



March 15, 2022

VIA EMAIL

Pete Galvan
Associate Rules Attorney
Arizona State Senate
1700 W. Washington St.
Room 202 C
Phoenix, AZ 85007
pgalvan@azleg.gov

Re: Public Records Request

Dear Public Records Officer:

Pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121 *et seq.*, American Oversight makes the following request for records.

American Oversight seeks records with the potential to shed light on the Arizona Senate's and Cyber Ninjas' efforts to comply with court orders to produce records held by Cyber Ninjas and its subvendors.¹ The requested records include, for example, communications following termination of the Senate's and Cyber Ninjas' joint legal defense agreement with respect to the production of records in the possession of Cyber Ninjas and its subvendors.² American Oversight has limited its request to communications regarding the production of records rather than other communications currently at issue in litigation against the Senate or over which the Senate has otherwise claimed privilege.

Requested Records

American Oversight requests that your office promptly produce the following records:

¹ Ryan Randazzo, *Cyber Ninjas CEO Participates in Contentious Deposition, Says He's Not Ready to Turn Over Audit Records*, AZ Republic (Jan. 28, 2022, 5:02 AM), <https://www.azcentral.com/story/news/politics/arizona/2022/01/28/cyber-ninjas-ceo-doug-logan-not-ready-to-turn-over-arizona-audit-records/9248990002/>.

² See Defendants' Response to Plaintiff's Motion for Contempt, *American Oversight v. Karen Fann, et al.*, The Superior Court for the State of Arizona in and for the County of Maricopa, <https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/3091/637692049218070000>, at 2; Senate Defendants' Status Report and Renewed Motion to Transfer and Consolidate, Ex. E, *American Oversight v. Karen Fann, et al.*, The Superior Court for the State of Arizona in and for the County of Maricopa, <https://www.dropbox.com/s/n4e6qmtmwwg5q0g/2021.09.17%20Status%2BReport%2Band%2BRenewed%2BMotion%2Bto%2BConsolidate.pdf?dl=0> at 330.



All electronic communications (including emails, email attachments, complete email chains, calendar invitations, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) regarding the production of records in the possession of Cyber Ninjas and its subvendors between (a) Senator Karen Fann or her aide Sawyer Bessler; Senator Warren Petersen or his aide Heather Cover; Senator Sonny Borrelli or his aide Phyllis Heivilin; Senator Kelly Townsend or her aide KayRee Kubat; or Senator Wendy Rogers or her aide Melissa Myers, and (b) any of the individuals or entities listed below (including, but not limited to, at the email addresses provided). In the case of emails and texts, the search should include those sent or received from the specified officials' personal accounts and devices if they were used to conduct official business, as well those sent from official email addresses or government-issued devices.

Specified Parties:

1. Alan Gleghorn, Chris Moore, or anyone communicating on behalf of StratTech (@stsaz.com)
2. Ben Cotton, or anyone communicating on behalf of CyFir (@cyfir.com)
3. Dennis Wilenchik, Jack Wilenchik, or anyone communicating on behalf of Wilenchik and Bartness (@wb-law.com)
4. Doug Logan, Jerrod Bates, or anyone communicating on behalf of Cyber Ninjas (@cyberninjas.com)
5. Eugene Kern, Pam Kleshick (pamkleshick@protonmail.com), or anyone communicating from an email address ending in @waketsi.com
6. Heather Honey, Frank Honey (frankhoney82@gmail.com), or anyone communicating on behalf of Haystack Investigations (@haystackinvestigations.com)
7. Rod Thomson, or anyone communicating on behalf of Thompson PR (@thomsonpr.com)

Please provide all responsive records beginning September 17, 2021, following the termination of the joint defense agreement between the Senate and Cyber Ninjas with respect to the production of records in the possession of Cyber Ninjas and its subvendors.³ Please consider this a standing request, the response to which should be updated promptly each time new information is added to any responsive records or new responsive records are created. *See W. Valley View, Inc. v. Maricopa Cty. Sheriff's Off.*, 216 Ariz. 225, 228 (App. 2007).

To be clear, American Oversight does not request and specifically excludes, communications prior to the termination of the joint defense agreement between the Arizona Senate and Cyber Ninjas with respect to the production of records in the possession of Cyber Ninjas and its subvendors, nor subsequent communications beyond this substantive scope.

³ *Id.*

Statement of Noncommercial Purpose

This request is made for noncommercial purposes. American Oversight seeks records regarding the Arizona Senate’s partisan “audit” of Maricopa County’s election results.⁴ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including regarding the involvement of actors external to the Arizona legislature.

Because American Oversight is a 501(c)(3) nonprofit, this request is not in American Oversight’s financial interest and is not made for a commercial purpose. 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.⁵

Because this request is made for noncommercial purposes, American Oversight requests that any fees charged in connection with processing this request be limited to copying and postage charges, if applicable.⁶ Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

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

⁴ See *supra*, notes 1 & 2.

⁵ American Oversight currently has approximately 15,730 page likes on Facebook and 117,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 9, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 9, 2022).

⁶ A.R.S. § 39-121.01(D)(1); see also *Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (Ct. App. 1980). Furthermore, because this request is for noncommercial purposes, additional fees provided for under A.R.S. § 39-121.03(A) are not applicable and should not be assessed.

Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

- 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.
- If any records are withheld in full or in part, pursuant to A.R.S. § 39-121.01(D)(2), please provide an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld.
- 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 Zachery Morris at records@americanoversight.org or (202) 897-4213.

Sincerely,

/s/ Zachery Morris

Zachery Morris

on behalf of

American Oversight