



May 1, 2023

VIA EMAIL

Texas Secretary of State
Office of the General Counsel
Capitol Bldg. 1E.8
Austin, TX 78701
generalcounsel@sos.texas.gov

Re: Public Information Request

Dear Public Information Officer:

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 the Texas Secretary of State promptly produce the following:

1. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent or received by any of the Texas Secretary of State personnel listed below, containing any of the key terms listed below. For this request item, please note that American Oversight does not object to the exclusion of communications exclusively internal to members of the Texas state government.

Texas Secretary of State Personnel:

- a. Jane Nelson, Secretary of State (or anyone communicating on her behalf, such as an assistant or scheduler)
- b. Christina Adkins, Acting Director of Elections
- c. Keith Ingram, Voter Registration Crosscheck Program Director
- d. Anyone serving as Chief of Staff
- e. Adam Bitter, General Counsel

Key Terms:

- i. ERIC¹
- ii. "Electronic Registration"
- iii. "Voter registration network"

¹ American Oversight does not object to excluding results where "ERIC" is the only key term to appear in the record and the term is not in reference to Electronic Registration Information Center.



- iv. Hamlin
- v. Haas
- vi. Whitt
- vii. Becker
- viii. “list maintenance”
- ix. ericstates.org

For request item 1, 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 or responding to such emails are responsive to this request. In other words, for example, if Acting Director of Elections Christina Adkins received a mass-distribution newsletter mentioning “list maintenance,” that initial email would not be responsive to this request. However, if Acting Director Adkins forwarded that email to another individual with her own commentary, that subsequent message would be responsive to this request and the complete email chain should be produced.

- 2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) any of the Texas Secretary of State personnel listed in item 1 above, and (b) any of the external parties or representatives of any of the external entities listed below (including, but not limited to, anyone communicating from an email address containing any of the listed domains).

External Parties:

- i. Shane Hamlin, Ericka Haas, Sarah Whitt, or anyone communicating on behalf of the Electronic Registration Information Center (ERIC) (ericstates.org)
- ii. Conservative Partnership Institute (cpi.org or conservativepartnership.org)
- iii. Cleta Mitchell (cleta@cletamitchell.com)
- iv. Erick Kaardal or anyone communicating on behalf of Mohrman, Kaardal & Erickson, P.A. (mklaw.com)
- v. Tim Griffin, or anyone communicating on behalf of the Thomas More Society (thomasmoresociety.org)
- vi. Phill Kline (phillklineva@gmail.com)
- vii. Luis Cornelio (luis.cornelio@protonmail.com, lcornel001@citymail.cuny.edu)
- viii. The Heritage Foundation (heritage.org or heritageaction.com)
- ix. Hans von Spakovsky (hans.vonspakovsky@heritage.org)
- x. Public Interest Legal Foundation (publicinterestlegal.org)
- xi. J. Christian Adams (a@electionlawcenter.com, adams@electionlawcenter.com, and jadams@usccr.gov)
- xii. Jim Hoft (midwestjim@charter.net), or anyone communicating on behalf of The Gateway Pundit (thegatewaypundit.com)

- xiii. Victoria Marshall (victoria@thefederalist.com), Molly Hemingway (mzhemingway@thefederalist.com), or anyone communicating on behalf of The Federalist (thefederalist.com)
- xiv. Hayden Ludwig, or anyone communicating on behalf of Capital Research Center (capitalresearch.org)
- xv. Restoration of America (restorationofamerica.org or restorationpac.com)
- xvi. Mike Lindell (mike@mypillow.com), or anyone communicating on behalf of MyPillow (mypillow.com)
- xvii. Michele Replogle (micrep@protonmail.com, micrep@pm.me, causeofamerica@protonmail.com), or anyone communicating on behalf of Cause of America (causeofamerica.org)
- xviii. Jay Valentine (jay@contingencysales.com), or anyone communicating on behalf of Omega4America (omega4america.com, contingencysales.com, or jayvalentine.com)
- xix. Alaska Division of Elections (alaska.gov)
- xx. Florida Department of State (dos.myflorida.com)
- xxi. Iowa Secretary of State (sos.iowa.gov)
- xxii. Missouri Office of the Secretary of State (sos.mo.gov)
- xxiii. Office of the Ohio Secretary of State (ohiosecretaryofstate.gov)
- xxiv. West Virginia Office of the Secretary of State (wvsos.gov or wvsos.com)
- xxv. Louisiana Secretary of State (sos.la.gov)
- xxvi. Alabama Secretary of State (sos.alabama.gov)
- xxvii. Paul Bettencourt, State Senator (Paul.Bettencourt@senate.texas.gov)
- xxviii. Marc Salvato, Chief of Staff to Senator Bettencourt (Marc.Salvato@senate.texas.gov)
- xxix. Jason Kirksey, Legislative Director to Senator Bettencourt (Jason.Kirksey@senate.texas.gov)
- xxx. Anyone communicating on behalf of the Texas Office of the Lieutenant Governor (including, but not limited to, anyone communicating from an email address ending in ltgov.texas.gov)

For request item 2, 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 Secretary of State Jane Nelson received a mass-distribution newsletter email from The Heritage Foundation, that initial email would not be responsive to this request. However, if Secretary Nelson responded to or forwarded that email to anyone at one of the emails or domains listed above, that subsequent message would be responsive to this request and the complete email chain should be produced.

- 3. Records reflecting any final formal or informal directives or guidance concerning any of the following matters:

- a. Texas' Electronic Registration Information Center (ERIC) membership;
 - b. any amendments or alterations to the bylaws or membership agreement of ERIC;
 - c. voter roll list maintenance;
 - d. notifying eligible but unregistered voters of their eligibility;
 - e. the Texas Secretary of State's own interstate voter registration crosscheck program.
4. All final assessments, reports, analyses, or recommendations in your possession (including formal memoranda and other written products) prepared by your office or otherwise provided to your office by other state or local offices, or independent experts, regarding any projected or actual impacts of (1) withdrawing from the Electronic Registration Information Center or (2) establishing a new interstate voter registration crosscheck program.

For request items 1 through 4, please provide all responsive records from January 1, 2023, through the date the search is conducted.

5. All text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook Messenger, WhatsApp, Signal, Telegram, or Parler) sent or received by any of the Texas Secretary of State personnel listed in item 1 above (whether on government-issued or personal devices), concerning any government business.
6. Any record of any telephone calls made, received, or transferred to or by Secretary of State Jane Nelson, Acting Director of Elections Christina Adkins, or Voter Registration Crosscheck Program Director Keith Ingram, or anyone communicating on their behalf (such as an assistant, secretary, or scheduler). This request includes any detailed billing information or phone records received by the Texas Secretary of State from any telecommunications provider for (a) state-owned/leased phones maintained by the Texas Secretary of State, and (b) personal phones or devices to the extent they are used to conduct official business. American Oversight does not object to the redaction of personal telephone calls.

For request items 5 and 6, please provide all responsive records from March 1, 2023, through March 10, 2023.

7. All calendars or calendar entries for Secretary of State Jane Nelson, Acting Director of Elections Christina Adkins, and Voter Registration Crosscheck Program Director Keith Ingram, including any calendars maintained on their behalf, from January 1, 2023, through March 31, 2023.

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.**

In addition, 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.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 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.

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

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 officials, with the potential to shed light on whether the state is planning to withdraw from ERIC. This question is a subject of substantial public interest in Texas.³ Accordingly, release of records that may help the public understand the operations and election administration activities of state officials is in the public interest.

Release of the requested records will primarily benefit the public.⁴ 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.⁵

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses

³ *State Voter Fraud System Fractures as Republicans Opt Out*, Assoc. Press (March 18, 2023, 3:30 PM), <https://www.cbsnews.com/pittsburgh/news/states-debate-making-changes-to-embattled-voter-roll-system/>; Natalia Contreras, *Conspiracy Theory Whirlwind Threatens to Blow Texas Out of National Program that Keeps Voter Rolls Updated*, Votebeat (March 9, 2023, 5:23 PM), <https://texas.votebeat.org/2023/3/9/23630956/texas-withdraw-eric-voter-rolls-electronic-registration-information-center>.

⁴ Tex. Code § 552.267(a).

⁵ American Oversight currently has approximately 16,000 followers on Facebook and 112,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 26, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 26, 2023).

posted to its website.⁶ 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;⁷ the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁸ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;⁹ 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;¹⁰ the posting of records 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;¹¹ and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹²

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

⁶ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

⁸ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁹ *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>.

¹⁰ *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>.

¹¹ *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>.

¹² *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>.

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