



October 26, 2020

VIA EMAIL

Harris County Elections Department
1001 Preston, 4th Floor, Rm. 439
Houston, TX 77002
county.clerk@cco.hctx.net

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

On October 1, 2020, the *Associated Press* reported that a number of North Carolina elections officials received an email in late September regarding a new rule on vote processing from a campaign operative for President Trump stating, “The NC Republican Party advises you to not follow the procedures.”¹ On October 4, 2020, the U.S. Department of Justice (DOJ) Public Integrity Section announced exemptions to DOJ’s practice of non-interference in election policy, including allowing investigations into alleged “misconduct by federal officials or employees administering an aspect of the voting process through the United States Postal Service, the Department of Defense or any other federal department or agency.”² These unusual actions may have the potential to create confusion or uncertainty at a time when many elections officials are processing huge numbers of early ballots, including many cast by mail.³

American Oversight seeks records with the potential to shed light on whether and to what extent external entities have communicated with local elections officials, including providing advice or directives concerning election administration.

¹ Nicholas Riccardi et al., *In Big States, Tiny Counties, Trump Attacking Voting Rules*, Associated Press (Oct. 1, 2020), <https://apnews.com/article/virus-outbreak-election-2020-donald-trump-local-elections-lawsuits-4298a514550323d39931f3e5fff2ccae>.

² Robert Faturechi & Justin Elliott, *DOJ Frees Federal Prosecutors to Take Steps That Could Interfere With Elections, Weakening Long-standing Policy*, ProPublica (Oct. 7, 2020, 12:40 PM), <https://www.propublica.org/article/doj-frees-federal-prosecutors-to-take-steps-that-could-interfere-with-elections-weakening-long-standing-policy>.

³ Brittany Renee Mayes et al., *The U.S. Has Already Hit 87% of Total 2016 Early Voting*, Wash. Post (updated Oct. 21, 2020, 2:47 PM), <https://www.washingtonpost.com/graphics/2020/elections/early-voting-numbers-so-far/>.



Requested Records

American Oversight requests that the Harris County Elections Department promptly produce the following:

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) County Clerk Chris Hollins, or Chief Deputy Teneshia Hudspeth, and (b) any of the following entities:
 - i. U.S. Department of Justice (@usdoj.gov or @usa.doj.gov)
 - ii. Donald J. Trump for President Campaign (@donaldtrump.com, @donaldjtrump.com, @donaldtrumpvictory.com)
 - iii. America First Action (@a1apac.org)
 - iv. The Republican National Committee (@gop.com or @rnchq.com)
 - v. Republican Party of Texas (@texasgop.org)

For item 1 of this request, please provide all responsive records from September 1, 2020, through the date the search is conducted.

2. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by County Clerk Chris Hollins, or Chief Deputy Teneshia Hudspeth, containing any of the following key terms:
 - i. RNC
 - ii. "TX GOP"
 - iii. "Democrat Party"
 - iv. "Trump Campaign"
 - v. "Election Day Operations"

For item 2 of this request, please provide all responsive records from September 15, 2020, through the date the search is conducted.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited item 2 of its request to emails sent by County Clerk Hollins or Chief Deputy Hudspeth. 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 County Clerk Hollins' response to an email containing one of the listed key terms and the initial received message are responsive to this request and should be produced.

We understand that your office's capacity is likely limited as a result of the ongoing election. Should that be the case, we would be happy to discuss potential streamlining or narrowing of our request or other accommodations. Please feel

free to contact us at the telephone number listed in the final paragraph of this letter; we look forward to working with you.

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.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.⁴

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.

⁴ Tex. Code § 552.002(a-2); see also *Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records, because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of county officials, with the potential to shed light on whether and to what extent external parties are offering guidance or attempting to exert influence regarding election administration. This question is a subject of substantial public interest in Texas, where elections officials are currently processing massive numbers of ballots.⁵ Accordingly, release of records that may help the public understand the operations and activities of county officials is in the public interest.

Release of the requested records will primarily benefit the public.⁶ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government’s activities 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization’s State Accountability Project covering voting rights issues in various states;⁹ the posting of records related to an ethics waiver received by a senior DOJ attorney and an analysis of what those records demonstrated regarding the

⁵ Dan Solomon, *Texas Has More Early Voters Than Any Other State*, Texas Monthly, Oct. 20, 2020, <https://www.texasmonthly.com/politics/early-voting-texas-highest-states/>.

⁶ Tex. Code § 552.267(a).

⁷ American Oversight currently has approximately 15,600 followers on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 26, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 26, 2020).

⁸ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *State Accountability Project*, American Oversight, <https://www.americanoversight.org/state-accountability-project>.

Department's process for issuing such waivers;¹⁰ 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 border, and analyses of what those records reveal;¹¹ posting records regarding potential self-dealing at the U.S. Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ and posting records and analysis regarding DOJ's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by DOJ itself and the Federal Bureau of Investigation.¹⁴

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county 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 Christine Monahan at records@americanoversight.org or (202) 869-5244. 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,



¹⁰ *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>.

¹¹ *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>.

¹² *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹³ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹⁴ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

Austin R. Evers
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