



April 6, 2021

VIA EMAIL

Senator Karen Fann
Arizona State Capitol Complex
1700 W Washington Street
Phoenix, AZ 85007
kfann@azleg.gov

Re: Public Records Request

Dear Senator Fann:

Pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121 et seq., American Oversight makes the following request for records.

On February 23, 2021, Maricopa County announced the results of an independent audit into its November 3 elections results, confirming that ballots were tabulated accurately and that voting equipment and software were secure.¹ Nevertheless, the Arizona State Senate has pursued an additional audit and recount, including the hand tabulation of more than two million votes. On March 31, 2021, Senate President Karen Fann announced that the audit team would be led by the firm Cyber Ninjas,² whose founder has repeatedly circulated baseless accusations of widespread fraud in the 2020 elections.³

American Oversight seeks records with the potential to shed light on the Senate's planned audit and recount of Maricopa County's election results, including whether or to what extent partisan political interests informed the selection of auditors. As explained more fully below, prompt disclosure of these records is crucial to meaningfully inform the public about the details of the audit process before the auditors have begun contacting voters and reviewing ballots.

Requested Records

American Oversight requests that your office promptly produce the following records:

¹ Jen Fifield, *Maricopa County's 2020 Election Votes Were Counted Correctly, More County Audits Show*, Ariz. Republic (updated Feb. 23, 2021, 5:48 PM), <https://www.azcentral.com/story/news/politics/elections/2021/02/23/maricopa-countys-election-audits-show-2020-votes-counted-correctly/4550644001/>.

² Jeremy Duda, *Arizona Senate Hires a 'Stop the Steal' Advocate to Lead 2020 Election Audit*, AZ Mirror (updated Apr. 1, 2021, 10:18 AM), <https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/>.

³ *Id.*



All records (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) telephone call logs, calendar invitations, calendar entries, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by Senator Karen Fann, anyone communicating on their behalf, such as a scheduler or assistant, or anyone serving as their Chief of Staff, regarding the planning or execution of the Arizona State Senate's audit of Maricopa County's elections results.

This request should be interpreted to include, but not be limited to, communications concerning: the Senate's decision to subpoena ballots and subsequent litigation; the bidding process for selecting an auditing team; the scope and conduct of the planned recount, including specific provisions such as hand counting ballots or questioning individual voters; the acquisition of confidential voter data or access to voter files; and/or discussion of alleged fraud as justification for the planned recount.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Sen. Fann received a mass-distribution news clip email, that initial email would not be responsive to this request. However, if Sen. Fann forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from November 3, 2020, through the date the search is conducted.

"Prompt" disclosure of these records is crucial to meaningfully inform the public on the details and scope of the audit process while the public still has an opportunity to affect the conduct of the process. The public has a legitimate interest in the manner in which the audit is conducted, as Cyber Ninjas itself has proposed to contact voters either by phone or in person to question their voting histories,⁴ a step that has been described as "harassment and intimidation" of voters.⁵ Further, the current audit—the second of its kind—raises potential questions concerning the integrity of certain state government officials, including the extent to which these actors seek to undermine public confidence in the electoral process.

⁴ Statement of Work between Cyber Ninjas Inc. and Arizona State Senate, Mar. 31, 2021, <https://www.documentcloud.org/documents/20536503-cyber-ninjas-sow-executed-33121>.

⁵ Bob Christie, *County Board to Senate: Find Another Spot to Recount Ballots*, AP, Apr. 2, 2021, <https://apnews.com/article/joe-biden-arizona-phoenix-elections-voting-23a34828e8dadd190fe2f02555559b30>.

Disclosure of the requested records is only meaningful if it occurs sufficiently promptly to inform the public about the process while there is still time for them to petition their government to alter the process. The Statement of Work executed by Cyber Ninjas contemplates that the auditors will be contacting individual voters to ask about their voting histories in the first phase of the audit process. That phase is expected to be completed within 20 days, after which point the auditors will begin reviewing paper ballots.⁶ Disclosure of records after Cyber Ninjas has already begun handling ballots and contacting voters would be too late to prevent any potential harms resulting from those processes.

Statement of Noncommercial Purpose

This request is made for noncommercial purposes. American Oversight seeks records regarding the Arizona State Senate's planned audit of Maricopa County's 2020 election results. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent partisan political considerations influenced the senate's decision to pursue an additional audit, or guided the selection of the auditing team.⁷

Because American Oversight is a 501(c)(3) nonprofit, this request is not in American Oversight's financial interest and is not made for a commercial purpose. 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.⁸

Because this request is made for noncommercial purposes, American Oversight requests that any fees charged in connection with processing this request be limited to copying

⁶ *See supra*, note 4.

⁷ *See supra*, notes 1 & 2.

⁸ American Oversight currently has approximately 15,680 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 5, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 5, 2021).

and postage charges, if applicable.⁹ 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 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 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.
- If any records are withheld in full or in part, pursuant to A.R.S. § 39-121.01(D)(2), please provide an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld.

⁹ A.R.S. § 39-121.01(D)(1); *see also Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (Ct. App. 1980). Furthermore, because this request is for noncommercial purposes, additional fees provided for under A.R.S. § 39-121.03(A) are not applicable and should not be assessed.

- 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. 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, please contact Khahilia Shaw at records@americanoversight.org or 202.539.6507.

Sincerely,

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