



July 20, 2021

VIA EMAIL

Rep. Cole Hefner
Texas Capitol, Rm. E2.718
1100 Congress Avenue
Austin, TX 78701
Cole.Hefner@house.texas.gov

Rep. Jacey Jetton
Texas Capitol, Rm. E2.716
1100 Congress Avenue
Austin, TX 78701
Jacey.Jetton@house.texas.gov

Rep. Briscoe Cain
Texas Capitol, Rm. E2.706
1100 Congress Avenue
Austin, TX 78701
Briscoe.Cain@house.texas.gov

Rep. Valoree Swanson
Texas Capitol, Rm. E2.710
1100 Congress Avenue
Austin, TX 78701
Valoree.Swanson@house.texas.gov

Re: Public Information Request

Dear Representatives Hefner, Cain, Jetton, and Swanson:

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

Requested Records

American Oversight requests that your offices promptly produce the following:

1. All email communications (including emails, email attachments, complete email chains, calendar invitation, and calendar attachments) sent by any of the individuals listed below concerning the manufacturing of hardware or software used in election voting systems, including, but not limited to, proposed requirements that the hardware or software be developed or manufactured in the United States or by American companies.

Office of Representative Hefner:

- i. Representative Cole Hefner
- ii. David Nicholson, Chief of Staff
- iii. James King, Legislative Director

Office of Representative Cain:

- i. Representative Briscoe Cain
- ii. Justin Williamson, Chief of Staff
- iii. Eric Ewing, Legislative Aide
- iv. Dylan Menard, Policy Analyst



Office of Representative Jetton:

- i. Representative Jacey Jetton
- ii. Tory Macfarlan, Chief of Staff
- iii. Cody David, Legislative Director

Office of Representative Swanson:

- i. Representative Cole Hefner
- ii. Cody Jordan, Chief of Staff
- iii. David Hinds, Legislative Director

In an effort to accommodate your offices and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed custodians. 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 Rep. Hefner's response to an email concerning foreign-manufactured voting machines and the initial received message are responsive to this request and should be produced.

2. All email communications (including emails, email attachments, complete email chains, calendar invitation, and calendar attachments) and text messages or messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, Twitter direct messages, Facebook Messenger, WhatsApp, Signal, Telegram, or Parler) between Representatives Hefner, Cain, Jetton, Swanson, or their staff members listed in Part 1 above, and any of the individuals listed below (including, but not limited to, at the listed email addresses).

External Individuals:

- i. NC Rep. Keith Kidwell (Keith.Kidwell@ncleg.gov)
- ii. NC Rep. Kyle Hall (Kyle.Hall@ncleg.gov)
- iii. NC Rep. Jeffrey McNeely (Jeffrey.McNeely@ncleg.gov)
- iv. NC Rep. George Cleveland (George.Cleveland@ncleg.gov)
- v. PA Rep. Matt Dowling (mdowling@pahousegop.com)
- vi. PA Rep. David Rowe (drowe@pahousegop.com)
- vii. PA Rep. Michael Peifer (mpeifer@pahousegop.com)
- viii. PA Rep. Aaron Bernstine (abernstine@pahousegop.com)
- ix. PA Rep. David Millard (dmillard@pahousegop.com)
- x. PA Rep. Carrie Lewis DelRosso (clewisdelrosso@pahousegop.com)
- xi. PA Rep. Rob Kauffman (rkauffman@pahousegop.com)
- xii. PA Rep. Perry Stambaugh (pstambaugh@pahousegop.com)
- xiii. PA Rep. Daryl Metcalfe (dmetcalfe@pahousegop.com)
- xiv. PA Rep. Ryan Warner (rwarner@pahousegop.com)
- xv. PA Rep. Russ Diamond (rdiamond@pahousegop.com)
- xvi. PA Rep. Jim Cox (jcox@pahousegop.com)
- xvii. PA Rep. Joe Hamm (jhamm@pahousegop.com)

3. All email communications (including emails, email attachments, complete email chains, calendar invitation, and calendar attachments) between Representatives Hefner, Cain, Jetton, Swanson, or their staff members listed in Part 1 above, and any representatives of the organizations listed below (including, but not limited to, anyone communicating from an email address ending with the listed domains).

External Organizations:

- i. The Heritage Foundation (@heritage.org)
- ii. Heritage Action for America (@heritageaction.com)
- iii. American Legislative Exchange Council (ALEC) (@alec.org)
- iv. Public Interest Legal Foundation (@publicinterestlegal.org)
- v. True the Vote (@truethevote.org)
- vi. Republican State Leadership Committee (@rslc.gop)
- vii. Family Research Council (frc.org)
- viii. Susan B. Anthony List (sba-list.org)
- ix. American Principles Project (americanprinciplesproject.org)
- x. FreedomWorks (freedomworks.org)
- xi. Tea Party Patriots (teapartypatriots.org)

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Rep. Hefner received a mass-distribution press release from The Heritage Foundation, that initial email would not be responsive to this request. However, if Rep. Hefner forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

For all parts of this request, please provide all responsive records from January 1, 2021, through June 17, 2021.

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.¹

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.

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 state legislators, with the potential to shed light on efforts to implement new voting system manufacturing and development requirements as well as more broadly reform electoral processes. This matter is a subject of substantial public interest in Texas.² Accordingly, release of records that may help the public understand the operations and activities of state officials is in the public interest.

¹ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

² Aris Folley, *Texas Senate Passes Voting Bill After House Democrats Flee State*, Hill (July 13, 2021, 11:01 PM), <https://thehill.com/homenews/state-watch/562893-texas-senate-passes-voting-overhaul-after-house-democrats-leave-state>.

Release of the requested records will primarily benefit the public.³ 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.⁴

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.⁵ 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 investigations into misconduct and corruption in state governments;⁶ the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ the posting of records

³ Tex. Code § 552.267(a).

⁴ American Oversight currently has approximately 16,300 page follows on Facebook and 106,600 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 19, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 19, 2021).

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

⁶ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ *See generally The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *see, e.g., CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

⁹ *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,

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;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

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 Emma Lewis at records@americanoversight.org or (202) 919-6303. 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,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight

<https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

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 Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; *see, e.g., New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.