



April 30, 2021

VIA EMAIL

Norm Moore
Senate Public Records Attorney
400 W Congress, Ste. 201
Tucson, AZ 85701
nmoore@azleg.gov

Re: Public Records Request

Dear Senate Public Records Attorney:

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 While the announcement claimed that “Senate leadership expects this audit to be done in a transparent manner with the cooperation of Maricopa County,”⁴ the public does not yet have access to basic information about the conduct of the audit.⁵

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.*

⁴ AZSenateRepublicans (@AZSenateGOP), Twitter (Mar. 31, 2021, 2:07 PM), <https://twitter.com/AZSenateGOP/status/1377321595518083074/photo/1>.

⁵ Jerod MacDonald-Evoy, *Judge Rejects Call for Secret Election Audit Hearing from Auditors, Senate Republicans*, AZ Mirror (Apr. 28, 2021, 8:24 AM), <https://www.azmirror.com/2021/04/27/judge-rejects-call-for-secret-election-audit-hearing-from-auditors-senate-republicans/?eType=EmailBlastContent&eId=19cfc01a-a092-4be0-abd6-4a95d066663f>.



Cyber Ninjas has attempted to keep procedural documents regarding protecting voter privacy out of public view even as the hand counting of ballots is already in process.⁶

American Oversight seeks records with the potential to shed light on the Senate's audit of Maricopa County's election results, including plans to protect the security of confidential voter information, paper ballots, and election equipment. 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 finished reviewing ballots and handling election equipment.

Requested Records

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

1. Complete copies (including any attachments) of any contract, sub-contract, amendment, memorandum of understanding, or other written agreement related to the execution of the audit of the 2020 election results being conducted by Cyber Ninjas, including the lease for use of the Veterans Memorial Coliseum; any contracts with third-party security and transportation; and any agreements regarding the recruitment and training of volunteers to assist in the audit.
2. Project plans or other documents detailing the steps or procedures to be followed in "Vote Count & Tally Phase" and "Electronic Voting System Phase" of the audit,⁷ including plans for the accessing, storing, and handling of physical ballots, confidential voter information, voting equipment, and voting software.
3. Records provided to the Senate sufficient to show a breakdown of the projected costs of the audit, including justifications for the specified \$150,000 value of the contract,⁸ or other documents reflecting the budget for the audit.
4. Records identifying the precincts to be canvassed in the "Registration and Votes Cast Phase"⁹ of the audit and any justification for the selection of those precincts.

⁶ Jeremy Duda, *Cyber Ninjas Releases Its Election Audit Policies After Court Order*, AZ Mirror (updated Apr. 29, 2021, 2:41 PM), <https://www.azmirror.com/2021/04/29/cyber-ninjas-releases-its-election-audit-policies-after-court-order/>.

⁷ 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>.

⁸ *Id.*

⁹ *Id.*

5. Scripts or other guidelines or protocols to be used by the auditors for contacting individual voters by phone, in person or electronically during the “Registration and Votes Cast Phase”¹⁰ of the audit.

Please provide all responsive records from February 1, 2021, 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 serious concerns exist with regard to protecting voter privacy, including the physical security of the facility where votes are being counted and the mishandling of paper ballots.¹¹ 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. Former Arizona Secretary of State Ken Bennett, who is acting as liaison between Cyber Ninjas and the Senate, encouraged the public to fund¹² the audit’s estimated \$2.8 million goal through a site which explicitly labels the operation as “the most in-depth Election Fraud Audit that has ever been performed.”¹³

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. Under the direction of Cyber Ninjas, more than 100,000 paper ballots have already been counted.¹⁴ Disclosure of records after the recount has been completed would be too late to prevent any potential harms resulting from those processes.

Statement of Noncommercial Purpose

¹⁰ *Id.*

¹¹ Andrew Oxford, *Privacy of Voters Worries Judge as Arizona Senate's Count of November Ballots Continues*, AZ Central (Apr. 27, 2021, updated 6:22 PM MST), <https://www.azcentral.com/story/news/politics/elections/2021/04/27/arizona-audit-judge-concerned-voter-protections-during-recount/4855290001/>.

¹² Rosalind S. Helderman & Josh Dawsey, *As Trump Seizes on Arizona Ballot Audit, Election Officials Fear Partisan Vote Counts Could be the Norm in Future Elections*, Wash. Post (Apr. 29, 2021, 3:05 PM EDT), https://www.washingtonpost.com/politics/trump-arizona-recount/2021/04/29/bcd8d832-a798-11eb-bca5-048b2759a489_story.html.

¹³ *About the Audit*, The America Project, (last visited Apr. 29, 2021), <https://fundtheaudit.com/maricopa/>.

¹⁴ Maria Polleetta & Piper Hansen, *Here's What Happened at the Arizona Election Audit of Maricopa County Ballots*, AZ Central (Apr. 28, 2021, updated Apr. 29, 2021, 8:05 AM MST), <https://www.azcentral.com/story/news/politics/arizona/2021/04/28/arizona-election-audit-what-happened-ballot-counting-april-28/4876185001/>.

This request is made for noncommercial purposes. American Oversight seeks records regarding the Arizona State Senate’s 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 how the Senate’s chosen contractors plan to protect the privacy of voters and maintain the security of confidential voter files and election infrastructure.¹⁵

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.¹⁶

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 and postage charges, if applicable.¹⁷ 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.

¹⁵ See *supra*, notes 5 & 6.

¹⁶ American Oversight currently has approximately 15,690 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 30, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 30, 2021).

¹⁷ 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 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.
- 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