



March 20, 2024

**VIA ONLINE PORTAL**

Office of the Secretary of State  
1900 Kanawha Boulevard East  
State Capitol Complex  
Bldg. 1, Ste. 157-K  
Charleston, WV 25305  
Via Online Portal

**Re: West Virginia Freedom of Information Act Request**

Dear Records Custodian:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 et seq., American Oversight makes the following request for copies of records.

**Requested Records**

American Oversight requests that the West Virginia Secretary of State produce the following records within five business days:<sup>1</sup>

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) any of the West Virginia Secretary of State officials listed below, and (b) any of the external entities or individuals listed below or anyone communicating on their behalf (including, but not limited to, at the listed email addresses and domains).

West Virginia Secretary of State Officials:

- i. Mac Warner, Secretary of State (or anyone communicating on his behalf, such as an assistant or scheduler)
- ii. Chuck Flannery, Chief of Staff
- iii. Donald Kersey, General Counsel
- iv. Brittany Westfall, Elections Director

External Entities and Individuals:

- a. Catherine Engelbrecht ([catherine@truethevote.org](mailto:catherine@truethevote.org))
- b. Catherine Trauernicht
- c. Chad Houck ([chad@chadhouch.com](mailto:chad@chadhouch.com))
- d. Charles Bernardin
- e. Cleta Mitchell ([cleta@cletamitchell.com](mailto:cleta@cletamitchell.com), [cmitchell@foley.com](mailto:cmitchell@foley.com))

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<sup>1</sup> W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records “as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.”).



- f. Compass Legal Group ([compasslegal.org](http://compasslegal.org))
- g. Conservative Partnership Institute ([cpi.org](http://cpi.org), [conservativepartnership.org](http://conservativepartnership.org))
- h. EagleAI NETwork ([EagleAI.pro](http://EagleAI.pro))
- i. Election Fairness Institute ([electionfairnessinstitute.org](http://electionfairnessinstitute.org))
- j. Election Integrity Network ([whoscounting.us](http://whoscounting.us),  
[ElectionIntegrity.Network](http://ElectionIntegrity.Network))
- k. Ellen Laybourne ([elblay8@yahoo.com](mailto:elblay8@yahoo.com))
- l. Gina Swoboda ([ginaswoboda@hotmail.com](mailto:ginaswoboda@hotmail.com), [ginaswo@asu.edu](mailto:ginaswo@asu.edu),  
[gs@voterreferencefoundation.com](mailto:gs@voterreferencefoundation.com), [gswoboda@azleg.gov](mailto:gswoboda@azleg.gov))
- m. Haystack Investigations ([haystackinvestigations.com](http://haystackinvestigations.com))
- n. Heather Honey ([heather@verityvote.us](mailto:heather@verityvote.us),  
[hhoney@haystackinvestigations.com](mailto:hhoney@haystackinvestigations.com), [h2osint@protonmail.com](mailto:h2osint@protonmail.com))
- o. Heritage Foundation ([heritage.org](http://heritage.org), [heritageaction.com](http://heritageaction.com))
- p. James “Jim” Womack ([james.k.womack@gmail.com](mailto:james.k.womack@gmail.com),  
[jameskwomack@gmail.com](mailto:jameskwomack@gmail.com))
- q. Jay DeLancy ([jay@voterintegrityproject.com](mailto:jay@voterintegrityproject.com))
- r. Jay Valentine ([jay@contingencysales.com](mailto:jay@contingencysales.com)), or anyone communicating on  
behalf of Omega4America ([omega4america.com](http://omega4america.com), [contingencysales.com](http://contingencysales.com),  
[jayvalentine.com](http://jayvalentine.com), [electionwatch.info](http://electionwatch.info), [fractalweb.app](http://fractalweb.app))
- s. John Richards ([johnrichards@EagleAI.pro](mailto:johnrichards@EagleAI.pro))
- t. Linda Rantz ([cause.america.mo@pm.me](mailto:cause.america.mo@pm.me),  
[causeofamerica@protonmail.com](mailto:causeofamerica@protonmail.com)), or anyone communicating on behalf of  
Cause of America ([causeofamerica.org](http://causeofamerica.org))
- u. Mac Warner ([amwarner@aol.com](mailto:amwarner@aol.com))
- v. North Carolina Election Integrity Team ([nceit.org](http://nceit.org))
- w. Oparent ([oparent.org](http://oparent.org))
- x. Patrice Johnson ([patricejohnson11@gmail.com](mailto:patricejohnson11@gmail.com))
- y. Patricia Chandler ([jsia34765@gmail.com](mailto:jsia34765@gmail.com))
- z. Public Interest Legal Foundation ([publicinterestlegal.org](http://publicinterestlegal.org))
- aa. Restoration of America ([restorationofamerica.org](http://restorationofamerica.org), [restorationpac.com](http://restorationpac.com))
- bb. Rick Richards ([drr@cathaid.com](mailto:drr@cathaid.com), [drr@EagleAI.pro](mailto:drr@EagleAI.pro), [drronline@me.com](mailto:drronline@me.com))
- cc. Shelley Oberlander
- dd. True the Vote ([truethevote.org](http://truethevote.org))
- ee. Valid Vote
- ff. Verity Vote ([verityvote.us](http://verityvote.us))
- gg. Virginia Institute of Public Policy ([virginia institute.org](http://virginia institute.org))
- hh. Virginia Project ([virginiaproject.com](http://virginiaproject.com))
- ii. Voter Reference Foundation ([voteref.com](http://voteref.com), [voterreferencefoundation.com](http://voterreferencefoundation.com))

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 responding to or forwarding such emails are responsive to this request. In other words, for example, if an official received a mass-distribution news clip email from the Election Integrity Network, that initial email would not be responsive to this request. However, if the official forwarded that email to another listed individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from October 1, 2023, through the date the search is conducted.

While we understand the West Virginia Freedom of Information Act permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit organization, we request consideration of a waiver of any fees associated with the furnishing of these documents. Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

### **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business.<sup>2</sup> Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- 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.<sup>3</sup> If a request is denied in whole, please state specifically whether 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

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<sup>2</sup> See W. Va. Code § 29B-1-2(5) (defining a “public record” to include “any writing containing information prepared or received by a public body” that “relates to the conduct of the public’s business.”).

<sup>3</sup> See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

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 office 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.

### **Conclusion**

American Oversight is a 501(c)(3) nonprofit with the mission 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.com.<sup>4</sup>

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 Loree Stark at [records@americanoversight.org](mailto:records@americanoversight.org) or 304.913.6114.

Sincerely,

*/s/ Loree Stark*  
Loree Stark  
on behalf of  
American Oversight

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<sup>4</sup> American Oversight currently has approximately 16,000 followers on Facebook and 111,400 followers on Twitter.com. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 12, 2024); American Oversight (@weareoversight), Twitter.com, <https://twitter.com/weareoversight> (last visited Mar. 12, 2024).