CHRIS KAPENGA

WISCONSIN STATE SENATOR

August 16, 2022

Sarah Colombo
American Oversight
records@americanoversight.org

Dear Ms. Colombo,

This is in response to your open records request to Senator Kapenga, dated August 11, 2022. In your request you seek:

> *" All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between (a) Senator Chris Kapenga or anyone communicating on behalf of their office such as a deputy, chief of staff, assistant, or scheduler, and (b) Virginia "Ginni" Thomas, or anyone communicating on her behalf, including but not limited to Crystal Clanton, including any email address ending in @libertyinc.co or any phone number with the final four digits 8983 or 7611. Please also include any messages from any sender identified as Ms. Thomas, including messages under Ms. Thomas's name from any email address ending in @freeroots.com."*

Your request could be partially construed as seeking personal notes and drafts from Senator Kapenga and our staff. However, notes, drafts, preliminary documents, and similar materials prepared for the originator's personal use or by the originator in the name of a person for whom the originator is working are not "records" for the purpose of the state's records law. 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.

Please note, 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. 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).

Additionally, please 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, and the law contemplates custodial decisions being made with respect to a specific request at the time the request is made. The Attorney General has long interpreted this status as not requiring a record custodian to honor prospective continuing requests for records. [73 Op. Att'y Gen. 37, 44 (1984).] Therefore, the search only includes

records from November 1, 2020 as specified in your request, through the date and time that your request was received on August 11, 2022.

Your search has produced **0** pages of records.

We now consider your request closed. Please contact me if you have any additional questions relating to this request.

Sincerely,

Roy Johnson
Office of Senator Chris Kapenga