



February 8, 2021

VIA EMAIL

S.C. Attorney General's Office
FOIA Office
PO Box 11549
Columbia, SC 29211
FOIA@scag.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., 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 South Carolina, 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 Attorney General’s Office promptly produce the following records:³

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) any of the South

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/>.

³ Pursuant to S.C. Code Ann. § 30-4-30(C), please notify American Oversight of your final determination as to the public availability of the requested records within ten business days and produce the records within thirty calendar days after issuing your final determination.



Carolina Attorney General’s Office officials listed in Column A, below, and (b) any of the external parties listed in Column B, below.

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 South Carolina Attorney General’s Office 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 South Carolina Attorney General’s Office 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: South Carolina Attorney General’s Officials	Column B: External Parties
<ul style="list-style-type: none"> i. Alan Wilson, Attorney General, or anyone communicating on his behalf (such as an assistant or scheduler) ii. Anyone serving as Chief of Staff to Attorney General Wilson iii. Robert D. Cook, Solicitor General iv. James Emory Smith, Deputy 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> <ul 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 Attorney General, or Justin Smith, Deputy Attorney General ix. Tim Fox, Montana (former) x. Doug Peterson, Nebraska xi. Wayne Stenehjem, North Dakota xii. Mike Hunter, Oklahoma xiii. Jason Raynsborg, South Dakota xiv. Herbert Slatery, Tennessee xv. Ken Paxton, Texas xvi. Sean Reyes, Utah xvii. Patrick Morrissey, West Virginia

	<p><u>Other:</u></p> <ul 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> <ul 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.

Fee Waiver Request

In accordance with S.C. Code Ann. § 30-4-30(B), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. In addition, this request is primarily and fundamentally for non-commercial purposes.

A waiver of fees is “in the public interest because furnishing the information can be considered as primarily benefiting the general public.”⁴ The general public has a significant interest in understanding the Attorney General’s Office’s efforts to overturn then President-elect Joe Biden’s victories in key swing states.⁵ Records with

⁴ S.C. Code Ann. § 30-4-30(B).

⁵ Kevin Accettulla, *South Carolina Expresses Support for Texas Lawsuit Attempting to Overturn Election Results*, Associated Press (Dec. 9, 2020, 5:36 PM),

the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether and to what extent Attorney General Wilson sought auxiliary support from the Department of Justice. 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 activities would be enhanced through American Oversight's analysis and publication of these records.

Furthermore, 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. American Oversight's mission is 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.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's investigations into misconduct and corruption in state governments;⁸ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁹ posting records received as part of American

<https://www.wbtw.com/news/elections/south-carolina-expresses-support-for-texas-lawsuit-attempting-to-overturn-election-results/>.

⁶ 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).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ See generally *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; see, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

⁹ See, e.g., *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *Wisconsin Documents Offer Window into*

Oversight’s “Audit the Wall” project to gather and analyze information related to the Trump administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

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 terms “record,” “document,” and “information” in their 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 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

Early Uncertainty over COVID-19, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

¹⁰ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹¹ *DOJ Records Relating to Solicitor General Noel Francisco’s Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

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.
- 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.¹² 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.

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.

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, have any questions, or foresee any problems in

¹² S.C. Code Ann. § 30-4-40(b).

fully releasing the requested records, please contact Khahilia Shaw at records@americanoversight.org or (202) 539-6507.

Sincerely,

/s/ Khahilia Shaw
Khahilia Shaw
on behalf of
American Oversight