



# DEVIN LEMAHIEU

## SENATE MAJORITY LEADER

October 30, 2024

Marwah Adhoob  
Paralegal  
American Oversight  
[records@americanoversight.org](mailto:records@americanoversight.org)

[Sent via e-mail]

Dear Marwah Adhoob,

Per your open records request from July 16, 2024 in which you requested:

*“All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) Senator Devin LeMahieu or anyone communicating on his behalf such as a Chief of Staff, assistant, or scheduler and (b) any of the external entities listed below (including but not limited, at the listed domains:*

***External Entities***

- 1. Public Interest Legal Foundation (publicinterestlegal.org, electionlawcenter.com)*
- 2. Cramer Multhauf LLP (cmlawgroup.com)*
- 3. Matthew Fernholz*
- 4. Noel Johnson*
- 5. Kaylan Phillips*

*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 forwarding such emails are responsive to this request. In other words, for example, if Senator LaMahieu received a mass-distribution news clip email from the Public Interest Legal Foundation that initial email would not be responsive to this request. However, if Senator LaMahieu forwarded that email to another listed individual with his own commentary, that subsequent message would be responsive to this request and should be produced.*

*Please provide all responsive records from March 1, 2024, through the date the search is conducted.”*

Under Wisconsin law, a record is “any material ... that has been created or is being kept by an authority.” Records are *not* “drafts, notes, preliminary computations, and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working...”<sup>1</sup> To the extent you requested anything that is not a record, like a draft proposals or notes, it was excluded from this request. Additionally, 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.<sup>2</sup>

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. The Attorney General has long held that a record custodian does not need to honor prospective or continuing records requests.<sup>3</sup> Therefore, the search only includes records from the dates specified in your request through the date and time that your request was received by our office on July 16, 2024.

Finally, Senator LeMahieu is denying and provided redactions on part of your request. Wisconsin Open Records Law recognizes “statutory,” “common law” and “public policy exceptions” to disclosure.<sup>4</sup> The attorney-client privilege protects from disclosure any “confidential communications between [the Legislature] and its attorneys,” and the attorney-work-product doctrine protects from disclosure any “attorney work product, including the material, information, mental impressions and strategies an attorney compiles in preparation for litigation.”<sup>5</sup> It was not reasonable to segregate portions of these records for release.

Denial of a written request is subject to review in an action for mandamus under Wis. Stat. §19.37(1), or by application to the local district attorney or Attorney General.

Please note, under Wis. Stat. § 19.35 (3) (c), an authority may request location costs if the costs are more than \$50. All responsive records have been sent to the Senate Chief Clerk’s office, who will be contacting you about cost and completing the request.

I consider this request fulfilled and this matter closed. Please contact me with any questions.

Sincerely,



Kara Sagan  
Office of Senator Devin LeMahieu

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 73 Op. Att’y Gen. 37, 44 (1984).

<sup>4</sup> *Democratic Party of Wis. v. Wis. Dep’t of Justice*, 2016 WI 100, ¶ 10, 372 Wis. 2d 460, 888 N.W.2d 584, including exceptions for “attorney-client privilege,” *Wis. Newspress, Inc. v. Sch. Dist. of Sheboygan Falls*, 199 Wis. 2d 768, 782, 546 N.W.2d 143 (1996) (citing Wis. Stat. § 905.03); *accord George v. Rec. Custodian*, 169 Wis. 2d 573, 581–82, 485 N.W.2d 460 (Ct. App. 1992), and for “attorney work product,” *Seifert v. Sch. Dist. of Sheboygan Falls*, 2007 WI App 207, ¶¶ 27–28, 305 Wis. 2d 582, 602, 740 N.W.2d 177, 187 (citing Wis. Stat. § 804.01(2)(c)1).

<sup>5</sup> *Wis. Newspress, Inc.*, 199 Wis. 2d at 782–83, *Seifert*, 2007 WI App 207, ¶ 28.