



November 15, 2021

VIA EMAIL

Kristen Muszynski
Director of Communications
Department of the Secretary of State
148 State House Station
Augusta, ME 04333
Kristen.Muszynski@maine.gov

Re: Freedom of Access Request

Dear Director Muszynski:

Pursuant to the Maine Freedom of Access Act, Me. Rev. Stat. tit. 1, § 400 *et seq.*, American Oversight makes the following request for records.

Requested Records

American Oversight requests that the Department of the Secretary of State produce the following records within a reasonable period of time:

1. Records sufficient to identify the information described in parts a-h (below) regarding mail or absentee ballots submitted during the 2016 general election and the 2020 general election that were either 1) rejected, 2) successfully cured by a voter, 3) unsuccessfully cured by a voter (i.e., where a voter attempted to cure their ballot but failed to do so for any reason), 4) rejected after a voter declined (whether actively or passively) an opportunity to cure their ballot, or 5) rejected without first providing the voter an opportunity to cure their ballot. Please provide the requested information listed below separately for each type of ballot (i.e., rejected, successfully cured, etc.).
 - a. The total number of ballots.
 - b. The grounds for each ballot rejection or challenge.
 - c. The submission method (e.g., by mail, drop box, or hand-delivered) of each ballot.
 - d. The county and precinct in which each ballot was submitted.
 - e. The submission date of each ballot.
 - f. The date each voter that submitted a challenged or rejected ballot was notified of their ballot's deficiency.
 - g. The date each voter attempted to cure their ballot.
 - h. The age, race, and political party affiliation of each voter who submitted a ballot.



For part 1 of this request, to the extent that responsive information is aggregated and maintained in a database or spreadsheet, we request a printout from the database containing the information identified and described above (regardless of the actual title of the database fields). American Oversight does not object to the redaction of the names, addresses, or phone numbers of any voters listed in records responsive to these requests.

2. Any materials used to train election officials to a) determine whether submitted ballots should be accepted or rejected (including, but not limited to, records concerning signature matching/verification or verifying a voter's identity), b) determine whether rejected or challenged ballots have been successfully cured, and c) record the status of received ballots (e.g., logging the grounds for rejecting ballots).
3. Records sufficient to identify the title, training, and experience of each person tasked with determining a) whether submitted ballots should be accepted or rejected, or b) whether rejected or challenged ballots have been successfully cured.

For parts 2 and 3 of this request, please provide all responsive records from January 1, 2020, through the date this request is received by your office.

Fee Waiver Request

In accordance with Me. Rev. Stat. tit. 1, § 408-A(11)(B), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it 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 will contribute significantly to public understanding of the operations of the government.¹ The public has a significant interest in Maine's election procedures.² Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether certain ballot issues lead to higher rates of rejection than others. American Oversight is committed to transparency and makes the responses agencies provide to public 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.

¹ Me. Rev. Stat. tit. 1, § 408-A(11)(B).

² Kevin Miller, *Half of Maine's Voters Have Cast Absentee Ballots. Now Election Day Voters Get Their Turn.*, Portland Press Herald, Nov. 2, 2020, <https://www.pressherald.com/2020/11/02/as-absentee-balloting-ebbs-election-day-voters-head-for-the-polls/>.

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. 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.³

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.⁴ 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;⁵ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁶ 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;⁷ and the posting of records related to

³ American Oversight currently has approximately 15,630 page likes on Facebook and 108,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 27, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 27, 2021).

⁴ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁵ 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>.

⁶ 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>.

⁷ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall*

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.⁸

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.
- 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.
- 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.

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>.

⁸ *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>.

- 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 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