



May 1, 2023

VIA EMAIL

North Dakota Department of Commerce
1600 E. Century Ave., Suite 6
Bismarck, ND 58503
commerce@nd.gov

Re: Open Records Law Request

Dear Record Custodian:

Pursuant to the North Dakota Open Records Law, N.D.C.C. §§ 44-04-18 et seq., and Section 6 of Article XI of the North Dakota Constitution, American Oversight makes the following request for records.

Requested Records

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

Any report, memoranda, or other document regarding environmental, social, and governance (ESG) investing created or commissioned by the Department of Commerce in response to its legal obligations under SB 2291, enacted in March 2021.¹

Please provide all responsive records from March 1, 2021, 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:

¹ Section 2 of SB 2291 mandated that during the 2021-22 interim, “the department of commerce shall study environmental social governance as it pertains to a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments as it pertains to government and private industry in the state.” Senate Bill No. 2291, Sixty-seventh Legislative Assembly of North Dakota, January 5, 2021, available at <https://ndlegis.gov/assembly/67-2021/documents/21-0717-04000.pdf>.



- In conducting your search, please understand the term “record,” in its broadest sense, to include all recorded information, regardless of physical form, related to any governmental functions, public business, or public funds.² 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Open Records Law.³
- 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.⁴ If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. Furthermore, if a request is denied in whole or in part, please describe the legal authority for the denial or, if applicable, provide a statement that the records do not exist.⁵
- 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

² N.D.C.C. § 44-04-17.1(16).

³ See N.D.A.G. 2014-O-20 (records contained on public employee’s personal device); N.D.A.G. 2014-O-10 (private email account used to generate or receive emails containing “public business”); N.D.A.G. 2008-O-15 (emails on home computers).

⁴ N.D.C.C. § 44-04-18.10 (1), (2).

⁵ N.D.C.C. § 44-04-18(7).

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.⁶

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 Taylor Stoneman at records@americanoversight.org or (202) 848-1319.

Sincerely,

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

⁶ American Oversight currently has approximately 16,000 followers on Facebook and 112,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 1, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 1, 2023).