



October 26, 2020

VIA EMAIL

Gina Kozlik, CMC/WCMC
Clerk-Treasurer
201 Delafield Street
Room 104
Waukesha, WI 53188
clerktreas@waukesha-wi.gov

Re: Public Records Law Request

Dear Ms. Kozlik:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of 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 Office of the City Clerk of Waukesha produce the following records “as soon as practicable and without delay”:⁴

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) Clerk-Treasurer Gina Kozlik, or anyone acting as Deputy Clerk, 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 Wisconsin (@wisgop.org, @wisgop.info)

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 Clerk-Treasurer Gina Kozlik, or anyone acting as Deputy Clerk, containing any of the following key terms:
 - i. RNC
 - ii. “WI 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 Clerk-Treasurer Kozlik or anyone serving as Deputy Clerk. 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 Clerk-Treasurer Kozlik’s 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

⁴ Wis. Stat. § 19.35(4)(a).

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

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.⁵ American Oversight also makes materials it gathers available on its public website⁶ and promotes their availability on social media platforms, such as Facebook and Twitter.⁷

The public has a significant interest in election administration in the City of Waukesha, especially given the surge in early voting in Wisconsin.⁸ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether external entities are offering guidance or are attempting to exert influence over election administration. American Oversight is

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

⁶ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

⁷ American Oversight currently has approximately 15,600 page likes 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 Craig Gilbert, *Some Communities in Wisconsin Have Already Surpassed Half Their 2016 Turnout, More Than Two Weeks Before Election Day*, Milwaukee J. Sentinel (updated Oct. 20, 2020, 7:26 AM), <https://www.jsonline.com/story/news/politics/elections/2020/10/19/wisconsin-voter-turnout-more-than-half-2016-in-some-areas-due-absentee-ballots/3709355001/>.

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.⁹

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.¹⁰ 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 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.

⁹ 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>.

¹⁰ Wis. Stat. § 19.36(6).

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 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,

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