



May 31, 2024

VIA ONLINE PORTAL

Office of the Secretary of State
1900 Kanawha Boulevard E.
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 your office produce the following records within five business days:¹

1. Any handouts, presentation materials, summaries, or notes (electronic or handwritten) or other documents provided to or created by Secretary of State Mac Warner or anyone working on Secretary Warner's behalf (such as a chief of staff, assistant, or counsel) as part of or in relation to the February 5-6, 2024 Heritage Foundation "Secretaries of State Conference" hosted by the Honest Elections Project, Public Interest Legal Foundation, and Heritage Foundation in Washington, D.C.²
2. All email communications (including emails, complete email chains, calendar invitations, or attachments thereto) between (a) the officials listed below and (b) any of the external entities listed below.

West Virginia Secretary of State's Office Officials:

- a. Secretary of State Mac Warner or anyone communicating on his behalf, such as an assistant, scheduler, or aide
- b. Chief of Staff Donald Kersey

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 See, e.g., David Armiak, *Heritage Foundation Secretaries of State Conference Agenda*, Feb. 5-6, 2024, Center for Media and Democracy, April 5, 2024, <https://www.exposedbycmd.org/featured-documents/heritage-foundation-secretaries-of-state-conference-agenda-feb-5-6-2024/>.



c. Elections Director Brittany Westfall

External Entities:

- i. Any email address ending in heritage.org
- ii. Any email address ending in heritageaction.com
- iii. Any email address ending in honestelections.org
- iv. Any email address ending in electionlawcenter.com
- v. Any email address ending in publicinterestlegal.org
- vi. Any email address ending in alec.org
- vii. Any email address ending in jasonsnead.com

Please note that American Oversight does not seek, and that part 2 of 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. For example, if an official received a mass-distribution news clip email from an email ending in heritage.org, 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.

- 3. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent or received by the officials listed above in part 2 and containing the key terms listed below.

Key Terms:

- 1. Heritage
- 2. HEP
- 3. PILF
- 4. "Honest Elections"
- 5. "Public Interest Legal Foundation"
- 6. Snead
- 7. Spakovsky
- 8. "Secretaries of State Conference"

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 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.

- 4. All text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, X direct messages, Facebook messages, WhatsApp, Signal, Telegram, or Parler) between

(a) Secretary of State Mac Warner or Chief of Staff Donald Kersey and (b) the external individuals listed below.

External Individuals:

- i. John Christian Adams, also known as J. Adams or J. Christian Adams
- ii. Jason Snead
- iii. Hans von Spakovsky
- iv. Cleta Mitchell
- v. Heather Honey
- vi. Katie Samalis, also known as Katie Samalis-Aldrich

For all parts of this request, please provide all responsive records from January 1, 2024, through April 1, 2024.

In the case of emails and texts, the search should include those sent or received from the specified officials' personal accounts and/or devices if they were used to conduct official business, as well as those sent from their official email addresses or government-issued devices.

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. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter.com direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- 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.³ 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.

³ 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.").

- 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.⁴ 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.⁵ 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.

⁴ 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.”).

⁵ 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).

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.⁶

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 or (304) 919-6114.

Sincerely,

/s/ Loree Stark

Loree Stark
on behalf of
American Oversight

⁶ 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 May 29, 2024); American Oversight (@weareoversight), Twitter.com, <https://twitter.com/weareoversight> (last visited May 29, 2024).