



October 5, 2020

VIA EMAIL

Public Records Officer Patrick Gannon
North Carolina State Board of Elections
Third Floor
430 N Salisbury St
Raleigh NC 27603
Patrick.Gannon@ncsbe.gov

Re: Public Records Act Request

Dear Mr. Gannon:

Pursuant to the North Carolina Public Records Act, as codified at North Carolina General Statutes ch. 132, American Oversight makes the following request for records.

On July 29, 2020, the United States Postal Service (USPS) issued a warning to 46 states and the District of Columbia—excluding only states that already conduct universal vote-by-mail elections—that delays in processing postage might result in ballots being uncounted.¹ These letters were reportedly planned even before operational changes made by newly appointed Postmaster General Louis DeJoy, changes which have resulted in significant delays in mail delivery times, even as states prepare to send and receive record numbers of mail ballots.²

American Oversight seeks records with the potential to shed light on North Carolina's preparedness for the November 2020 election, including communications with USPS in anticipation of widespread use of mail ballots.

Requested Records

American Oversight requests that the State Board of Elections produce the following records as promptly as possible:

¹ Erin Cox et al., *Postal Service Warns 46 States Their Voters Could Be Disenfranchised by Delayed Mail-In Ballots*, Wash. Post (Aug. 14, 2020, 4:44 PM),

https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html.

² See *id.*



All email communications (including emails, complete email chains, email attachments, calendar invitations, and attachments thereto) sent by (a) State Board of Elections Executive Director Karen Brinson Bell, or anyone communicating on her behalf, such as a scheduler or assistant, or Board Chair Damon Circosta to (b) anyone with an email address ending in @usps.com or @usps.gov.

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

American Oversight has limited its request to sent messages to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a government official sent a response to an incoming message from one of the email domains listed above, the email chain containing the initially received message and the response is responsive to this request.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Public Records Act.³
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

³ See Atty. Gen. Josh Stein, *North Carolina Open Government Guide* at 22 (2019), <https://ncdoj.gov/download/141/files/17891/2019-open-government-guide> (“Emails about official business are public records even if they are sent using the personal email account of an employee or official.”).

requested records. If a request is denied in whole, please state specifically why 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.

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.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission 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.⁴

We share a common mission to promote transparency in government. American Oversight looks forward to working with you on this request. If you do not understand any part of

⁴ American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 28, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 28, 2020).

this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at records@americanoversight.org or 202.897.4213

Sincerely,

A handwritten signature in blue ink, appearing to read "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