



April 30, 2024

VIA EMAIL

Office of the West Virginia Attorney General
Attn: Steven A. Travis, Deputy General Counsel
State Capitol Complex, Bldg. 1, Rm E-26
1900 Kanawha Boulevard E
Charleston, WV 25305
steven.a.travis@wvago.gov

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 office of the West Virginia Attorney General produce the following records within five business days:¹

1. Complete copies (including any attachments) of any contract, formal or informal agreement, statement of work, memorandum of understanding, or other written agreement between (a) Attorney General Patrick Morrissey and/or the Office of the West Virginia Attorney General, and (b) Alliance Defending Freedom.
2. Complete copies (including any attachments) of any invoice received from, or records reflecting any payment made to Alliance Defending Freedom.
3. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by the Office of the Attorney General officials listed below and containing any of the key terms listed below.²

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.”).

² In West Virginia, generally “neither the identity of a client nor the fees that the client pays is within the attorney-client privilege.” *Mordesovitch v. Westfield Ins. Co.*, 244 F. Supp. 2d 636, 643 (S.D.W. Va. 2003) (internal citations omitted). Further, the Fourth Circuit has “acknowledged that attorney fee arrangements ordinarily do not reveal confidential professional communications between attorney and client and, as such, are not generally protected by the attorney-client privilege.” *Id.* American Oversight does



Office of the West Virginia Attorney General Officials:

1. Attorney General Patrick Morrissey
2. Lindsay See, Solicitor General
3. Terri Varney, Executive Assistant
4. Douglas Buffington, Chief Deputy Attorney General
5. Curtis Capehart, Deputy Attorney General
6. David Gilbert, Deputy Attorney General
7. Caleb Seckman, Assistant Solicitor General
8. Brent Wolfingbarger, Senior Deputy Attorney General
9. Candace Kraus, Senior Deputy Attorney General

Key Terms:

- a. “Alliance Defending Freedom”
- b. ADF
- c. Waggoner
- d. Hawley
- e. Burch
- f. Harle
- g. Payne
- h. Bursch

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 3 of its request to emails sent by the listed officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both a listed official’s response to an email containing a listed key term and the initial received message are responsive to this request and should be produced.

4. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) the Office of the West Virginia Attorney General Officials listed above, and (b) anyone communicating on behalf of Alliance Defending Freedom (including, but not limited to, anyone communicating from an email address ending in adflegal.org).³

For part 4 of this request, please note that American Oversight does not seek, and this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Attorney General Morrissey received a mass-distribution news clip email from Alliance Defending Freedom, that initial email would not be

not object, however, to the appropriate redaction of otherwise responsive records when material is subject to attorney-client privilege.

³ See *supra*, note 2.

responsive to this request. However, if Attorney General Morrissey forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be provided.

For all parts of this request, please provide all responsive records from April 1, 2021, 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.
- In conducting your search, please understand the term “record” in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.⁴ We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- 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.⁵ 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.

⁴ See W. Va. Code § 29B-1-2(6) (defining “writing” to include “books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.”).

⁵ 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.”).

- 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.⁶ 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 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.⁷

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

⁶ 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).

⁷ American Oversight currently has approximately 16,000 followers on Facebook and 111,200 followers on Twitter.com. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 23, 2024); American

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

Oversight (@weareoversight), Twitter.com, <https://twitter.com/weareoversight> (last visited Apr. 23, 2024).