



April 9, 2021

VIA EMAIL

Cyber Ninjas
Attn: Doug Logan
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sales@cyberninjas.com

Re: Public Records Request

To Whom It May Concern:

The Arizona Public Records Law, A.R.S. §§ 39-121 et seq., applies to any public organization or agency “supported in whole or in part by monies from this state or any political subdivision of this state, or expending monies provided by this state or any political subdivision of this state.” A.R.S. § 41-151.18. Arizona Senate President Karen Fann recently announced that the Senate had retained your company, Cyber Ninjas, to conduct an audit of the November 2020 election results from Maricopa County.¹ The work performed pursuant to that contract is therefore subject to the provisions of the Arizona Public Records Law, which requires you to promptly produce records to any member of the public who requests access to them. *See* A.R.S. § 39-121.01(E).

American Oversight seeks records with the potential to shed light on Cyber Ninjas’ role in the Senate’s planned audit of Maricopa County’s election results, including regarding the anticipated or actual costs of the audit, the direct canvassing of voters or handling of confidential voter information, and other relevant communications. As explained more fully below, prompt disclosure of these records is crucial to meaningfully inform the public about the details of the audit process before the auditors begin contacting voters and reviewing ballots.

Requested Records

American Oversight requests that Cyber Ninjas promptly produce the following records:

¹ Bob Christie, *CEO of Firm Eyeing Ballots Appeared to Make Political Posts*, AP, Mar. 31, 2021, <https://apnews.com/article/joe-biden-arizona-elections-phoenix-dcb5478736188723b405a26e5b7031fc>.



1. Complete copies (including any attachments) of any contract, sub-contract, amendment, memorandum of understanding, or other written agreement in possession of Cyber Ninjas related to the planning, preparation, or execution of the audit, including but not limited to: leases for spaces used to recount ballots; contracts with third-party security or transportation; vendor contracts; or contracts with any formal or informal advisors, consultants, or counsel.
2. Any project plans or other documents detailing the steps or procedures to be followed in each phase of the audit, including but not limited to: plans for the accessing, storing, and handling of confidential voter information, voting equipment, or voting software; methodology for comparing the expected and final results; or other privacy or security protocols.
3. Records sufficient to show a breakdown of the projected costs of Cyber Ninjas' involvement in the Senate's audit of Maricopa County's November 3, 2020 election results, including any cost estimates submitted to the Senate during the procurement process, justifications for the specified \$150,000 value of the contract,² or other documents reflecting the budget for the audit.
4. Records sufficient to identify the precincts to be included in the "Registration and Votes Cast Phase" of the audit and the underlying justification for the selection of those precincts.
5. Any scripts or other guidelines or protocols for contacting individual voters by phone, in person or electronically.

Please provide all responsive records from February 1, 2021, through the date the search is conducted.

"Prompt" disclosure of these records is crucial to meaningfully inform the public on the details and scope of the audit process while the public still has an opportunity to affect how the process is conducted. The public has a legitimate interest in the manner in which the audit is conducted, as Cyber Ninjas itself has proposed to contact voters either by phone or in person to question their voting histories,³ a step that has been described as "harassment and intimidation" of voters.⁴

² Statement of Work between Cyber Ninjas Inc. and Arizona State Senate, Mar. 31, 2021, <https://www.documentcloud.org/documents/20536503-cyber-ninjas-sow-executed-33121>.

³ *Id.*

⁴ Bob Christie, *County Board to Senate: Find Another Spot to Recount Ballots*, AP, Apr. 2, 2021, <https://apnews.com/article/joe-biden-arizona-phoenix-elections-voting-23a34828e8dadd190fe2f02555559b30>.

Disclosure of the requested records is only meaningful if it occurs sufficiently promptly to inform the public about the process while there is still time for them to petition their government to alter the process. The Statement of Work executed by Cyber Ninjas contemplates that the auditors will be contacting individual voters to ask about their voting histories in the first phase of the audit process. That phase is expected to be completed within 20 days, after which point the auditors will begin reviewing paper ballots.⁵ Disclosure of records after Cyber Ninjas has already begun handling ballots and contacting voters would be too late to prevent any potential harms resulting from those processes.

Statement of Noncommercial Purpose

This request is made for noncommercial purposes. American Oversight seeks records regarding the Arizona State Senate's planned audit of Maricopa County's 2020 election results. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the costs to taxpayers of a second audit into the November 3, 2020 election results, the measures being taken to protect confidential voter information, and the extent to which voters may be contacted by phone or in person.

Because American Oversight is a 501(c)(3) nonprofit, this request is not in American Oversight's financial interest and is not made for a commercial purpose. 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.⁶

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or

⁵ See *supra*, note 2.

⁶ American Oversight currently has approximately 15,500 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 8, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 8, 2021).

Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- 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 government business. Do not exclude records regarding government business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- If any records are withheld in full or in part, pursuant to A.R.S. § 39-121.01(D)(2), please provide an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld.
- 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 a request is denied in whole, please state specifically why 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 organization 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 organization 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 organization on this request. If you do not understand any part of this request, please contact Khahilia Shaw at records@americanoversight.org or 202.539.6507.

Sincerely,

/s/ Khahilia Shaw
Khahilia Shaw
on behalf of
American Oversight