



February 8, 2021

VIA EMAIL

Office of the Attorney General
600 East Boulevard Avenue, Department 125
Bismarck, ND 58505-0040
ndag@nd.gov

Re: Open Records Law Request

Dear Records Custodian:

Pursuant to the North Dakota Open Records Law, N.D.C.C. §§ 44-04-18 et seq., and Section 6 of Article XI of the North Dakota Constitution, American Oversight makes the following request for records.

In early December 2020, Texas Attorney General Ken Paxton filed a lawsuit seeking to block various states from casting “unlawful and constitutionally tainted votes” in the Electoral College.¹ Seventeen additional states, including North Dakota, filed motions backing Texas’s efforts.² Later public reporting indicated that in the days leading up to Texas’s filing, a group of Republican state attorneys general solicited U.S. Justice Department support from then-Attorney General William Barr.

Accordingly, American Oversight seeks records concerning any attempts to petition the U.S. Department of Justice to support efforts to overturn state election results.

Requested Records

American Oversight requests that the Office of the Attorney General promptly produce the following records:

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) any of the North Dakota Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.

¹ Emma Platoff, *In New LawsUIT, Texas Contests Election Results in Georgia, Wisconsin, Michigan, Pennsylvania*, Tex. Tribune, Dec. 8, 2020, <https://www.texastribune.org/2020/12/08/texas-ken-paxton-election-georgia/>.

² Todd J. Gillman, *17 States and Trump Join Texas Request for Supreme Court to Overturn Biden Wins in Four States*, Dallas Morning News (Dec. 9, 2020, 10:34 AM), <https://www.dallasnews.com/news/politics/2020/12/09/trump-says-hell-join-texas-lawsuit-asking-supreme-court-to-block-62-biden-electors-from-four-states/>.



2. All text messages or communications on messaging applications similar in form to text messages (including, but not limited to, Signal, WhatsApp, Facebook Messenger, and Twitter direct messages) between (a) any of the North Dakota Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.

3. All records reflecting the content of any meetings or calls between (a) any of the North Dakota Office of the Attorney General officials listed in Column A, below, and (b) any of the external parties listed in Column B, below, including, but not limited to, agendas, meeting minutes or summaries (including handwritten notes and informal email summaries), and any materials exchanged by participating parties.

Column A: North Dakota Office of the Attorney General Officials	Column B: External Parties
<ol style="list-style-type: none"> i. Wayne Stenehjem, Attorney General, or anyone communicating on his behalf (such as an assistant or scheduler) ii. Anyone serving as Chief of Staff to Attorney General Stenehjem iii. Matthew Sagsveen, Solicitor General 	<p><u>State Attorneys General (including the named attorneys general and anyone communicating on their behalf such as a Chief of Staff, assistant or scheduler):</u></p> <ol style="list-style-type: none"> i. Steve Marshall, Alabama ii. Leslie Rutledge, Arkansas iii. Ashley Moody, Florida iv. Curtis Hill, Indiana (former) v. Derek Schmidt, Kansas vi. Jeff Landry, Louisiana vii. Lynn Fitch, Mississippi viii. Eric Schmitt, Missouri ix. Justin Smith, Missouri (Deputy Attorney General) x. Tim Fox, Montana (former) xi. Doug Peterson, Nebraska xii. Mike Hunter, Oklahoma xiii. Alan Wilson, South Carolina xiv. Jason Raynsborg, South Dakota xv. Herbert Slatery, Tennessee xvi. Ken Paxton, Texas xvii. Sean Reyes, Utah xviii. Patrick Morrissey, West Virginia <p><u>Other:</u></p> <ol style="list-style-type: none"> i. John Sauer, Missouri Solicitor General (including, but not limited to, at John.Sauer@ago.mo.gov)

	<p><u>U.S. Department of Justice:</u></p> <ol style="list-style-type: none"> i. Bill Barr, former Attorney General ii. Jeffrey Rosen, former Acting Attorney General iii. Will Levi, former Chief of Staff to Attorney General Barr iv. Rachel Parker Bissex, former Deputy Chief of Staff to Attorney General Barr v. Patrick Hovakimian, Chief of Staff to former Acting Attorney General Rosen vi. Jeffrey Wall, former Solicitor General vii. Jeffrey Clark, former Acting Assistant Attorney General, Civil Division
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Please provide all responsive records from November 3, 2020, through January 20, 2021.

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please understand the term “record,” in its broadest sense, to include all recorded information, regardless of physical form, related to any governmental functions, public business, or public funds.³ 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.

³ N.D.C.C. § 44-04-17.1(16).

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 Open Records Law.⁴
- 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.⁵ If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. Furthermore, if a request is denied in whole or in part, please describe the legal authority for the denial or, if applicable, provide a statement that the records do not exist.⁶
- 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.

⁴ See N.D.A.G. 2014-O-20 (records contained on public employee's personal device); N.D.A.G. 2014-O-10 (private email account used to generate or receive emails containing "public business"); N.D.A.G. 2008-O-15 (emails on home computers).

⁵ N.D.C.C. § 44-04-18.10 (1), (2).

⁶ N.D.C.C. § 44-04-18(7).

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.⁷

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 Christine Monahan at records@americanoversight.org or (202) 869-5244.

Sincerely,

/s/ Christine Monahan
Christine Monahan
on behalf of
American Oversight

⁷ American Oversight currently has approximately 15,600 page likes on Facebook and 105,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 26, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 26, 2021).