



June 10, 2020

VIA EMAIL

Meagan Wolfe, Administrator
Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984
elections@wi.gov

Re: Public Records Law Request

Dear Ms. Wolfe:

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 the Wisconsin Elections Commission (WEC) produce the following records “as soon as practicable and without delay”:¹

Any formal or informal policy directives, protocols, guidance documents, and decision memoranda provided to local elections officials, sheriffs, operators of correctional facilities, or other officials regarding the ability of individuals incarcerated in Wisconsin jails, prisons, or correctional facilities who either (a) have not yet been convicted of a crime, or who (b) are completing sentences for misdemeanors, to vote in municipal, state, and federal elections (including primaries, special elections, and run-off elections) while being detained or incarcerated.²

Documents that give guidance to law enforcement officials and staff of correctional facilities instructing them to provide absentee ballots and assist with the return of such ballots, make copies of photo IDs, provide or allow others to provide education about voting rights, or otherwise assist qualified voters incarcerated in the facilities where the staff work are responsive to this request.³ Emails between (a) WEC staff or Commissioners and (b) officials operating and managing correctional facilities, in which WEC staff or Commissioners answer questions about voting rights and procedures in correctional facilities are also responsive to this request.

American Oversight refers to the WEC's February 18, 2019 guidance document, *Ex-Felons and Incarcerated Voters*,⁴ to illustrate subjects which the WEC would likely communicate with law enforcement officials and staff of correctional facilities, to

¹ Wis. Stat. § 19.35(4)(a).

² *Ex-Felons and Incarcerated Voters*, Wisconsin Elections Commission, https://elections.wi.gov/sites/elections.wi.gov/files/publication/154/ex_felons_incarcerated_voters_wi_voter_guide_pdf_42117.pdf.

³ *Id.*

⁴ *Id.*



ensure that qualified voters in correctional facilities are able to exercise their voting rights. To be clear, American Oversight is requesting WEC's communications with officials operating and managing correctional facilities, not WEC's communications with individual voters.

Please provide all responsive records from January 1, 2020 to the date the search is conducted.

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 websites and promotes their availability on social media platforms, such as Facebook and Twitter.⁶ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁷

The public has a significant interest in understanding whether and to what extent the WEC is working to protect the voting rights of individuals detained before trial or incarcerated for misdemeanor offenses.⁸ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government. 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

⁵ *Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents>.

⁶ American Oversight currently has approximately 15,500 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 9, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 9, 2020).

⁷ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁸ See, e.g. *Eli Hager, The 470,000 Potential Voters Most Likely To Be Disenfranchised Next Election, The Marshall Project (Apr. 24, 2020)*, <https://www.themarshallproject.org/2020/04/24/the-470-000-potential-voters-most-likely-to-be-disenfranchised-next-election>; Dana Paikowsky, *Jails as Polling Places: Living Up to the Obligation to Enfranchise the Voters We Jail*, HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW, 829-873, Vol.54, 2019, <https://harvardcrcl.org/wp-content/uploads/sites/10/2019/07/54.2-Paikowsky.pdf>; Danielle Root & Lee Doyle, *Protecting the Voting Rights of Americans Detained While Awaiting Trial*, Center for American Progress (Aug. 23, 2018, 9:00 AM), <https://www.americanprogress.org/issues/democracy/reports/2018/08/23/455011/protecting-voting-rights-americans-detained-awaiting-trial/>.

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.⁹

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.¹⁰ 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.

⁹ 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>.

¹⁰ Wis. Stat. § 19.36(6).

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 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, reading "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight