



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

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December 6, 2021

Mehreen Rasheed
American Oversight
1030 15th St. NW, Suite B255
Washington, DC 20005

Re: Request for Records

Dear Ms. Rasheed:

On February 9, 2021, we received your fax dated February 8, 2021 (we note the transmission date is February 9, 2021), requesting records in the possession of this office. In your fax, you request the following:

Pursuant to the Kansas Open Records Act (KORA), Kan. Stat. §§ 45-215 et seq., American Oversight makes the following request for records.

In early December 2020, Texas Attorney General Ken Paxton filed a lawsuit seeking to block various states from casting “unlawful and constitutionally tainted votes” in the Electoral College. Seventeen additional states, including Kansas, filed motions backing Texas’s efforts. ***Later public reporting indicated that in the days leading up to Texas’s filing, a group of Republican state attorneys general solicited U.S. Justice Department support from then-Attorney General William Barr.*** [internal references omitted]

Accordingly, American Oversight seeks records concerning any attempts to petition the U.S. Department of Justice to support efforts to overturn election results.

[Emphasis added]

Requested Records

American Oversight requests that the Kansas Attorney General’s Office produce the following records within three business days:

1. All email communications (including emails, email attachments, calendar invitations, and calendar attachments) between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.

2. All text messages or communications on messaging applications similar in form to text messages (including, but not limited to, Signal, WhatsApp, Facebook Messenger, and Twitter direct messages) between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.
3. All records reflecting the content of any meetings or calls between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below, including, but not limited to, agendas, meeting minutes or summaries (including handwritten notes and informal email summaries), and any materials exchanged by participating parties.

Column A: Kansas Attorney General’s Office Officials	Column B: External Parties
<ul style="list-style-type: none"> i. Derek Schmidt, Attorney General, or anyone communicating on his behalf (such as an assistant or scheduler) ii. Anyone serving as Chief of Staff to Attorney General Schmidt iii. Toby Crouse, former Solicitor General iv. Anyone temporarily serving as Solicitor General or handling the responsibilities of the Solicitor General 	<p><u>State Attorneys General (including the named attorneys general and anyone communicating on their behalf such as a chief of staff, assistant or scheduler):</u></p> <ul style="list-style-type: none"> i. Steve Marshall, Alabama ii. Leslie Rutledge, Arkansas iii. Ashley Moody, Florida iv. Curtis Hill, Indiana (former) v. Jeff Landry, Louisiana vi. Lynn Fitch, Mississippi vii. Eric Schmitt, Missouri viii. Justin Smith, Missouri (Deputy Attorney General) ix. Tim Fox, Montana (former) x. Doug Peterson, Nebraska xi. Wayne Stenehjem, North Dakota xii. Mike Hunter, Oklahoma xiii. Alan Wilson, South Carolina xiv. Jason Raynsborg, South Dakota xv. Herbert Slatery, Tennessee xvi. Ken Paxton, Texas xvii. Sean Reyes, Utah

	<p>xviii. Patrick Morrissey, West Virginia</p> <p><u>Other:</u></p> <p>i. John Sauer, Missouri Solicitor General (including, but not limited to, at John.Sauer@ago.mo.gov)</p> <p><u>U.S. Department of Justice:</u></p> <p>i. Bill Barr, former Attorney General</p> <p>ii. Jeffrey Rosen, former Acting Attorney General</p> <p>iii. Will Levi, former Chief of Staff to Attorney General Barr</p> <p>iv. Rachel Parker Bissex, former Deputy Chief of Staff to Attorney General Barr</p> <p>v. Patrick Hovakimian, Chief of Staff to former Acting Attorney General Rosen</p> <p>vi. Jeffrey Wall, former Solicitor General</p> <p>vii. Jeffrey Clark, former Acting Assistant Attorney General, Civil Division</p>
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Please provide all responsive records from November 3, 2020, through January 20, 2021.

On February 12, 2021, we sent you a letter acknowledging receipt of your request pursuant to the provisions of K.S.A. 45-218(d).

On April 2, 2021, we sent you a letter setting out the results of our search for records. Our letter advised that we identified no records responsive to your request for records.

On April 20, 2021, we received your email dated the same date, stating the following:

I am writing in response to your letter dated April 2, 2021, in response to American Oversight's Open Records Act request submitted to your office via fax on February 9, 2021...

In your letter, you state that your office “identified no records responsive” to our request. However, we are aware of communications between at least one of the external parties listed in our request and at [least] one of the Kansas custodians specified; specifically, between Missouri Solicitor General John Sauer and former Kansas Solicitor General Toby Crouse. I have attached an example of such a communication...

To the extent your office’s search was not reasonable calculated to capture all responsive records, we respectfully request that your office also revise its search parameters accordingly to perform a more inclusive search.

Your February 8, 2021, request stated, “Later public reporting indicated that in the days leading up to Texas’s filing, a group of Republican state attorneys general solicited U.S. Justice Department support from then-Attorney General William Barr. Accordingly, ***American Oversight seeks records concerning any attempts to petition the U.S. Department of Justice to support efforts to overturn election results.***” The phrasing of your request became the content analysis and primary search parameters of our review. We then conducted our search for records pertaining to the named Kansas Attorney General officials and external parties listed in your request using that primary search parameter. If you wish to revise your request to remove the search parameters of our review and wish to seek all records between the parties listed in your February 8, 2021, request, you may send it to me at the address on this letter.

On May 18, 2021, we received your revised request. In your revised request, you request the following:

Please see below American Oversight’s revised request, pursuant to the Kansas Open Records Act (KORA), Kan. Stat. §§ 45-215 et seq., without the search parameters your office previously applied.

Requested Records

American Oversight requests that the Kansas Attorney General’s Office produce the following records within three business days:

1. All email communications (including emails, email attachments, calendar invitations, and calendar attachments) between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.
2. All text messages or communications on messaging applications similar in form to text messages (including, but not limited to, Signal, WhatsApp, Facebook Messenger, and Twitter direct messages) between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.
3. All records reflecting the content of any meetings or calls between (a) any of the Kansas Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below, including, but not limited to, agendas, meeting minutes or summaries (including handwritten notes and informal email summaries), and any materials exchanged by participating parties.

Column A: Kansas Attorney General's Office Officials	Column B: External Parties
<p>v. Derek Schmidt, Attorney General, or anyone communicating on his behalf (such as an assistant or scheduler)</p> <p>vi. Anyone serving as Chief of Staff to Attorney General Schmidt</p> <p>vii. Toby Crouse, former Solicitor General</p> <p>viii. Anyone temporarily serving as Solicitor General or handling the responsibilities of the Solicitor General</p>	<p><u>State Attorneys General (including the named attorneys general and anyone communicating on their behalf such as a chief of staff, assistant or scheduler):</u></p> <p>xix. Steve Marshall, Alabama</p> <p>xx. Leslie Rutledge, Arkansas</p> <p>xxi. Ashley Moody, Florida</p> <p>xxii. Curtis Hill, Indiana (former)</p> <p>xxiii. Jeff Landry, Louisiana</p> <p>xxiv. Lynn Fitch, Mississippi</p> <p>xxv. Eric Schmitt, Missouri</p> <p>xxvi. Justin Smith, Missouri (Deputy Attorney General)</p> <p>xxvii. Tim Fox, Montana (former)</p> <p>xxviii. Doug Peterson, Nebraska</p> <p>xxix. Wayne Stenehjem, North Dakota</p> <p>xxx. Mike Hunter, Oklahoma</p> <p>xxxi. Alan Wilson, South Carolina</p> <p>xxxii. Jason Raynsborg, South Dakota</p> <p>xxxiii. Herbert Slatery, Tennessee</p> <p>xxxiv. Ken Paxton, Texas</p> <p>xxxv. Sean Reyes, Utah</p> <p>xxxvi. Patrick Morrisey, West Virginia</p> <p><u>Other:</u></p> <p>ii. John Sauer, Missouri Solicitor General (including, but not limited to, at John.Sauer@ago.mo.gov)</p> <p><u>U.S. Department of Justice:</u></p> <p>viii. Bill Barr, former Attorney General</p>

	<ul style="list-style-type: none">ix. Jeffrey Rosen, former Acting Attorney Generalx. Will Levi, former Chief of Staff to Attorney General Barrxi. Rachel Parker Bissex, former Deputy Chief of Staff to Attorney General Barrxii. Patrick Hovakimian, Chief of Staff to former Acting Attorney General Rosenxiii. Jeffrey Wall, former Solicitor Generalxiv. Jeffrey Clark, former Acting Assistant Attorney General, Civil Division
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Please provide all responsive records from November 3, 2020, through January 20, 2021.

On September 10, 2021, we sent you a letter asking you to send us a letter clarifying your request for records because your request as submitted was unclear as written. We asked that you clarify what “or anyone communicating on his behalf” means in the context of the attorneys general listed in your request. We asked that you provide this clarification to us no later than October 8, 2021.

On September 27, 2021, we received your email clarifying your request as follows:

Thank you for your letters dated September 10, 2021, in response to two different requests for records (received on February 9, 2021, and April 23, 2021) and seeking clarification regarding what “or anyone communicating on his behalf” means. By this, we mean any person who represents or speaks for the Attorney General in communication, such as a scheduler, personal/administrative assistant, or a Chief of Staff, or who represents Attorney General individually or directly.

On November 5, 2021, we sent you a letter setting out the results of our search for records and the estimated fee to provide the requested records. Our letter advised that we completed our search for records that may be responsive to your request for records. Our letter stated that we identified approximately 109 electronic records that may be responsive to your request for records.

We respectfully declined to release twenty-two (22) attachments to these electronic records potentially responsive to your request for records pursuant to the provisions of K.S.A. 45-221(a)(20). K.S.A. 45-221(a)(20) provides an exemption for disclosure for “[n]otes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed, except that this exemption shall not apply when such records are publicly cited or identified in an open meeting or in an agenda of an open meeting.”

These records are notes and drafts made by attorneys in this office and were not publicly cited or identified in an open meeting or in an agenda of an open meeting.

Our November 5, 2021, letter noted that the remaining 109 electronic records and attachments contain approximately 872 pages of records. Our letter advised that these records contained information that is not subject to disclosure pursuant to the KORA. Because of this, some records would need to be redacted pursuant to the provisions of K.S.A. 45-221(d). This provision requires the separation or deletion of material in public records that is not open to the public.

Our letter stated that pursuant to K.S.A. 45-218(f), a public agency may charge and require advance payment of a fee for providing access to or furnishing copies of public records. We estimated it would require fourteen (14) hours to review, redact¹ if necessary and prepare these records to be provided to you. Because your request involves more than 25 pages of records, the fee for paper copies is \$0.25 per page and the fee for mailing is \$0.50 for the first five pages plus \$0.25 for each additional five-page increment. Therefore, we requested advance payment of the estimated fee of \$754.75.

On November 23, 2021, we received your email requesting information related to your request. You asked the following:

You noted that there are approximately 872 pages for responsive records that need to be redacted and released. In the interest of both reducing the volume of records for your office to process and reducing the resultant fee amount, American Oversight is interested in potentially narrowing its request to eliminate certain categories of records or prioritizing certain records for release. In order to do this, I would greatly appreciate any information you could provide regarding the 109 records. Could you provide a breakdown of the following:

- How many records (including page numbers, if available) are responsive to each of the three parts of the request (i.e., part 1 for email communications, part 2 for text messages & similar messages, and part 3 for records reflecting the content of meetings or calls)
- For each part of the request, how many records are associated with each of the Attorney General Office custodians listed in the request?
- For Part 1, how many pages are email communications versus attachment documents?
- For Part 1 of the request, approximately how many pages, if any, contain newsletters, news clips, press releases, or final court filings?

Finally, your letter noted that all of the records were electronic. Can you clarify whether your office performed a search for any non-electronic records in response to Part 3?

We have reviewed our search results and note that we searched for each category of record requested. In an effort to be helpful, we note that approximately eleven (11) electronic record attachments containing approximately 539 pages are final court filings.

¹ K.S.A. 45-221(d) requires the separation or deletion of material in public records that is not open to the public.

Letter to Mehreen Rasheed

December 6, 2021

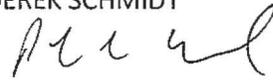
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We also note that we understand the phrase “or anyone communicating on his (Attorney General Schmidt or the officials listed in (b)) behalf” to mean “[a]ny person who represents or speaks for the Attorney General in communication, such as a scheduler, personal/administrative assistant, or a Chief of Staff, or who represents Attorney General individually or directly. Many of the electronic records consist of official notifications provided by an employee of this office acting on behalf of the Attorney General or from an employee of another Attorney General acting in that same capacity.

Thank you in advance for your assistance. If we do not hear from you by **Monday, January 3, 2022**, we will consider your request for records withdrawn.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
DEREK SCHMIDT



Philip R. Michael
Assistant Attorney General

PRM:sb