



January 15, 2021

**VIA EMAIL**

Steve Harrison, House Clerk  
West Virginia House of Delegates  
Room 208  
State Capitol Complex  
Charleston, West Virginia 25305  
[steve.harrison@wv.gov](mailto:steve.harrison@wv.gov)  
[house.clerk@wvhouse.gov](mailto:house.clerk@wvhouse.gov)

**Re: West Virginia Freedom of Information Act Request**

Dear Mr. Harrison:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1 et seq., American Oversight makes the following request for copies of records.

On January 6, 2020, then-State Delegate Derrick Evans posted a video of himself and a crowd of the President's supporters unlawfully entering the U.S. Capitol.<sup>1</sup> On January 8, Ken Kohl of the U.S. Attorney's Office for the District of Columbia confirmed Mr. Evans had been federally charged for his role in invading the U.S. Capitol.<sup>2</sup>

American Oversight seeks records with the potential to shed light on an elected official's potential knowledge of, and involvement in, the storming of the U.S. Capitol.

**Requested Records**

American Oversight requests that the House of Delegates produce the following records within five business days:<sup>3</sup>

- 1) All (a) email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar attachments) sent by and (b) text message threads/conversations, or message

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<sup>1</sup> *West Virginia Lawmaker, Charged After Filming Himself Storming U.S. Capitol, Resigns*, CBS News (Jan. 9, 2021 4:09 PM), <https://www.cbsnews.com/news/derrick-evans-resigns-west-virginia-lawmaker-charged-after-filming-himself-storming-us-capitol/>.

<sup>2</sup> *W. VA Delegate Derrick Evans Has Been Federally Charged*, WDTV, Jan. 8, 2021, <https://www.wdtv.com/2021/01/08/wva-delegate-derrick-evans-has-been-federally-charged/>.

<sup>3</sup> W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records "as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.").



threads/conversations on similar applications such as Signal, WhatsApp, or Facebook Messenger) sent or received by then-State Delegate Derrick Evans, and containing any of the following key terms:

- i. Capitol
- ii. "Stop the steal"
- iii. "Save America"
- iv. "Rally to Revival"
- v. Storm
- vi. Trump
- vii. President
- viii. Biden
- ix. Congress
- x. DC
- xi. D.C.
- xii. Washington
- xiii. RNC
- xiv. DNC
- xv. Patriot
- xvi. Patriots
- xvii. Pelosi
- xviii. Schumer
- xix. Pence
- xx. "Our House"
- xxi. MAGA
- xxii. "great again"
- xxiii. Caravan
- xxiv. Parler
- xxv. Gab
- xxvi. QAnon

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited Item 1(a) of its request to emails sent by Mr. Evans. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Mr. Evans's response to an email containing one of the listed key terms and the initial received message are responsive to this request and should be produced.

For item 1(b) of this request, American Oversight requests that complete text message threads/conversations be produced. This means, for example, that if Mr. Evans sent or received a text message containing any of the key terms listed above, American Oversight requests that the complete text conversation for the timeframe listed below should be produced, and not just the message containing the key term

- 2) Records reflecting any and all expenditures made and/or reimbursed by the state government in connection with Delegate Derrick Evans's trip on or about January 6, 2021, to Washington, D.C., including, but not limited to, records of any reimbursements submitted by or on behalf of Mr. Evans.

Responsive records would include, but are not limited to, hotel or other lodging invoices or receipts; legislature-issued charge card or travel card reports; receipts from airlines, rental car, or other transportation companies; records reflecting the cost of government transportation; receipts or other records reflecting the cost of meals or refreshments; or records reflecting per diem payments.

For both parts of this request, please provide all responsive records from January 1, 2021, through January 9, 2021.

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

### **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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- 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.<sup>4</sup> 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 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

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<sup>4</sup> See W. Va. Code § 29B-1-2(6) (defining "writing" to include "books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.").

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.<sup>5</sup> 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.
- 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.<sup>6</sup> 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.

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

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<sup>5</sup> See W. Va. Code § 29B-1-2(5) (defining a “public record” to include “any writing containing information prepared or received by a public body” that “relates to the conduct of the public’s business.”).

<sup>6</sup> See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

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>7</sup>

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 Mehreen Rasheed at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 848-1320.

Sincerely,

A handwritten signature in blue ink that reads "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

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<sup>7</sup> 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 Jan. 15, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 15, 2021).