



September 23, 2021

**VIA EMAIL**

Secretary of State  
State of North Dakota  
600 E. Boulevard Avenue, Dept. 108  
Bismarck, ND 58505-0500  
[sos@nd.gov](mailto:sos@nd.gov)

**Re: Open Records Law Request**

Dear Records Custodian:

Pursuant to the North Dakota Open Records Law, N.D.C.C. §§ 44-04-18 et seq., and Section 6 of Article XI of the North Dakota Constitution, American Oversight makes the following request for records.

**Requested Records**

American Oversight requests that Secretary of State promptly produce the following records:

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by any of the Secretary of State officials listed below concerning changes in the Secretary of State's election authorities (including, but not limited to, communications concerning House Bill 1253).

At a minimum, communications concerning the following changes would be responsive to this request and should be produced:

- i. The elimination of the requirements that the Secretary of State notify county auditors after removing voters from the central voter file due to death, after receiving notice of a voter's name change due to marital status, or after designating a voter as inactive.
- ii. Proposed or actual changes to the deadline for the Secretary of State to query the list of names in the central voting file to determine if any individual voted more than once.

**Secretary of State Officials:**

- a. Al Jaeger, Secretary of State
- b. Jim Silrum, Deputy Secretary of State
- c. Brian Newby, State Election Director
- d. Anyone serving as General Counsel



In an effort to accommodate the Secretary of State and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited request item 1 to emails sent by the listed officials. 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 Secretary Jaeger's response to an email concerning the elimination of the requirement that the Secretary of State notify county auditors after removing voters from the central voter file and the initial received message are responsive to this request and should be produced.

2. All records reflecting any formal or informal directive, order, advisory, guidance, or final analysis regarding the provisions of House Bill 1253 referenced in request item 1.

For both items 1 and 2, please provide all responsive records from January 11, 2021, through the date the search is conducted.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

### **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 term "record," in its broadest sense, to include all recorded information, regardless of physical form, related to any governmental functions, public business, or public funds.<sup>1</sup> 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

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<sup>1</sup> N.D.C.C. § 44-04-17.1(16).

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 Open Records Law.<sup>2</sup>
- 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.<sup>3</sup> If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. Furthermore, if a request is denied in whole or in part, please describe the legal authority for the denial or, if applicable, provide a statement that the records do not exist.<sup>4</sup>
- 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.

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.

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<sup>2</sup> See N.D.A.G. 2014-O-20 (records contained on public employee's personal device); N.D.A.G. 2014-O-10 (private email account used to generate or receive emails containing "public business"); N.D.A.G. 2008-O-15 (emails on home computers).

<sup>3</sup> N.D.C.C. § 44-04-18.10 (1), (2).

<sup>4</sup> N.D.C.C. § 44-04-18(7).

## Conclusion

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 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.<sup>5</sup>

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](mailto:records@americanoversight.org) or (202) 869-5244.

Sincerely,

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

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<sup>5</sup> American Oversight currently has approximately 15,640 page likes on Facebook and 108,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 22, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 22, 2021).