



September 23, 2021

VIA EMAIL

Iowa Secretary of State
First Floor, Lucas Building
321 E. 12th St.
Des Moines, IA 50319
sos@sos.iowa.gov

Re: Public Records Request

Dear Custodian of Public Records:

Pursuant to the Iowa Public Records Law, Iowa Code, Ch. 22, American Oversight makes the following request for records.

Requested Records

American Oversight requests that the Secretary of State produce the following records promptly, or as soon as feasible:

1. All email communications (including emails, complete email chains, calendar invitation, and attachments thereto) sent by any of the Secretary of State officials listed below concerning changes in the Secretary of State's election authorities (including, but not limited to, communications concerning Senate File 413).

At a minimum, communications concerning the following changes would be responsive to this request and should be produced:

- i. The authority of the State Commissioner of Elections (i.e., the Secretary of State) to oversee the activities of county election officials in the 60 days before and after an election
- ii. The authority of the State Commissioner of Elections (i.e., the Secretary of State) to issue guidance that is not subject to the rulemaking process to clarify election laws and rules

Secretary of State Officials:

- a. Paul Pate, Secretary of State & State Commissioner of Elections
- b. Michael Ross, Deputy Secretary of State & Chief of Staff
- c. Heidi Burhans, Director of Elections
- d. Eric Gookin, Chief Operations Officer
- e. Anyone serving as General Counsel



In an effort to accommodate the Secretary of State and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited this request item 1 to emails sent by the listed officials. 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 Secretary Pate's response to an email concerning the authority of the State Commissioner of Elections to oversee the activities of county election officials in the 60 days before and after an election and the initial received message are responsive to this request and should be produced.

2. All records reflecting any formal or informal directive, order, advisory, guidance, or final analysis regarding the provisions of Senate File 413 referenced in request item 1.

For both items 1 and 2, please provide all responsive records from February 10, 2021, through the date the search is conducted.

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

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.
- 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.¹ 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

¹ See Iowa Code § 22.1(3).

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 Public Records Law.²

- 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 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 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.

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

² See *Linder v. Eckard*, 152 N.W.2d 833, 835 (Iowa 1967) (“It is the nature and purpose of the document, not the place where it is kept, which determines its status” as a public record); *Chapter 22 Frequently Asked Questions*, Iowa Public Information Board, <https://ipib.iowa.gov/faq/if-email-report-or-other-document-composed-received-or-stored-my-personally-owned-electronic> (“If a government official or employee uses privately owned electronic devices or services, such as cell phones, computers, email accounts, smart phones, or such to conduct official government business, then the record generated is a public record.”).

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.³

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

³ American Oversight currently has approximately 15,630 page likes on Facebook and 108,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 7, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 7, 2021).