



February 28, 2023

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.

Requested Records

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

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by the listed officials containing any of the following key terms.

Arizona Senate Officials:

1. President Warren Petersen, or his aide Heather Covert
2. Former President Karen Fann, or her aide Sawyer Bessler
3. Senator Sonny Borrelli, or his aide Phyllis Heivilin
4. Senator Thomas Shope, or his aide Doug Anderson
5. Senator Sine Kerr, or her aide Stacy Farrell

Key Terms:

1. "American Oversight"
2. Archive
3. "Cyber Ninjas"
4. "legislative privilege"
5. "litigation hold"
6. "online platform"
7. "personal device"
8. "public records"
9. "records request"
10. Retention
11. "reference value"



12. "Title 39"
13. Vexatious
14. "Rule 38"
15. "Rule 32"

Please provide all responsive records from December 1, 2022, through the date the search is conducted.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed legislators or their staff. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both one of the listed legislators' responses to an email containing the key term "records retention" and the initial received message are responsive to this request and should be produced.

Statement of Noncommercial Purpose

This request is made for noncommercial purposes. American Oversight seeks records regarding changes made to the Arizona State Legislature's public records rules.¹ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the implementation of this rules change.

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.²

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

¹ Patrick Marley & Yvonne Wingett Sanchez, *Arizona Republicans Exempt Lawmakers from the State's Open-Records Law*, Wash. Post (Jan. 26, 2023, 7:15 PM), <https://www.washingtonpost.com/politics/2023/01/26/arizona-legislature-transparency-open-records-law/>.

² American Oversight currently has approximately 16,000 followers on Facebook and 112,800 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 27, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 27, 2023).

and postage charges, if applicable.³ 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 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

³ 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.

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 Ben Sparks at records@americanoversight.org or (202) 873-1741.

Sincerely,

/s/ Ben Sparks

Ben Sparks
on behalf of
American Oversight