



July 2, 2021

VIA EMAIL

Lisa Mellott-McConahy
Fulton County Chief Clerk
116 West Market Street, Suite 203
McConnellsburg, PA 17233
chiefclerk@co.fulton.pa.us

Eldon Martin
Fulton County Technology Director
122 West Market Street, Suite 202
McConnellsburg, PA 17233
techdirector@co.fulton.pa.us

Re: Right-to-Know Law Request

Dear Chief Clerk Mellott-McConahy:

Pursuant to the Right-to-Know Law (RTKL), as codified at 65 P.S. §§ 67.101 et seq., American Oversight makes the following request for records.

At the request of Senators Doug Mastriano and Judy Ward, Wake Technology Services conducted a review of Fulton County's voting machines and mail ballots following the November 2020 elections.¹ A contract obtained by the Arizona Mirror further demonstrates that Wake Technology Services did so as a contractor to Defending the Republic, a nonprofit operated by attorney Sidney Powell, who represented former President Trump in attempts to challenge the results of the November 2020 election.²

American Oversight seeks records with the potential to shed light on the review of the November 2020 election results and administration in Fulton County, including to whether or to what extent county officials were in communication with external individuals or entities during this time period.

¹ Jeremy Duda, *Wake Technology Services Audited a Pennsylvania Election as Part of the #StopTheSteal Movement*, AZ Mirror, May 21, 2021,

<https://www.azmirror.com/2021/05/21/wake-technology-services-audited-a-pennsylvania-election-as-part-of-the-stopthesteal-movement/>.

² Aaron Davis, et al., *For Trump Advocate Sidney Powell, A Playbook Steeped in Conspiracy Theories*, Wash. Post (Nov. 28, 2020, 5:32 PM),

https://www.washingtonpost.com/investigations/sidney-powell-trump-kraken-lawsuit/2020/11/28/344d0b12-2e78-11eb-96c2-aac3f162215d_story.html.



Requested Records

American Oversight requests that your office produce the following records within five business days:

All electronic communications (including emails, email attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) sent or received by Fulton County Technology Director Eldon Martin regarding investigations, inspections, or other reviews of election equipment or ballots, including but not limited to the review completed by Wake TSI or the inspection that occurred on or about December 31, 2020.³ In the case of emails and texts, the search should include those sent or received from Director Martin's personal accounts and devices if they were used to conduct official business, as well those sent from their official email addresses and government-issued devices.

Please provide all responsive records from November 3, 2020, through February 15, 2021.

Fee Waiver Request

In accordance with 65 P.S. § 67.1307(f)(2), American Oversight requests a waiver of fees associated with processing this request for records, because disclosure of the requested information is "in the public interest."

The public has a significant interest in elections administration in Fulton County, and specifically the review of the 2020 election and its connection to the broader nationwide effort to discredit the results of the presidential election.⁴ 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 external political actors participated in Fulton County's review of the November 2020 election results.

American Oversight is committed to transparency and makes the responses agencies provide to open 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. 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

³ Fulton County Board of Commissioners, Commissioners' Minutes, Jan. 5, 2021, <https://www.co.fulton.pa.us/files/live-folders/commissioner-minutes-agendas/2021-01-05%20Commissioners'%20Minutes.pdf?fixcache=20210523145152>.

⁴ See, e.g., Duda, *supra* note 1.

on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵

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.⁶ 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;⁷ posting records and analysis of federal and state governments' responses to the coronavirus pandemic;⁸ posting records received as part of American 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;⁹ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of

⁵ American Oversight currently has approximately 15,670 page likes on Facebook and 106,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 25, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 25, 2021).

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ 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>.

⁸ 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 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>.

⁹ 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>.

what those records demonstrated regarding the Department's process for issuing such waivers.¹⁰

Finally, this request is primarily and fundamentally for non-commercial purposes. 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.

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. 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. Records of official business conducted

¹⁰ *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>.

using unofficial systems or stored outside of official files are subject to the Right-to-Know Law.¹¹

- 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 under 65 P.S. § 67.706. 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 Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's

¹¹ See, e.g., *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight