



March 31, 2022

VIA EMAIL

Sylvia Tillbrook
Executive Assistant
County Manager's Office
1101 New York Avenue, Room 106
Alamogordo, NM 88310
stillbrook@co.otero.nm.us

Re: Public Records Act Request

Dear Custodian of Public Records:

Pursuant to the New Mexico Inspection of Public Records Act (IPRA), NMSA 1978, Chapter 14, Article 2, American Oversight makes the following request for copies of public records.

On January 13, 2022, the Otero County Commission unanimously approved a contract and services agreement with EchoMail, Inc for approximately \$50,000 to conduct an audit of the 2020 General Election in Otero County.¹

American Oversight seeks records with the potential to shed light on Otero County's audit of the 2020 General Election.

Requested Records

American Oversight requests that Otero County produce the following records within three business days:²

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials)

¹ Nicole Maxwell, *Otero County to Spend \$49,750 on 2020 Election Audit*, Alamogordo Daily News (Jan. 19, 2022, 7:58 PM), <https://www.alamogordone news.com/story/community/2022/01/18/otero-county-spend-49-7550-2020-election-audit/6527530001/>.

² NMSA § 14-2-8. If inspection is not permitted within three business days, please explain in writing when the records will be available or when you will respond to the request. *Id.* In any event, please make the records available no later than fifteen days after receipt of this request. *Id.*



between the Otero County officials listed below (or anyone communicating on their behalf) and Dr. Shiva Ayyadurai (including at vashiva@vashiva.com), David Clements, Erin Clements (née Erin Hughes), or anyone communicating on behalf of EchoMail, including from an email address ending in @echomail.com.

Otero County Officials

1. County Attorney RB Nichols
2. Commissioner Gerald Matherly
3. Commissioner Couy Griffin
4. Commissioner Vickie Marquardt
5. Elections Coordinator Selina Maes
6. County Clerk Robyn Holmes

Please provide all responsive records from February 5, 2022, 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.
- 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 using unofficial systems or stored outside of official files are subject to the IPRA.³
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of

³ See Office of the New Mexico Attorney General, *Inspection of Public Records Act Compliance Guide* at 26 (8th ed. 2015) (“if email is used to conduct public business, the email is a public record even though a personal account is used”).

the requested records.⁴ 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.

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.

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.⁵

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

⁴ NMSA § 14-2-9(A).

⁵ American Oversight currently has approximately 15,700 page likes on Facebook and 118,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 30, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 30, 2022).

understand any part of this request, please contact Taylor Stoneman at records@americanoversight.org or (202) 848-1319.

Sincerely,

/s/ Taylor Stoneman
Taylor Stoneman
on behalf of
American Oversight