



April 28, 2023

VIA ONLINE PORTAL

Office of the Secretary of State
State Capitol Building
Charleston, WV 25305
VIA Online Portal

Re: West Virginia Freedom of Information Act Request

Dear Records Custodian:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code § 29B-1-1 et seq., American Oversight makes the following request for copies of records.

Requested Records

American Oversight requests that the West Virginia Office of the Secretary of State produce the following records within five business days:¹

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) and text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook Messenger, WhatsApp, Signal, Telegram, or Parler) between (a) any West Virginia Office of the Secretary of State official listed below, and (b) any of the external entities or individuals listed below.

West Virginia Office of the Secretary of State Officials:

- i. Mac Warner, Secretary of State
- ii. Anyone serving as an assistant or scheduler to Secretary of State Mac Warner
- iii. Christopher Alder, Deputy General Counsel

External Parties:

- i. Anyone communicating on behalf of the Heritage Foundation or Heritage Action for America (including, but not limited to, anyone communicating from an email address ending in heritage.org or heritageaction.com)
- ii. J. Christian Adams (a@electionlawcenter.com, adams@electionlawcenter.com, and jadams@usccr.gov), Logan

¹ W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records “as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.”).



- Churchwell, Maureen Riordan, or anyone communicating on behalf of Public Interest Legal Foundation (including, but not limited to, anyone communicating from an email address ending in publicinterestlegal.org)
- iii. Jason Snead (jason@jasonsnead.com) or anyone communicating on behalf of Honest Elections Project (including, but not limited to, anyone communicating from an email address ending in honestelections.org)
 - iv. Anyone communicating on behalf of the National Association of Secretaries of State (NASS) (including, but not limited to, anyone communicating from an email address ending in nass.org or sso.org)
2. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent or received by Secretary of State Mac Warner, Deputy General Counsel Christopher Alder, or anyone communicating on their behalf (such as an assistant or scheduler), containing any of the following terms “Heritage,” “Honest Elections Project,” “HEP,” “Snead,” “Public Interest Legal,” “PILF,” “Christian Adams,” “Churchwell,” “Riordan,” “Association of Secretaries,” or “NASS.”

For Parts 1 and 2 of this request, please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications responding to or forwarding such emails are responsive to this request. In other words, for example, if Secretary Warner received a mass-distribution newsletter from Public Interest Legal Foundation, that initial email would not be responsive to this request. However, if Secretary Warner forwarded that email with his own commentary, that subsequent message would be responsive to this request and the entire email chain should be produced.

3. The following records regarding (1) the February 15-18, 2023 National Association of Secretaries of State 2023 Winter Conference in Washington, DC, and (2) the February 14-15, 2023 Secretaries of State Conference hosted by The Heritage Foundation, Honest Elections Project, and Public Interest Legal Foundation in Washington, DC.
- a. All records containing registration information related to Secretary of State Mac Warner and Deputy General Counsel Christopher Alder’s attendance;
 - b. All itineraries or agendas for Secretary of State Mac Warner and Deputy General Counsel Christopher Alder’s travel (including, but not limited to, records identifying the individuals accompanying Secretary of State Warner and Deputy General Counsel Alder and records identifying any related travel or housing accommodations);
 - c. Records sufficient to identify any expense requests or reimbursement requests (either for payment or reimbursement by the Office of the Secretary of State or by any external party, including, but not limited to, The Heritage Foundation) submitted in connection with Secretary

- of State Mac Warner and Deputy General Counsel Christopher Alder's attendance;
- d. Any handouts, presentation materials, summaries, or notes (electronic or handwritten) provided to or created by Secretary of State Mac Warner, Deputy General Counsel Christopher Alder, or anyone communicating on their behalf (such as an assistant or scheduler).

For Parts 1 through 3, please provide all responsive records from January 1, 2023, through March 1, 2023.

4. All calendars or calendar entries for Secretary of State Mac Warner and Deputy General Counsel Christopher Alder, including any calendars maintained on their behalf, from February 1, 2023, through February 28, 2023.

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.
- In conducting your search, please understand the term "record" in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.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

² See W. Va. Code § 29B-1-2(6) (defining "writing" to include "books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.").

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.³ 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.⁴ If a request is denied in whole, please state specifically whether 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 office 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

³ See W. Va. Code § 29B-1-2(5) (defining a “public record” to include “any writing containing information prepared or received by a public body” that “relates to the conduct of the public’s business.”).

⁴ See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

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 understand any part of this request, please contact Mehreen Rasheed at records@americanoversight.org or (202) 848-1320.

Sincerely,

/s/ Mehreen Rasheed
Mehreen Rasheed
on behalf of
American Oversight

⁵ 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 April 27, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited April 27, 2023).