

July 8, 2020

VIA EMAIL

Paul M. Ferguson
Office of Open Government
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
heinam@doj.state.wi.us

Re: Public Records Law Request

Dear Mr. Ferguson:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, the League of Women Voters of Wisconsin (LWVWI), the League of Women Voters of the U.S. (LWVUS), and American Oversight (together, Requesters), make the following request for copies of records.

Requested Records

Requesters request that the Attorney General's office produce the following records "as soon as practicable and without delay"¹:

Records sufficient to show the costs your office incurred and expended in connection with the lawsuit *Baldus et al. v. Brennan et al.*, 849 F. Supp. 2d 840 (E.D. Wis. 2012), including but not limited to your office's representation of the Wisconsin Government Accountability Board and any intervenor defendants. Specifically, Requesters seek records sufficient to show the following:

1. The number of attorney hours spent on the case;
2. The number of non-attorney (such as paralegal or legal assistant) staff hours spent on the case;
3. Costs incurred and expended in connection with DOJ attorneys' time spent on the case;²

¹ Wis. Stat. § 19.35(4)(a).

² Requesters believe your office is in the best position to know how the cost of DOJ attorneys' time is calculated and recorded. Responsive records would include, for example,



4. Costs incurred and expended in connection with non-attorney staff members' time spent on the case;
5. Costs incurred and expended for outside counsel engaged to work on the case;³
6. Agreements with outside counsel, including but not limited to engagement letters or agreements and/or cost sharing agreements;
7. Costs incurred and expended for any experts and consultants associated with the case, including any who provided any informal or formal analysis or reports, helped prepare for trial, who participated in and/or testified at hearings or the trial itself, or who were involved in the resolution of the case, including carrying out remedial measures agreed to by the parties or ordered by the Court;
8. Any litigation costs incurred and expended, including but not limited to, filing fees, court costs, copies, and vendor expenses;
9. Agreements on cost-sharing with the Wisconsin Government Accountability Board;
10. Any amounts paid to plaintiffs or other parties in connection with any resolution of this case, whether through settlement agreement or court order.

Requesters seek any records, to the extent they exist, reflecting total costs incurred for the categories of expenses listed above and other expenses your office may have incurred in connection with this litigation. To the extent that your office has any records that aggregate all or some of the costs, Requesters specifically request those records. In addition, Requesters believe records such as time and/or billing records, budgets, appropriations or budget requests, engagement agreements, vendor contracts, invoices, receipts, or memoranda or reports discussing the cost of the litigation would be responsive to this request. Requesters are available to discuss this request and the categories of records your office may have in its possession, custody, or control and the most efficient means of identifying the most relevant records.

records that show the number of billable hours attorneys spent on the case and the attorneys' billable rates or annual salaries.

³ In addition to DOJ's representation of the defendants, Requesters understand that the Wisconsin Government Accountability Board was represented by Reinhart Boerner Van Deuren SC (Colleen E. Fielkow, Patrick J. Hodan, and Joseph W. Voiland) and Rogahn Jones LLC (Daniel Kelly).

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), Requesters respectfully request that the records be produced without charge. The public has a significant interest in understanding how much the state of Wisconsin, including the DOJ, has historically spent to defend against challenges to politically drawn legislative districts. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including informing voters of the true cost of a political redistricting process.

Providing Requesters with a waiver of fees is in the “public interest” because Requesters will make these important records available to the public without charge. The League of Women Voters of Wisconsin, the League of Women Voters of the U.S., and American Oversight’s work is aimed solely at serving the public interest. As a 501(c)(3) nonprofits, Requesters do not have a commercial purpose for this request and the release of the information requested is not in the nonprofits’ financial interest.

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 website⁴ and promotes their availability on social media platforms, such as Facebook and Twitter.⁵ 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.⁶

Similarly, the League of Women Voters encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. The League’s mission is to empower voters and defend democracy. The League envisions a democracy where every person has the

⁴ *Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents>.

⁵ American Oversight currently has approximately 15,500 page likes on Facebook and 102,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 16, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 16, 2020).

⁶ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

desire, the right, the knowledge and the confidence to participate. Protecting voter rights and voter mobilization are central components of the organization's work.

Accordingly, Requesters qualify for a fee waiver.

Requesters ask that if its request for a fee waiver is denied in whole or in part, that you contact American Oversight, at the contact information below, prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

Requesters seek 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

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

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>.

⁸ Wis. Stat. § 19.36(6).

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 the Requesters, please do not hesitate to contact the American Oversight, to discuss this request. Requesters welcome an opportunity to discuss their request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we 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 Requesters, please also provide responsive material on a rolling basis.

The League of Women Voters of Wisconsin, the League of Women Voters of the U.S., and American Oversight look forward to working with your office on this request. If you do not understand any part of this request or have any questions, please contact Megan Field at American Oversight, at records@americanoversight.org or 202.897.2465. Also, if Requesters' request for a fee waiver is not granted in full, please contact Ms. Field immediately upon making such a determination.

Sincerely,



Austin R. Evers
Executive Director
American Oversight



Debra Cronmiller
Executive Director
League of Woman Voters - Wisconsin