



November 15, 2021

**VIA EMAIL**

Elections Unit  
North Dakota Office of the Secretary of State  
600 East Boulevard Ave.  
Bismarck, ND 58505  
[soselect@nd.gov](mailto:soselect@nd.gov)

**Re: Open Records Law Request**

Dear Records Custodian:

Pursuant to the North Dakota Open Records Law, N.D.C.C. § 44-04-18 *et seq.*, and Section 6 of Article XI of the North Dakota Constitution, American Oversight makes the following request for records.

**Requested Records**

American Oversight requests that the Office of the Secretary of State promptly produce the following records:

1. Records sufficient to identify the information described in parts a-h (below) regarding mail or absentee ballots submitted during the 2016 general election and the 2020 general election that were either 1) rejected, 2) successfully cured by a voter, 3) unsuccessfully cured by a voter (i.e., where a voter attempted to cure their ballot but failed to do so for any reason), 4) rejected after a voter declined (whether actively or passively) an opportunity to cure their ballot, or 5) rejected without first providing the voter an opportunity to cure their ballot. Please provide the requested information listed below separately for each type of ballot (i.e., rejected, successfully cured, etc.).
  - a. The total number of ballots.
  - b. The grounds for each rejection or challenge of each ballot.
  - c. The submission method (e.g., by mail, drop box, or hand-delivered) of each ballot.
  - d. The county and precinct in which each ballot was submitted.
  - e. The submission date of each ballot.
  - f. The date each voter that submitted a challenged or rejected ballot was notified of their ballot's deficiency.
  - g. The date each voter attempted to cure their ballot.
  - h. The age, race, and political party affiliation of each voter who submitted a ballot.



For part 1 of this request, to the extent that responsive information is aggregated and maintained in a database or spreadsheet, we request a printout from the database containing the information identified and described above (regardless of the actual title of the database fields). American Oversight does not object to the redaction of the names, addresses, or phone numbers of any voters listed in records responsive to these requests.

2. Any materials used to train election officials to a) determine whether submitted ballots should be accepted or rejected (including, but not limited to, records concerning signature matching/verification or verifying a voter's identity), b) determine whether rejected or challenged ballots have been successfully cured, and c) record the status of received ballots (e.g., logging the grounds for rejecting ballots).
3. Records sufficient to identify the title, training, and experience of each person tasked with determining a) whether submitted ballots should be accepted or rejected, or b) whether rejected or challenged ballots have been successfully cured.

For parts 2 and 3 of this request, please provide all responsive records from January 1, 2020, through the date this request is received by your office.

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 term “record,” in its broadest sense, to include all recorded information, regardless of physical form, related to any governmental functions, public business, or public funds.<sup>1</sup> 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

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<sup>1</sup> N.D.C.C. § 44-04-17.1(16).

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 Open Records Law.<sup>2</sup>
- 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.<sup>3</sup> If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. Furthermore, if a request is denied in whole or in part, please describe the legal authority for the denial or, if applicable, provide a statement that the records do not exist.<sup>4</sup>
- 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.

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<sup>2</sup> See N.D.A.G. 2014-O-20 (records contained on public employee's personal device); N.D.A.G. 2014-O-10 (private email account used to generate or receive emails containing "public business"); N.D.A.G. 2008-O-15 (emails on home computers).

<sup>3</sup> N.D.C.C. § 44-04-18.10 (1), (2).

<sup>4</sup> N.D.C.C. § 44-04-18(7).

## **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.<sup>5</sup>

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](mailto:records@americanoversight.org) or (202) 869-5244.

Sincerely,

*/s/ Sarah Colombo*  
Sarah Colombo  
on behalf of  
American Oversight

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<sup>5</sup> 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 Oct. 27, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 27, 2021).