



October 15, 2021

VIA EMAIL

Amanda Joiner
Associate Counsel
U.S. Election Assistance Commission
633 3rd Street NW, Suite 200
Washington, DC 20001
ajoiner@eac.gov

Re: Freedom of Information Act Request

Dear Associate Counsel Joiner:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 11 C.F.R. Part 9405, American Oversight makes the following request for records.

In May 2021, public reporting revealed that Heritage Action for America, the lobbying and advocacy affiliate of the Heritage Foundation, took credit for writing many of the recent restrictive voting bills enacted throughout the country.¹ Records previously released to American Oversight suggest that Commissioner Don Palmer, Commissioner Christy McCormick, and Special Counsel Tyler Herrmann were members of the Heritage Foundation's Election Law Working Group.² Separately, American Oversight obtained records from the Arizona Senate revealing Commissioner McCormick's early contact with legislators planning a partisan audit of the state's election results.³

Accordingly, American Oversight seeks records that may shed light on Palmer, McCormick, and Herrmann's association with activist groups.

Requested Records

American Oversight requests that the U.S. Election Assistance Commission produce the following records within twenty business days:

¹ Ari Berman & Nick Surgey, *Leaked Video: Dark Money Group Brags About Writing GOP Voter Suppression Bills Across the Country*, Mother Jones, May 13, 2021, <https://www.motherjones.com/politics/2021/05/heritage-foundation-dark-money-voter-suppression-laws/>.

² *New Emails Show Election Assistance Commission Officials in Communications with Anti-Voting Rights Groups*, American Oversight, July 19, 2021, <https://www.americanoversight.org/new-emails-show-election-assistance-commission-officials-in-communication-with-anti-voting-rights-groups>.

³ *New Arizona 'Audit' Records Released*, American Oversight, Oct. 5, 2021, <https://www.americanoversight.org/new-arizona-audit-records-released>.



1. All calendars or calendar entries for Commissioner Donald Palmer and Commissioner Christy McCormick including any calendars maintained on their behalf, such as calendars maintained by administrative assistants or schedulers.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how Commissioner Palmer and Commissioner McCormick allocate their time on Commission business.

For request item 1, please provide all responsive records from January 1, 2020, through the date the search is conducted.

2. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar attachments) between (a) Commissioner Donald Palmer, Commissioner Christy McCormick, or Special Counsel Tyler Herrmann, and (b) any representative of any of the external entities listed below (including, but not limited to, anyone communicating from an email address ending in the listed domains).

External Entities:

- i. Election Law Center (electionlawcenter.com)
- ii. Judicial Watch (judicialwatch.org)
- iii. American Civil Rights Union (theacru.org)
- iv. True the Vote (truethevote.org)
- v. Public Interest Legal Foundation (publicinterestlegal.org)
- vi. Landmark Legal Foundation (landmarklegal.org)
- vii. Republican State Leadership Committee (rslc.gop)
- viii. National Republican Redistricting Trust (thenrrt.org)

For request item 2, please provide all responsive records from January 1, 2021, through the date the search is conducted.

3. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar attachments) between (a) Commissioner Donald Palmer, Commissioner Christy McCormick, or Special Counsel Tyler Herrmann, and (b) any representative of any of the external entities listed below (including, but not limited to, anyone communicating from an email address ending in the listed domains).

External Entities:

- i. Alliance Defending Freedom (adflegal.org)
- ii. Allied Security Operations Group (alliedspecialops.us, jkeetlewis.com, onewarrior.com, or bonfiresearch.org)
- iii. American First Policy Institute (americafirstpolicy.org)

- iv. American Greatness Fund (americangreatnessfund.com)
- v. American Legislative Exchange Council (ALEC) (alec.org)
- vi. Americans for Prosperity (afhq.org or americansforprosperity.org)
- vii. Bradley Foundation (bradleyfdn.org)
- viii. Conservative Partnership Institute (cpi.org)
- ix. Consovoy McCarthy (consovoymccarthy.com)
- x. CRC Advisors (crcadvisors.com)
- xi. CRC Strategies (crcpublicrelations.com)
- xii. Cyber Ninjas (cyberninjas.net)
- xiii. CyFIR (cyfir.com)
- xiv. diGenova & Toensing, LLP (digenovatoensing.com)
- xv. Freedomworks (freedomworks.org)
- xvi. Heartland Institute (heartland.org)
- xvii. Holtzman Vogel Baran Torchinsky & Josefiak (holtzmanvogel.com, holtzmanlaw.net, or hvjt.law)
- xviii. Honest Elections Project (honestelections.org)
- xix. Institute for Free Speech (campaignfreedom.org)
- xx. Judicial Crisis Network (judicialnetwork.com)
- xxi. Liberty University (liberty.edu)
- xxii. Michael Best & Friedrich (michaelbest.com)
- xxiii. National Republican Congressional Committee (nrcc.org)
- xxiv. National Republican Senatorial Committee (nrsc.org)
- xxv. Republican National Committee (gop.com or rnchq.org)
- xxvi. Republican National Lawyers Association (republicanlawyer.net)
- xxvii. Republican State Leadership Committee (rslc.gop)
- xxviii. Sidney Powell P.C. (federalappeals.com)
- xxix. Standing for Freedom Center (falkirkcenter.com or standingforfreedom.com)
- xxx. State Policy Network (spn.org)
- xxxi. Thomas More Society (thomasmoresociety.org)
- xxxii. Arizona State Senate or House of Representatives (azleg.gov)
- xxxiii. Georgia State Senate or House of Representatives (senate.ga.gov or house.ga.gov)
- xxxiv. Michigan State Senate (senate.michigan.gov)
- xxxv. Pennsylvania State Senate (pasen.gov)

For request item 3, please provide all responsive records from January 1, 2020, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”⁴ The public has a significant interest in actions taken by the Commission or its members and staff that have the potential to impact the public’s perception of election security, in particular at a time when the integrity of elections is a major topic of public discussion.⁵ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent EAC commissioners and officials are consulting outside sources for input on the Commission’s decisions regarding election integrity. American Oversight is committed to transparency and makes the responses agencies provide to FOIA 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.

This request is primarily and fundamentally for non-commercial purposes.⁶ 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. 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.⁷

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.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁹ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;¹⁰ posting records received as part of American Oversight’s

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ Maggie Miller, *False Election Claims Undermine Efforts to Increase Security*, The Hill (Oct. 2, 2021, 7PM EDT), <https://thehill.com/policy/cybersecurity/574983-false-election-claims-undermine-efforts-to-increase-security>.

⁶ *See* 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ American Oversight currently has approximately 15,635 page likes on Facebook and 108,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 6, 2021 American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 6, 2021).

⁸ *See generally* News, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹⁰ *See generally* *The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations->

“Audit the Wall” project to gather and analyze information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹¹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;¹² and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹³

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.
- 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

[response-to-coronavirus](https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings); see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

¹¹ 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>.

¹² *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>.

¹³ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo’s 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁵

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁶ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- 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.

¹⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

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 foia@americanoversight.org or (202) 919-6303. 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/ Emma Lewis
Emma Lewis
on behalf of
American Oversight