



# DEVIN LEMAHIEU

## SENATE MAJORITY LEADER

August 30, 2022

Ms. Sarah Colombo  
American Oversight  
1030 15<sup>th</sup> Street NW, Suite B255  
Washington, DC 20005

*Sent via e-mail*

Dear Ms. Colombo,

You submitted an open records request on December 2, 2021 which asked for:

*"All calendars or calendar entries for Senate Majority Leader Devin LeMahieu, Senator Duey Stroebel, and Senator Mary Felzkowski including any calendars maintained on their behalf) from January 1, 2021, through the date the search is conducted.*

*American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar— paper or electronic, whether on government-issued or personal devices— used to track or coordinate how Senate Majority Leader LeMahieu, Senator Stroebel, and Senator Felzkowski allocates their time on public business.*

*The search should include any calendars associated with their individual email accounts, if used for official business, as well as any official calendars maintained for them, including by their legislative assistants."*

Under Wisconsin law, a record is "any material ... that has been created or is being kept by an authority." Records are *not* "drafts, notes, preliminary computations, and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working...."<sup>1</sup> To the extent you requested anything that is not a record, like notes, it was excluded from this request.

Additionally, the Public Records Law does not require an authority to provide requested information if no record exists, and it does not require that an authority create a new record by extracting information from existing records and compiling the information into a new format.<sup>2</sup> We did not include calendars for

<sup>1</sup> Wis. Stat. § 19.32(2); *State v. Panknin*, 217 Wis. 2d 200, 209-10 (Ct. App. 1998); *Voice of Wis. Rapids*, 2015 WI App 53, ¶¶ 13-15.

<sup>2</sup> Wis. Stat. § 19.35 (1) (L); *Journal Times v. City of Racine Bd. of Police & Fire Comm'rs*, 2015 WI 56 ¶55; *George v. Record Custodian*, 169 Wis. 2d 573 (1992).

Senators Felzkowski and Stroebel because our office does not maintain calendars for them. And although the law does not require a record holder to create a new record, the Majority Leader directed staff to work with the non-partisan Legislative Technology Service Bureau (LTSB) to convert calendar entries into a format that could fill your request, as the format the office uses would have made that impossible.

Majority Leader LeMahieu is denying part of your request by way of redacting certain information. In working with LTSB, and after discussions with you, our office partially redacted calendar entries that included links to Zoom and other online calls. After applying the balancing test to that request, we determined there was a need to protect this information as LTSB was unsure how the information could be used if made available to the public. Our software made it difficult to block out only portions of the call information, so you will notice some large blocks of redactions in the response. This information is only technical and does not include substantive entries like participant names or conversation topics.

We also redacted portions of phone numbers that are not publicly available, including access codes for group calls. On balance, it is important for people to be able to conduct these calls while knowing the participants and the public has little interest in knowing the exact numbers dialed. One example is redacting the number for closed caucus. Please let me know if you have any questions or want further information.

Please also note that "continuing" requests are not contemplated by the public records law. The right of access applies only to records that exist at the time the request is made. The Attorney General has long held that a record custodian does not need to honor prospective or continuing records requests.<sup>3</sup> Therefore, the search only includes records from the dates specified in your request through the date and time that your request was received by our office on December 2, 2021.

Under Wis. Stat. § 19.35 (3) (c), an authority may request location costs if the costs are more than \$50. Our office communicated with you that this request was substantial and would cost more than \$50 and our understanding was we should proceed. All responsive records have been sent to the Senate Chief Clerk's office, who will be contacting you about cost and completing the request.

I consider this request fulfilled and this matter closed. You may submit this partial denial to review via an action for mandamus under Wis. Stat. § 19.37(1), or by application to the local district attorney or the Attorney General. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Samantha Stohlman". The signature is written in a cursive, flowing style.

Samantha Stohlman  
Office of Senate Majority Leader Devin LeMahieu

---

<sup>3</sup> 73 Op. Att'y Gen. 37, 44 (1984).