are available to discuss if you have concerns that any of the listed terms may yield a large volume of responsive records.

³ Philip Bump, *What We Know About Those Discarded Absentee Ballots in Pennsylvania*, Wash. Post (Sept. 25, 2020, 1:02 PM), <https://www.washingtonpost.com/politics/2020/09/25/what-we-know-about-those-discarded-trump-ballots-pennsylvania/>.

American Oversight is committed to transparency and makes the responses agencies provide to open 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's mission is 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.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's State Accountability Project covering voting rights issues in various states;⁶ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the Trump administration's proposed construction of a barrier along the U.S.-Mexico

⁴ American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 25, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 25, 2020).

⁵ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ See generally *State Accountability Project*, American Oversight, https://www.americanoversight.org/areas_of_investigation/state-local-investigations; see, e.g. *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

⁷ See e.g. *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

border, and analyses of what those records reveal;⁸ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers.⁹

Finally, this request is primarily and fundamentally for non-commercial purposes. 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.

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Right-to-Know Law.¹⁰
- 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 under 65 P.S. § 67.706. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

⁸ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁰ See, e.g., *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).

- 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 Emma Lewis at records@americanoversight.org or (202) 919-6303. 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,



Austin R. Evers
Executive Director
American Oversight