



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:¹

1. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by any of the West Virginia Secretary of State officials listed below and containing any of the key terms listed below.

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

Key Terms:

- a. EagleAI
- b. "Eagle AI"
- c. VoteRef
- d. Fractal

¹ 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.").



In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited part 1 of this request to emails sent by the specified individuals. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means that both an individual's response to an email and the initial received message are responsive to this request and should be produced.

For part 1 of this request, please provide all responsive records from October 1, 2023, through the date the search is conducted.

2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by any of the West Virginia Secretary of State officials listed above in part 1 and containing any of the key terms listed below.

Key Terms:

- a. Houck
- b. Oparent
- c. Opearant
- d. "ERIC member"
- e. "ERIC replacement"
- f. "ERIC alternative"
- g. "ERIC state"
- h. "member of ERIC"
- i. "members of ERIC"
- j. "members in ERIC"
- k. "withdraw from ERIC"
- l. "state-to-state voter"
- m. "state-to-state data"
- n. "state-to-state registration"
- o. "state to state voter"
- p. "state to state data"
- q. "state to state registration"
- r. "cross-state voter"
- s. "cross-state data"
- t. "cross-state registration"
- u. "cross state voter"
- v. "cross state data"
- w. "cross state registration"
- x. "data cross check"
- y. "registration cross check"
- z. "data cross-check"
- aa. "registration cross-check"
- bb. "data comparison"
- cc. "registration comparison"
- dd. "data sharing"
- ee. "list maintenance"

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited part 2 of this request to emails sent by the specified individuals. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means that both an individual's response to an email and the initial received message are responsive to this request and should be produced.

For part 2 of this request, please provide all responsive records from June 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.² 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.³ If a request is denied in whole, please state specifically whether it is not reasonable to segregate portions of the record for release.

² 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.”).

³ 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

- 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 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.⁴

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

within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

⁴ 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).

understand any part of this request, please contact Loree Stark at records@americanoversight.org or 304.913.6114.

Sincerely,

/s/ Loree Stark

Loree Stark
on behalf of
American Oversight