



March 20, 2024

VIA EMAIL

West Virginia Office of Technology
1900 Kanawha Blvd. East
Building 5, 10th Floor
Charleston, WV 25305
Jennelle.h.jones@wv.gov

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 Office of Technology produce the following records within five business days:¹

1. All formal or informal guidance, recommendations, directives, or policy memoranda prepared or received by the West Virginia Office of Technology regarding the preservation and retention of state agency files (including, but not limited to, state employee email files) pursuant to litigation holds or West Virginia's Freedom of Information Act.

For **part 1** of this request, please provide all responsive records **from January 1, 2021, through the date the search is conducted.**

2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) any of the West Virginia Office of Technology officials listed below, and (b) any email address ending in governor.wv.gov, dhhr.wv.gov, or dcr.wv.gov, and (c) regarding the preservation and retention of state agency files or electronically stored information.

Office of Technology Officials:

- i. Chief Information Officer Heather Abbott
- ii. Deputy Chief Information Officer Cynthia Smith
- iii. General Counsel Jenelle Jones

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.”).



For **part 2** of this request, please provide all responsive records **from January 1, 2022, through the date the search is conducted.**

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.com 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 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

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.”).

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.”).

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. 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.

While we understand the West Virginia Freedom of Information Act permits public agencies to assess fees associated with the reproduction of public records, as a not-for-profit organization, we request consideration of a waiver of any fees associated with the furnishing of these documents. Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

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

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).

website and promotes their availability on social media platforms, such as Facebook and Twitter.com.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 Loree Stark at records@americanoversight.org or (304) 913-6114.

Sincerely,

/s/ Loree Stark
Loree Stark
on behalf of
American Oversight

⁵ American Oversight currently has approximately 16,000 followers on Facebook and 111,300 followers on Twitter.com. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited March 18, 2024); American Oversight (@weareoversight), Twitter.com, <https://twitter.com/weareoversight> (last visited March 18, 2024).