



November 9, 2021

VIA EMAIL

FOIA Coordinator
Office of the Corporation Counsel
1 South Main Street, 8th Floor
Mount Clemens, MI 48043
candice.donato@macombgov.org

Commissioners Don Brown and Jeff Farrington
Macomb County Administration Building
One South Main, 9th Floor
Mount Clemens, MI 48043
Don.brown@macombgov.org
Jeff.farrington@macombgov.org

Re: Freedom of Information Act Request

Dear FOIA Coordinator and Commissioners:

Pursuant to Michigan's Freedom of Information Act (FOIA), as codified at Mich. Comp. Laws Ann. § 15.231 et seq., American Oversight makes the following request for records.

Macomb County Clerk Anthony Forlini has indicated that he is looking into the November 2020 election in Macomb County, stating to local press, "I can't tell you whether it (2020 election) was hacked. I might be able to with more information."¹ As part of his investigation of elections in the county, Forlini has requested voting information from municipal clerks and requested phone records of local officials.² On October 5, Forlini announced that the review would be conducted by Pro V&V and would cost the county roughly \$16,000.³

American Oversight seeks records with the potential to shed light on apparent investigations into the November 2020 election in Macomb County, including whether

¹ Jameson Cook, *Macomb County Clerk Tells Election-Audit Supporters He is Investigating 2020 Tally*, Macomb Daily (updated August 23, 2021, 10:05 AM), <https://www.macombdaily.com/2021/08/23/macomb-county-clerk-tells-election-audit-supporters-he-is-investigating-2020-tally/>.

² *Id.*

³ Carol Thompson, *Macomb County Clerk Pursues Forensic Audit of County Election Server*, Detroit News (updated 2:42 PM, Oct. 5, 2021), <https://www.detroitnews.com/story/news/local/macomb-county/2021/10/05/macomb-county-clerk-pursues-forensic-audit-election-server/6006646001/>.



or to what extent county officials are acting in coordination or communication with individuals or entities engaged in similar investigations in other jurisdictions.

Requested Records

American Oversight requests that your office respond to this request for the following records within five business days:

Please provide all responsive records described below from October 11, 2021, through the date the search is conducted:⁴

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, or summaries of any oral communications) sent or received by Commissioners Don Brown and/or Jeff Farrington or anyone acting as their agent or communicating on their behalf, regarding the planning, preparation, or execution of any potential or actual audit, recount, inspection, investigation, or other analysis or review of the November 2020 election results in Macomb County, including, but not limited to any formally authorized or independent efforts to canvass voters or review physical ballots, ballot images, voting equipment, or software. This request should be interpreted to include, but not be limited to, communications with local, state, or federal governmental officials; contractors, subcontractors, or volunteers; consultants, counsel, or formal or informal advisors; media or observers; or fundraisers.

In the case of emails and texts, the search should include those sent or received by any individual or personal accounts associated with any of the individuals described above, if they were used to conduct official business, as well those sent from the individuals' official email addresses or official phones.

Please note that American Oversight does not seek, and that this request specifically excludes, communications between the listed officials and Macomb County constituents 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 the official's own commentary, that subsequent message would be responsive to this request and should be produced.

⁴ This request seeks the records substantively described in American Oversight's request identified as MI-MACOMB-21-1420, sent to the Office of the Corporation Counsel, from the period after that request was submitted —*i.e.*, from October 11, 2021, through the date of the search.

See <https://www.americanoversight.org/document/records-request-to-macomb-county-mich-board-of-commissioners-seeking-communications-regarding-reviews-of-election-equipment-and-materials>.

Fee Waiver Request

In accordance with Mich. Comp. Laws Ann. § 15.234(2), American Oversight requests a waiver of fees associated with processing this request for records. A waiver of fees for this request “is in the public interest because searching for or furnishing copies of the public record[s] can be considered as primarily benefiting the general public.”⁵

The public has a significant interest in elections in Michigan, including efforts by state and local officials to investigate elections results.⁶ Records with the potential to shed light on this matter will help American Oversight and the general public understand whether or to what extent Macomb County officials may have acted in communication or coordination with individuals or entities engaged in similar investigations in other jurisdictions.

American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the general 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.⁷

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.⁸ 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;⁹ an ethics waiver received by a senior U.S. Department of Justice attorney and an analysis of what those records demonstrated regarding the

⁵ Mich. Comp. Laws Ann. § 15.234(2).

⁶ See, *supra*, note 1; Clara Hendrickson, *Bureau of Elections Denies Cheboygan County Commission’s Request to Conduct Election Audit*, Detroit Free Press (updated Aug. 5, 2021, 6:08 PM), <https://www.freep.com/story/news/politics/elections/2021/08/05/state-elections-director-denies-cheboygan-county-commission-audit/7992370002/>.

⁷ American Oversight currently has approximately 15,630 page likes on Facebook and 108,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 8, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 8, 2021).

⁸ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

Department's process for issuing such waivers;¹⁰ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the federal administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹¹ posting records regarding potential self-dealing at the U.S. Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ and posting records and analysis regarding the U.S. Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁴

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 communications, including relevant hard-copy files, correspondence files,

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 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>.

¹² *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹³ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹⁴ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

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 use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. 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.
- 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.¹⁵ 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 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

¹⁵ Mich. Comp. Laws Ann. § 15.234(14).

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 Sarah Colombo at records@americanoversight.org or (202) 869-5244. 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/ Sarah Colombo
Sarah Colombo
on behalf of
American Oversight