



September 16, 2021

VIA EMAIL & ONLINE FORM

Assemblyman Robert Smullen
LOB 527
Legislative Office Bldg.
Albany, NY 12248
smullenr@nyassembly.gov

New York State Assembly Public Information Office
Legislative Office Bldg, Room 202
Albany, NY 12248
Via Online Form

Re: Freedom of Information Law Request

Dear Assemblyman Robert Smullen and Records Access Officer:

Pursuant to the Freedom of Information Law (FOIL), N.Y. Pub. Off. Law §§ 84-90, American Oversight makes the following request for records.

Requested Records

American Oversight requests that the office of Assemblyman Robert Smullen produce the following records within five business days:

1. All records reflecting the full content of any post published to ALEC Connect¹ by Assemblyman Smullen (including the original post and the complete comment thread).
2. All records reflecting the full content of any ALEC Connect posts (including the original post and the complete comment thread) on which Assemblyman Smullen commented.
3. All records reflecting the full content of any ALEC Connect posts or comments (including the original post and the complete comment thread)

¹ ALEC Connect is the online portal of the American Legislative Exchange Council. As a member of ALEC, Assemblyman Smullen has access to ALEC Connect and its content. *See Convening Ideas Across the States*, State Policy Network, Dec. 5, 2019, <https://spn.org/blog/convening-ideas-across-the-states/>; Nick Surgey, *Weapons, Tobacco Makers, Koch Group Are Among Newest ALEC Members*, Documented, Dec. 2, 2020, <https://documented.net/2020/11/weapons-tobacco-makers-koch-group-are-among-newest-alec-members/>.



mentioning or tagging Assemblyman Smullen by name, username, or email address.

4. All files uploaded to ALEC Connect by Assemblyman Smullen.
5. All files downloaded from ALEC Connect by Assemblyman Smullen, whether to a government or personal device.
6. All records reflecting the full content of any written exchanges on ALEC Connect, including chats, concerning legislation or policy issues in which Assemblyman Smullen participated. Please note that American Oversight does not seek, and that this request specifically excludes, chats with ALEC support staff concerning information technology troubleshooting or related issues.
7. All records reflecting the content of Assemblyman Smullen's ALEC Connect member profile page.
8. All records reflecting any expense report submitted through ALEC Connect by Assemblyman Smullen, any communications (including messages sent through ALEC Connect or by email) concerning any such expense report, and any records reflecting reimbursement, approval, rejection, or other action in response to any such expense report.

Please provide all responsive records from August 1, 2019, through the date the search is conducted.

Fee Waiver Request

American Oversight requests that your agency consider waiving any fees associated with processing this request for records pursuant to 21 NYCRR § 1401.8(g). 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 public website and promotes their availability on social media platforms, such as Facebook and Twitter.²

² American Oversight currently has approximately 15,630 page likes on Facebook and 108,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 8, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 8, 2021).

The public has a significant interest in the influence of ALEC, a group that convenes state legislators to coordinate legislative priorities and solutions.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the New York state government, whether and to what extent New York state legislators have been influenced in their official duties by ALEC or ALEC members. 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. To the extent that an email is responsive to our request, our request includes all

³ Yvonne Wingett Sanchez and Rob O’Dell, *What is ALEC? ‘The Most Effective Organization’ for Conservatives, Says Newt Gingrich*, USA Today (April 5, 2019, 4:15 PM), <https://www.usatoday.com/story/news/investigations/2019/04/03/alec-american-legislative-exchange-council-model-bills-republican-conservative-devos-gingrich/3162357002/>; see also David Armiak, *UW-Madison Chancellor and State Legislators Use Digital Dodges to Hide Records from the Public*, Milwaukee J. Sentinel (May 4, 2021, 2:32 PM), <https://www.jsonline.com/story/news/solutions/2021/05/04/uw-madison-chancellor-legislators-use-hide-records-public/4943305001/> (discussing ALEC members’ policy discussions and other activities related to their official duties).

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.
- 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 Hart Wood at records@americanoversight.org or (202) 87301743. 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/ Hart Wood

Hart Wood
on behalf of
American Oversight