



October 19, 2022

VIA EMAIL

Office of Special Counsel
155 South Executive Drive
Brookfield, WI 53005
coms@wispecialcounsel.org

Re: Public Records Law Request

Dear Office of Special Counsel:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Speaker Vos later expanded the scope of the investigation, appointing former Wisconsin Supreme Court justice Michael Gableman as “special counsel,” and gaining Assembly approval to spend at least \$676,000 in public funds.² On August 12, 2022, Speaker Vos’s office issued a statement announcing the end of the investigation.³ During a subsequent hearing, OSC’s legal counsel indicated that the office still exists and that in the absence of a Special Counsel, Speaker Vos or his designee could authorize actions on behalf of OSC.⁴

American Oversight seeks records with the potential to shed light on the Wisconsin Assembly’s investigation of the November 2020 election, including regarding OSC’s continued operation in absence of a Special Counsel.

¹ Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel (updated May 26, 2021, 5:16 PM), <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.

² Patrick Marley & Molly Beck, *Michael Gableman Reveals One More Staffer for His Election Review in Testimony Before Lawmakers*, Milwaukee J. Sentinel (Nov. 10, 2021, 7:06 PM), <https://www.jsonline.com/story/news/politics/2021/11/10/michael-gableman-reveals-another-staffers-name-election-review/6371829001/>.

³ Patrick Marley, *Wisconsin GOP Fires Election Investigator Who Pushed False Fraud Claims*, Wash. Post (Aug. 12, 2022, 4:23 PM), <https://www.washingtonpost.com/politics/2022/08/12/wisconsin-gop-fires-election-investigator-who-pushed-false-fraud-claims/>.

⁴ Hearing in *American Oversight v. Office of Special Counsel*, Dane County Case No. 22-cv-1583, Sept. 27, 2022, at 0:08:20, 0:10:00, <https://wiseye.org/2022/09/27/dane-county-circuit-court-oral-argument-american-oversight-vs-office-of-special-counsel/>.



Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁵

Records pertaining to the Office of Special Counsel’s lease of offices at 155 S. Executive Drive Suites 212 and 110A, set to expire on September 30, 2022, as well as records pertaining to sublease agreements between Michael Gableman/Consultare LLC and the Thomas More Society and law offices of Mohrman, Kaardal & Erickson, P.A., respectively.⁶

Responsive records should include, but not be limited to:

1. All records of payment made by the Thomas More Society and/or Mohrman, Kaardal & Erickson, P.A., to Michael Gableman/Consultare LLC, the Office of Special Counsel, or anyone acting on behalf of the Wisconsin Assembly, including, but not limited to, rent payments.
2. Any modifications or amendments to the referenced lease or sublease agreements, including any break lease agreements between Michael Gableman/Consultare LLC and their landlord, or between Michael Gableman/Consultare LLC and sublessees.
3. All communications between members, agents, or intermediaries of the Thomas More Society and/or Mohrman, Kaardal & Erickson, P.A, to Michael Gableman/Consultare LLC, the Office of Special Counsel, or anyone acting on behalf of the Wisconsin Assembly regarding the referenced lease or sublease agreements, or regarding the use of the subleased space.

Please provide all responsive records from August 23, 2022, through the date the search is conducted.

This request seeks records in addition to, and not duplicative of, records previously sought by American Oversight.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government procedures by the general public.

American Oversight’s work is aimed solely at serving the public interest. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of

⁵ Wis. Stat. § 19.35(4)(a).

⁶ See American Oversight, *Wisconsin Assembly Records of Gableman Investigation Costs and Contracts*, at 72-74, <https://www.documentcloud.org/documents/21114423-wi-rep-21-1493-a#document/p72/a2066913>.

the information requested is not in American Oversight's financial interest. Rather, American Oversight's mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring 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.⁷ American Oversight also makes materials it gathers available on its public website⁸ and promotes their availability on social media platforms, such as Facebook and Twitter.⁹

The public has a significant interest in the Wisconsin Assembly's investigation of the November 2020 election.¹⁰ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including regarding the continued operation of the Wisconsin Office of Special Counsel in absence of a Special Counsel. American Oversight is committed to transparency and makes the responses agencies provide to public 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 asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

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

⁸ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

⁹ American Oversight currently has approximately 16,000 followers on Facebook and 119,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 17, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 17, 2022).

¹⁰ See *supra*, notes 1–3.

Please search all locations and systems likely to have responsive 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 the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.¹¹

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.¹² 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 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 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

¹¹ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

¹² Wis. Stat. § 19.36(6).

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