



June 11, 2021

VIA EMAIL

Steven A. Travis
Deputy General Counsel
Office of the West Virginia Attorney General
State Capitol Complex, Bldg. 1, Room E-26
Steven.A.Travis@wvago.gov

Re: West Virginia Freedom of Information Act Request

Dear Records Custodian:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1 et seq., American Oversight makes the following request for copies of records.

Requested Records

American Oversight requests that Office of the Attorney General produce the following records within five business days:¹

All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar attachments) sent by (a) Attorney General Patrick Morrissey or Solicitor General Lindsay See, or anyone communicating on their behalf (such as a chief of staff, assistant, or secretary), to (b) any of the external entities or individuals listed below.

Please provide all responsive records from January 20, 2021, through April 22, 2021.

External Entities and Individuals:

1. Anyone communicating from Devon Energy Corporation, including from an email address ending in @dvn.com
2. Anyone communicating from Peabody Energy, including from an email address ending in @peabodyenergy.com
3. Anyone communicating from Murray Energy Corporation, including from an email address ending in @murrayenergycorp.com
4. Anyone communicating from Southern Company, including from an email address ending in @southerncompany.com
5. Anyone communicating from American Fuel & Petrochemical Manufacturers, including from an email address ending in @afpm.org

¹ W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records “as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.”).



6. Anyone communicating from America's Power, including from an email address ending in @americaspower.org
7. Anyone communicating from Western Energy Alliance, including from an email address ending in @westernenergyalliance.org
8. Anyone communicating from American Petroleum Institute, including from an email address ending in @api.org
9. Anyone communicating from Independent Petroleum Association of America, including from an email address ending in @ipaa.org
10. Anyone communicating from Koch Ag & Energy Solutions, including from an email address ending in @kochind.com
11. Anyone communicating from the West Virginia Farm Bureau, including from an email address ending in @wvfam.org
12. Anyone communicating from the Heritage Foundation, including from an email address ending in @heritage.org
13. Anyone communicating from the Heartland Institute, including from an email address ending in @heartland.org
14. Anyone communicating from the U.S. Chamber of Commerce, including from an email address ending in @uschamber.com
15. Anyone communicating from Americans for Prosperity, including from an email address ending in @americansforprosperity.org
16. Anyone communicating from the Republican Attorneys General Association, including from an email ending in @republicanags.com
17. Anyone communicating from the Rule of Law Defense Fund, including from an email ending in @rldf.org or @ruleoflawdefensefund.org
18. Missouri Attorney General Eric Schmitt (ag@ago.mo.gov or eric.schmitt@ago.mo.gov), or anyone communicating on Schmitt's behalf (such as a chief of staff, assistant, or scheduler)
19. South Carolina Attorney General Alan Wilson (agwilson@scag.gov, wilsonforag@gmail.com), or anyone communicating on Wilson's behalf (such as a chief of staff, assistant, or scheduler)
20. Arizona Attorney General Mark Brnovich (@azag.gov, thebrno@gmail.com), or anyone communicating on Brnovich's behalf (such as a chief of staff, assistant, or scheduler)

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 the officials listed above. 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 Attorney General Morrissey's response to an email from one of the external entities listed above and the initial received message are responsive to this request and should be produced.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

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.² 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.
- 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.³ If a request is denied in whole, please state specifically whether 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.

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

² See W. Va. Code § 29B-1-2(5) (defining a “public record” to include “any writing containing information prepared or received by a public body” that “relates to the conduct of the public’s business.”).

³ See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

your office 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.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission 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

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 Mehreen Rasheed at records@americanoversight.org or (202) 848-1320

Sincerely,

/s/ Mehreen Rasheed
Mehreen Rasheed
on behalf of
American Oversight

⁴ American Oversight currently has approximately 15,700 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 4, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 4, 2021).