



May 28, 2020

VIA EMAIL

Winnebago County Clerk, Sue Ertmer
112 Otter Avenue
Oshkosh, WI 54901
sertmer@co.winnebago.wi.us

Re: Public Records Law Request

Dear Public Records Officer:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:¹

1. Records sufficient to identify the following information concerning the processing of absentee ballots for the April 7, 2020 election:
 - A. Absentee Ballot Requests Received:
 - i. Total absentee ballot requests received;
 - ii. Absentee ballot requests received by or on April 3;
 - iii. Absentee ballot requests received after April 3.
 - B. Absentee Ballots Sent:
 - i. Total absentee ballots sent;
 - ii. Absentee ballots reported sent by your office or on April 6;
 - iii. Absentee ballot requests unfulfilled (ballots not sent by your office by April 7);
 - iv. Absentee ballots sent by your office but not delivered by USPS;
 - v. Absentee ballots delivered but not returned.
 - C. Absentee Ballots Returned and Counted:
 - i. Total absentee ballots counted;
 - ii. Absentee ballots postmarked, returned, and counted by April 7;

¹ Wis. Stat. § 19.35(4)(a).



- iii. Absentee ballots postmarked, returned, and counted after April 7;
- iv. Absentee ballots returned in person and counted;
- v. Absentee ballots that had a missing or defective postmark but were nevertheless counted because the bar code was scanned to determine when it was mailed.

D. Absentee Ballots Returned and Rejected:

- i. Total absentee ballots returned and not counted;
- ii. Absentee ballots rejected for lack of a signature on the voter certification on EL-122, the absentee ballot certificate envelope;
- iii. Absentee ballots rejected for lack of a signature on the witness certification on EL-122, the absentee ballot certificate envelope;
- iv. Absentee ballots rejected for lack of enclosed copy of photo ID;
- v. Absentee ballots rejected for a missing, incomplete, or otherwise defective postmark.

Please provide all responsive records from March 1, 2020 to April 17, 2020.

2. Records sufficient to show the total number of complaints (a) received by and (b) resolved by your office about the April 7, 2020 election.

By “complaints” American Oversight means any and all complaints related to voting rights and local election officials’ behavior during the April 7, 2020 election, including but not limited to complaints related to safety concerns about in-person voting in light of the coronavirus pandemic, failure to receive ballots, confusion or misinformation over how to apply for or submit ballots or voter registrations, concerns about polling location closures, and lack of personal protective equipment for poll workers.

Please provide all responsive records from March 1, 2020, through April 30, 2020. American Oversight is requesting records of complaints filed both in the lead up to the April 7, 2020 election and those filed after the fact about the election.

3. Records sufficient to show the following information about complaints received regarding the April 7, 2020 election:
 - a. The total number of complaints received by your office by phone, email, and letter, respectively;
 - b. The total number of complaints received by your office enumerated to the extent practicable by subject matter, including but not limited to regarding: complaints related to safety concerns about in-person voting in light of the coronavirus pandemic; failure to receive ballots; confusion or misinformation over how to apply for or submit ballots or

voter registrations; concerns about polling place closures; and lack of personal protective equipment for poll workers.

By “complaints” American Oversight means any and all complaints related to voting rights and local election officials’ behavior during the April 7, 2020 election. Please provide all responsive records from March 1, 2020, through April 30, 2020. American Oversight is requesting records of complaints filed both in the lead up to the April 7, 2020 election and those filed after the fact about the election.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government procedures by the general public.

American Oversight’s work is aimed solely at serving the public interest. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. Rather, American Oversight’s mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring 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 website² and promotes their availability on social media platforms, such as Facebook and Twitter.³ American Oversight has demonstrated its commitment to the public disclosure of documents and

² *Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents>.

³ American Oversight currently has approximately 15,400 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 6, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 6, 2020).

creation of editorial content through numerous substantive analyses posted to its website.⁴

The public has a significant interest in the processing of absentee ballots during the April 7, 2020 election, in which more than a million voters cast ballots by mail.⁵ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether and to what extent logistical obstacles and procedural confusion prevented tens of thousands of residents of Wisconsin from casting ballots or having their votes counted.⁶ American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

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.**

Please search all locations and systems likely to have responsive 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 the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.⁷

⁴ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁵ Ashley Luthern, *Wisconsin Election Commission Decides to Dig Deeper into Unreturned Absentee Ballots from Election*, MILWAUKEE J. SENTINEL (April 18, 2020, 8:00 PM), <https://www.jsonline.com/story/news/politics/2020/04/18/wisconsin-election-commission-look-into-unreturned-absentee-ballots/5159766002/>.

⁶ *Id.*

⁷ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

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.⁸ 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 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.

Conclusion

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 agency 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.

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 Megan Field at records@americanoversight.org or

⁸ Wis. Stat. § 19.36(6).

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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight