



July 28, 2021

VIA ONLINE PORTAL

Samina Mays, Public Records Officer
424 Legislative Building
P.O. Box 40600
Olympia, WA 98504-0600

Re: Public Records Act Request

Dear Public Records Officer,

Pursuant to the Public Records Act, RCW, Ch. 42.56, American Oversight makes the following request for records.

Requested Records

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

1. Records reflecting any expenses and costs incurred by the Washington House of Representatives or by Representative Robert Sutherland related to Representative Sutherland's trip to Phoenix, Arizona on or around June 26, 2021.¹

To the extent your office has aggregated records sufficient to show all relevant expenses and costs, such as spreadsheets, American Oversight would accept production of such records as sufficient. To the extent your office does not have an aggregated record of these costs, American Oversight requests records reflecting those costs, such as receipts, invoices, charge card or credit card statements, reimbursement requests, and any records reflecting the approval, rejection, or other disposition of reimbursement requests.

Relevant expenses may include, but are not limited to, hotel or other lodging costs; costs for air travel, rental car, or other transportation companies; costs incurred for government transportation; the cost of meals or refreshments; and diem payments.

¹ See Jim Camden, *GOP Lawmaker Tours Cyber Ninjas 'Audit,' Considers Changes in Washington Called Unnecessary*, The Spokesman-Rev., June 26, 2021, <https://www.spokesman.com/stories/2021/jun/26/gop-lawmaker-tours-cyber-ninjas-audit-considers-ch/>.



Relevant expenses include costs associated with the travel of Representative Sutherland and of any staff members, family members, or other individuals travelling with them.

2. All email communications (including emails, email attachments, complete email chains, and calendar invitations) sent by Representative Sutherland or anyone communicating on his behalf such as a Chief of Staff, scheduler, or assistant, regarding Representative Sutherland's trip to Phoenix, Arizona on or about June 26, 2021, or about the ongoing audit of the 2020 election in Maricopa County.²

In an effort to accommodate the House of Representatives and the Office of Representative Sutherland and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by Representative Sutherland and his staff. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Representative Sutherland's response to an email about the trip and the initial received message are responsive to this request and should be produced.

3. Any handouts, agendas, summaries, or notes created by or provided to Representative Sutherland as part of or in relation to his trip to Phoenix, Arizona on or about June 26, 2021. Responsive records would include, but not be limited to, itineraries, electronic or hard-copy documents provided to Representative Sutherland before, during, or after his tour of audit facilities, and formal or informal descriptions or analyses of the Maricopa County election audit provided to or created by Representative Sutherland or any member of their staff.

Please provide all responsive records from June 1, 2021, through July 15, 2021.

Fee Waiver Request

In accordance with RCW § 42.56.120(4), American Oversight requests a waiver of fees associated with providing copies of the requested records to the extent permitted by your agency's rules and regulations.

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 information gathered through research and public records requests, 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

² *Id.*

public website and promotes their availability on social media platforms, such as Facebook and Twitter.³

The public has a significant interest in a trip to Phoenix, Arizona, taken by Representative Sutherland to tour the audit facilities in Maricopa County.⁴ Records with the potential to shed light on the cost and nature of Representative Sutherland's trip would contribute significantly to public understanding of operations of the Washington state government, including whether and to what extent this trip informed Representative Sutherland's opinions about the conduct of elections or related matters in Washington.

Accordingly, American Oversight respectfully requests a fee waiver.

To the extent your agency anticipates charging any fees in connection with this request for records, American Oversight requests that you inform us in advance of doing so.

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.

³ American Oversight currently has approximately 15,640 page likes on Facebook and 106,600 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 21, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 21, 2021).

⁴ See Camden, *supra* note 1.

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 Public Records Act.⁵
- 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.⁶ If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. If a request is denied in whole or in part, please state specifically which statute renders the records or portions exempt from disclosure and provide a brief explanation of how the exemption applies to the record or portion withheld.⁷
- 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

⁵ See, e.g., *O'Neill v. City of Shoreline*, 170 Wn.2d 138, ¶ 11 (2010) (holding agency records on city officials' personal computers subject to PRA, and noting "[i]f government employees could circumvent the PRA by using their home computers for government business, the PRA could be drastically undermined."); *Nissen v. Pierce County*, 183 Wn.2d 581, 585 (2015) (holding agency records on personal cell phones subject to PRA); see also Washington State Att'y Gen. Bob Ferguson, *Washington State Sunshine Laws 2016, An Open Government Resource Manual* at 7 (Oct. 31, 2016), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About the Office/Open Government/Open Government Internet Manual/Open%20Government%20Resource%20Manual%202016%20-%20Oct.%2031%202016%20%282%29.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Home/About%20the%20Office/Open%20Government/Open%20Government%20Resource%20Manual%202016%20-%20Oct.%2031%202016%20%282%29.pdf).

⁶ RCW § 42.56.210(1).

⁷ RCW § 42.56.210(3).

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 Sarah Colombo at records@americanoversight.org or 202.869.5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarah Colombo
Sarah Colombo
on behalf of
American Oversight