



March 29, 2019

**VIA ELECTRONIC MAIL**

Texas Secretary of State  
Office of the General Counsel  
Capitol Bldg. 1E.8  
Austin, TX 78701  
[generalcounsel@sos.texas.gov](mailto:generalcounsel@sos.texas.gov)

**Re: Public Information Request**

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

**Requested Records**

American Oversight requests that the Office of the Secretary of State promptly produce the following:

All communications (including emails, email attachments, text messages, calendar invitations/entries, letters, memoranda, or other communications) between (a) any of the Texas state government officials listed in Column A below and (b) any of the individuals or entities listed in Column B below:

<b>Column A: Texas State Officials</b>	<b>Column B: External Individuals &amp; Entities</b>
<ul style="list-style-type: none"><li>• Secretary of State David Whitley</li><li>• Deputy Secretary of State José “Joe” Esparza, and anyone else serving in the role of Deputy Secretary of State</li><li>• Former Secretary of State Rolando Pablos</li><li>• Former Secretary of State Carlos Cascos</li><li>• Anyone serving in the role of Chief of Staff to the Secretary of State</li><li>• Director of Elections Keith Ingram, and anyone else serving in the role of Director of Elections</li><li>• Dan Glotzer, Elections Funds Management, Elections Division</li><li>• Kristi Hart, Elections Administration, Elections Division</li></ul>	<ul style="list-style-type: none"><li>• Kris Kobach (including communications from <a href="mailto:kkobach@gmail.com">kkobach@gmail.com</a>, <a href="mailto:kris@kriskobach.com">kris@kriskobach.com</a>, or any email addresses ending in ks.gov</li><li>• J. (John) Christian Adams</li><li>• Hans von Spakovsky</li><li>• John R. Lott Jr.</li><li>• Ken Block</li><li>• Donal Palmer</li><li>• Robert Popper</li><li>• Catherine Engelbrecht</li><li>• Anyone communicating on behalf of the Election Law Center (<a href="http://electionlawcenter.com">electionlawcenter.com</a>)</li></ul>



<ul style="list-style-type: none"> <li>• Christina Adkins, General Law, Elections Division</li> <li>• Anyone serving as an Assistant, Deputy, Chief of Staff, or similar role to the Director of Elections</li> <li>• Anyone communicating on behalf of any of the above officials, such as an administrative assistant or scheduler</li> </ul>	<ul style="list-style-type: none"> <li>• Anyone communicating on behalf of the Government Accountability Institute (g-a-i.org)</li> <li>• Anyone communicating on behalf of Simpatico Software Systems (simpaticosoftware.com)</li> <li>• Anyone communicating on behalf of Judicial Watch (judicialwatch.org)</li> <li>• Anyone communicating on behalf of Heritage Foundation (heritage.org)</li> <li>• Anyone communicating on behalf of Heritage Action for America (heritageaction.com)</li> <li>• Anyone communicating on behalf of Public Interest Legal Foundation (publicinterestlegal.org)</li> <li>• Anyone communicating on behalf of American Civil Rights Union (theacru.org)</li> <li>• Anyone communicating on behalf of True The Vote (truethevote.org)</li> </ul>
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Please provide all responsive records from November 9, 2016, to the date the search is conducted.

American Oversight seeks all 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. 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that the Office of the Secretary of State use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental

authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.<sup>1</sup>

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. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that 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 your office 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.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 the Office of the Secretary of State can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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.

### **Fee Waiver Request**

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of high-ranking Texas officials, with the potential to shed light on whether and to what extent such officials are communicating with individuals outside the Texas executive branch regarding official policy, including with respect to election-related activities. Voting rights and allegations of voter fraud are subjects of substantial and increasing public interest, both in Texas and nationally.<sup>2</sup> Accordingly, release of records that may

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<sup>1</sup> Tex. Code § 552.002(a-2); *see also* *Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

<sup>2</sup> *See, e.g.*, Robert T. Garrett, *From Choirboy to “Threat?” Texas Secretary of State David Whitley Defends Scrutiny of Possible Noncitizen Voters*, Dallas News, Mar. 3, 2019, <https://www.dallasnews.com/news/texas-politics/2019/03/03/choirboy-threat-texas-secretary-state-david-whitley-defends-scrutiny-possible-noncitizen-voters>; Editorial Board, *The GOP Finds Yet Another Way to Suppress the Vote*, Wash. Post, Sept. 10, 2018,

help the public to better understand the operations and activities of the Secretary of State, who serves as the Chief Election Officer for Texas, and his staff, is in the public interest.

Release of the requested records will primarily benefit the public.<sup>3</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. American Oversight's mission is 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.<sup>4</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior United States Department of Justice (DOJ) attorney,<sup>5</sup> American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>6</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>7</sup> American Oversight similarly intends to engage with media outlets in Texas to ensure that the general public within the state has access to the information American Oversight obtains.

Accordingly, American Oversight qualifies for a fee waiver.

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[https://www.washingtonpost.com/opinions/the-gop-finds-yet-another-way-to-suppress-the-vote/2018/09/10/7cd2617e-b536-11e8-a7b5-adaaa5b2a57f\\_story.html?utm\\_term=.8321c34c5b87](https://www.washingtonpost.com/opinions/the-gop-finds-yet-another-way-to-suppress-the-vote/2018/09/10/7cd2617e-b536-11e8-a7b5-adaaa5b2a57f_story.html?utm_term=.8321c34c5b87).

<sup>3</sup> Tex. Code § 552.267(a).

<sup>4</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 28, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 28, 2019).

<sup>5</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>6</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>7</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

## Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with the Office of the Secretary of State on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Beth France at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.2465. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers  
Executive Director  
American Oversight