



July 26, 2021

VIA EMAIL

County of York Open Records Official
York County Administrative Center
28 East Market Street, Room 216
York, Pa. 17401
CountyOpenRecordsOfficial@yorkcountypa.gov

Re: Right-to-Know Law Request

Dear Open Records Official:

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 July 7, 2021, Senator Doug Mastriano issued letters to three counties seeking election materials, including ballots, ballot applications, and equipment, following indications that he intended to pursue an investigation in Pennsylvania modeled after the Arizona State Senate's partisan "audit" of Maricopa County's elections.¹ The following day, Secretary of State Veronica Degraffenreid directed counties not to permit third party access to their voting systems and Governor Tom Wolf condemned Sen. Mastriano's proposed investigation as "a profound waste of time and taxpayer money."² On July 14, the York County Board of Commissioners issued a response to Sen. Mastriano revealing that he had contacted the county in December 2020 to request that Allied Security Operations Group and Wake Technologies conduct a "voluntary forensic analysis."³

American Oversight seeks records with the potential to shed light on efforts to conduct election investigations in Pennsylvania.

¹ Andrew Seidman & Jonathan Lai, *A Key Pa. Republican Asks Counties to Hand Over Ballots and Election Equipment for an Arizona-Style 'Audit,'* PA. Inquirer, July 7, 2021, <https://www.inquirer.com/politics/election/doug-mastriano-pa-election-audit-20210707.html>.

² Marley Parish, *Pa. GOP Lawmaker Mastriano Doubles Down on Election Audit, Requests Meeting with President Biden,* PA. Capital-Star, July 13, 2021, <https://www.penncapital-star.com/government-politics/pa-gop-lawmaker-mastriano-doubles-down-on-election-audit-requests-meeting-with-president-biden/>.

³ York County Board of Commissioners, *RE: Second Forensic Analysis Request,* July 14, 2021, is included as Exhibit A to this request.



Requested Records

American Oversight requests that the York County Board of Commissioners produce the following records within five business days:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by Commissioners Ron Smith and/or Julie Wheeler regarding attempts by the Pennsylvania legislature or its agents to conduct inquiries or investigations into York County's November 2020 elections, including but not limited to Senator Doug Mastriano's December 2020 request to conduct a "voluntary forensic examination of the general election."⁴ This request should be interpreted to include, but not be limited to, records reflecting:

1. Communications with Sen. Mastriano, his staff, or any other members or agents of the Pennsylvania legislature regarding his December 2020 request or follow-up communications, his July 2021 request for ballots and election equipment, or similar requests from other members or agents of the Pennsylvania legislature
2. Communications with Allied Security Operations Group, Wake Technology Services, or any other individual or entity affiliated with Sen. Mastriano's proposed examination
3. Communications with other York County officials regarding Sen. Mastriano's proposed examination or subsequent request for election materials, including regarding: the conduct of York County's elections; the costs or feasibility of the proposed examination or complying with Sen. Mastriano's request for election materials; implications for the county's contract with Dominion Voting Systems; or the legal authority of the Pennsylvania legislature to conduct an investigation
4. Communications with other Pennsylvania officials regarding Sen. Mastriano's proposed examination or request for election materials
5. Communications regarding any allegations of fraud, irregularities, or issues with voting software or equipment, in York County or elsewhere
6. Communications regarding the implications of any examinations or their findings, including but not limited to legal challenges to or decertification of the November 2020 presidential election

Please provide all responsive records from November 3, 2020, through February 28, 2021.

Please note that American Oversight does not seek, and that this request specifically excludes, communications between the listed officials and York

⁴ *Id.*

County residents regarding the November 2020 election, whether the initial constituent communication or the official's response. However, if one of the listed officials forwarded that message to another individual with their own commentary, that subsequent message would be 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 efforts to conduct investigations into the November 2020 elections in Pennsylvania.⁵ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent external individuals or entities have been in contact with local officials regarding proposed investigations.

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.⁶

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.⁷ 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 investigations into misconduct and corruption in state governments;⁸ posting records and analysis of federal and state governments'

⁵ *See supra*, notes 1 & 2.

⁶ American Oversight currently has approximately 15,640 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 15, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 15, 2021).

⁷ *See generally News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *See generally State Investigations*, American Oversight, <https://www.americanoversight.org/states>; *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

responses to the Coronavirus pandemic;⁹ 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;¹⁰ 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.¹¹

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:

- 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

Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

⁹ 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>.

¹⁰ 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>.

¹¹ *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>.

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 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 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.¹²
- 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.
- 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

¹² See, e.g., *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).

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 Zachery Morris at records@americanoversight.org or 202.539.6507.

Sincerely,

/s/ Zachery Morris
Zachery Morris
on behalf of
American Oversight

EXHIBIT A

YORK COUNTY BOARD OF COMMISSIONERS

COMMISSIONERS
JULIE WHEELER, PRESIDENT
DOUG HOKE, VICE PRESIDENT
RON SMITH, COMMISSIONER



ADMINISTRATOR/CHIEF CLERK
MARK E. DERR

SOLICITOR
MICHÈLLE POKRIFKA

YORK COUNTY ADMINISTRATIVE CENTER
28 E. Market Street, York, PA 17401

SENT BY EMAIL AND FACSIMILE

July 14, 2021

Senator Doug Mastriano
118 Carlisle Street, Suite 309
Hanover, PA 17331

RE: Second Forensic Analysis Request

Senator Mastriano:

The County Commissioners of York are in receipt of your July 7, 2021 Request for Information pertaining to the 2020 General Election and 2021 Primary Election. The request appears to pertain to a forensic analysis of the voting equipment used by the County of York during those stated elections.

Your correspondence recounts some of the issues that arose during 2020 and 2021 elections and the guidance that was provided by the Department of State throughout that process. Additionally indicated is that the process of the “mass mail-in voting” where “many ballots were counted at offsite locations with limited outside observation or oversight ... damaged the integrity and confidence in our election process...”. We believe it is important to provide clarification regarding these statements.

During the 2020 General Election, York County did perform off-site pre-canvassing of the mail-in and absentee ballots. Pre-canvassing activities were open to the press, the political parties, candidates, representatives of the candidates and elected officials. The ballots were transported by Sheriff Deputies along with County staff and were secure during the transport and all pre-canvassing activities. This pre-canvass process was conducted in an upfront, transparent manner, permitting all interested parties to observe all aspects of the successful process that was in place.

After the pre-canvassing was completed, the ballots were again transported securely by the Sheriff's Deputies to the Elections Office for tabulation. At the time of scanning of the ballots, a video system permitted all watchers, to observe the scanning and tabulation process. Anyone

who requested to view the process in person was accommodated and permitted to do so. No tabulation was conducted at an off-site location. The observation of the tabulation and verification by watchers, representatives and candidates continued throughout the process of the review, approval and computation of provisional ballots which continued for several days after the election.

The mail-in ballot drop off process was supervised by County staff and Sheriff's deputies and followed security protocols for collection and transport of the ballots from the lobby of the Administrative Center to the Elections Department located in the same building.

All County staff involved and assisting with elections were formally sworn in to those positions and these employees placed a priority on the security and accuracy of our elections processes. We have upheld our commitment of being transparent and accountable not only in elections but in all we do for the residents of York County.

In December 2020 you made a similar request of the Commissioners to permit a company that you had solicited, Allied Security Cooperation Group along with Wake Technologies, to conduct a voluntary forensic analysis of the general election. From the information you provided at that time, you indicated that the request was coming from the bipartisan Committee that had been formed to explore election integrity issues.

At the time of the request in December, 2020, it was communicated to you that although two of the three Commissioners had no objection to the request, there were significant concerns regarding the cost of the analysis, the time commitment related to the analysis, as well as concerns related to the pending litigation matters that involved Dominion, our voting equipment vendor. As the taxpayers of York County have already had to bear the burden of significant election litigation expenses, the Commissioners were in unanimous agreement to not spend additional taxpayer funds for what we believed to be additional or unnecessary supplemental analysis of the election.

There were no indications that the County of York experienced any equipment issues or anomalies during either the General Election of 2020 or the Municipal Primary Election of 2021.

Since that time the County has completed all auditing requirements including engaging in the pilot program, the Risk Limiting Audit or RLA as requested by the Department of State. Such audit verified that the results of the County for the General Election of 2020 were accurate. The County also complied with other reporting processes as required by statutory law, including the comprehensive report required by Act 35 of 2020.

This second request for a forensic analysis raises additional concerns for the Commissioners of York County. It does not appear that the Senate Committee on Intergovernmental Operations, since reconvening in 2021 has addressed this issue during Committee meetings based on review of the documents of the Committee and a review of the regulatory matters that this Committee has addressed in 2021. The County has concerns with the jurisdiction of this Interdepartmental Committee including elections oversight as those matters would fall within the purview of the State Government Committee. As a result, we believe that there may be a lack of jurisdiction

over this issue which should be addressed and determined internally between the Committees and the legislature that created these Committees.

We are aware that there are only two approved audit firms who can complete some of the analysis that you are requesting. Neither of those approved firms are Wake Technologies or Allied Security Cooperation Group. You do not indicate who has been tasked with the completion of such an exhaustive analysis. Has an auditing firm been selected? If so, what actions have been taken to obtain state authorization to complete the analysis?

We are aware of the strict requirements regarding chain of custody issues that must be followed by the County in any post-election analysis of our equipment. Not following those strict requirements will result in decertification of the voting equipment. We would require a written agreement and plan which addresses all of our security concerns and contractual responsibilities. We would also require any group approved to complete such analysis be approved by the Dept. of State and our equipment vendor before further consideration of such a request can be undertaken.

We are aware that the Commissioners of Fulton County, Pennsylvania agreed to a similar voluntary analysis upon your request which was completed by Wake Technologies. This analysis resulted in their vendor, Dominion, who is also our vendor, notifying the Dept. of State that Fulton County was in violation of the licensing agreement. This information is required to be shared with the Department and it has resulted in the de-certification of the bulk of their equipment.

A review of your Exhibit A indicates that this analysis would be a time intensive endeavor. The County does not have adequate staff to complete this project. Also, there is no information in your request addressing the funding of the significant cost of staff time and cost of the analytical process. Is this to be funded by the Bipartisan Committee you mentioned in December or by the Committee on Intergovernmental Operations or by the State Government Committee or the Department of State?

Will the Senate Committee on Intergovernmental Operations provide the staffing, appropriate oversight and incur all costs related to the analysis? If not, the York County Commissioners cannot in good conscience agree that the York County taxpayers should foot the bill for this forensic investigation. Not only is the cost of the analysis prohibitive, the potential loss of certification of the election equipment is a cost that our York County residents cannot sustain, nor should they be asked to do so. The County cannot jeopardize the certification of our equipment by agreeing to this voluntary analysis. The overall cost of the equipment purchased by the County of York was nearly \$2.7 million dollars. Please note that this does not include ongoing licensing fees which are required to annually update the equipment.

All equipment used across the Commonwealth is required to be certified by the EAC and the Pa. Dept of State. This certification required that they successfully complete penetration testing, access-control testing, and testing to ensure that all access points, software, and firmware are protected from tampering. This is the very reason that third party access is limited and in fact in many circumstances prohibited.

The County entered a contract through the COSTARS program with Dominion voting systems which required that they provide a five-year service and maintenance plan and prohibited any third parties from providing any service without specific disclosure requirements being met. This was part of the certification process and required by the State Department in every contract.

Additionally, the confidentiality provisions of the agreement with Dominion include “Prohibited Acts”. Such acts include among other things, the copying of software, the disassembling, deciphering, or analyzing of their equipment and components along with obstruction of their proprietary devices. Inclusion of these provisions were also required by the Dept of State and Dept of General Services so that they could be assured that the certification elements will not be tampered with or modified in any way.

Our agreement with Dominion only permits such a review, as you are requesting, to occur by a court order or “agency with appropriate jurisdiction”. As indicated above we have concerns regarding the Senate Committee on Intergovernmental Operations jurisdiction in this matter.

We have received a directive from the Dept. of State, who is the certification authority for the election equipment. This directive confirms that if third parties, unapproved by the State, gain access to the voting systems, it will undermine the chain of custody requirements with the vendor and will result in de-certification of the equipment.

As a result, as we had stated on January 4, 2021, should the Committee decide to subpoena such an analysis and provide comprehensive answers to all the above issues, we could more properly consider such request.

We recognize the need for significant election law reform and have been vocal with our state and federal representatives regarding our specific needs. We have also partnered with and work along-side our supportive organizations such as CCAP regarding this matter. We also will continue to educate our residents on the need for such reform. Until our requests for reform are acted upon, we will continue to work within the guidelines and constraints of the current Election Code with an emphasis on transparency and accuracy as we have throughout these election cycles.

Yours in service,



Julie Wheeler, President



Doug Hoke, Vice President



Ron Smith, Commissioner

cc: Veronica W. Degraffenreid, Acting Secretary of State
Jonathan M. Marks, Deputy Secretary for Elections and Commissions
Senator Jake Corman, President pro-tempore, State Senate via Chief of Staff Callahan
Lisa Schaeffer, Executive Director, CCAP
York County Office of Election and Voter Registration, Director
Michèle Pokrifka, Solicitor, County of York