



November 24, 2020

VIA EMAIL

Laura Dennis, Esquire
Luzerne County Office of Law
200 North River Street
Wilkes-Barre, PA 18711
laura.dennis@luzernecounty.org

Luzerne County Board of Elections
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711
ElectionBoard@LuzerneCounty.org

Re: Right-to-Know Law Request

Dear Ms. Dennis;

Pursuant to the Right-to-Know Law (RTKL), as codified at 65 P.S. §§ 67.101 et seq., American Oversight makes the following request for records.

On November 23, 2020, boards of election in several of the Pennsylvania's most populous counties voted in favor of certifying their election results but split votes along partisan lines, with Republican minorities opposing certification.¹

American Oversight requests records with the potential to shed light on the conduct of county elections officials, including whether or to what extent officials may have acted at the behest of external political interests.

Requested Records

American Oversight requests that the Luzerne County Board of Elections produce the following records within five business days:

All email communications (email messages, email attachments, complete email chains) between (a) Luzerne County Board of Elections Secretary Keith Gould, or Board Member Joyce Dombroski-Gebhardt, from their official email addresses, or from personal emails in an official capacity, and (b) any of the following external parties:

¹ Jeremy Roebuck & Jonathan Lai, *Pennsylvania Counties Certify Election Results Despite Isolated Pushback from Trump Allies*, Philadelphia Inquirer (updated Nov. 23, 2020, 7:01 PM), <https://www.inquirer.com/politics/election/pennsylvania-certification-election-results-third-circuit-trump-counties-20201123.html>.



External Parties:

1. Anyone communicating from an email address ending in @donaldtrump.com, @donaldjtrump.com, @trumpvictory.com, or @trumporg.com
2. Anyone communicating on behalf of the White House, including anyone communicating from an email address ending in @who.eop.gov
3. Ronna McDaniel, Laura Cox, Terry Bowman, or anyone communicating from an email address ending in @gop.com or @rnchq.com
4. Anyone communicating from an email address ending in @pasenate.gov, @pahouse.net, or @pahousegop.com
5. Lawrence Tabas, Bernadette Comfort, or anyone communicating from an email address ending in @pagop.org
6. John Gore, Alex Potapov, or anyone communicating from an email address ending in @jonesday.com
7. Kathleen Gallagher, Russel Giancola, or anyone communicating from an email address ending in @porterwright.com
8. Marc Scaringi, Brian Caffrey, or anyone communicating from an email address ending in @scaringilaw.com.
9. Justin Clark, Nathan Groth, Stefan Passantino, or anyone communicating from an email address ending in @michaelbest.com
10. Kory Langhofer, Thomas Basile, or anyone communicating from an email address ending in @statecraftlaw.com
11. Brett Johnson, Eric Spencer, or anyone communicating from an email address ending in @swlaw.com
12. Jay Sekulow or anyone communicating from an email address ending in @aclj.org
13. Matt Schlapp or anyone communicating from an email address ending in @conservative.org
14. Rudolph Giuliani, or anyone communicating on his behalf (such as Jo Ann Zafonte, Christianne Allen, Beau Wagner, or anyone communicating from an email address ending in @giulianisecurity.com, giulianipartners.com, gdcillc.com)
15. Anyone communicating from an email address ending in mail.house.gov or senate.gov
16. Jeff Landry, or anyone communicating from an email address ending in @republicanags.com or ag.state.la.us
17. Joseph diGenova, Victoria Toensing, or anyone communicating from an email address ending in @digenovatoensing.com
18. Sidney Powell, or anyone communicating from an email address ending in @federalappeals.com
19. Jenna Ellis, or anyone communicating from an email address ending in @falkirkcenter.com or @thomasmore.org.
20. John Solomon (including, but not limited to john@solomonmediallc.com, or any of his email addresses ending in @fox.com, @thehill.com, @justthenews.com, @washingtonguardian.net, or @washingtontimes.com)

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 forwarding such emails are responsive to this request. In other words, for example, if Mr. Gould received a mass-distribution news clip email from Fox News, that initial email would not be responsive to this request. However, if Mr. Gould forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from November 3, 2020, through November 23, 2020.²

Fee Waiver Request

In accordance with 65 P.S. § 67.1307(f)(2), American Oversight requests a waiver of fees associated with processing this request for records, because disclosure of the requested information is “in the public interest.”

The public has a significant interest in the actions of elections officials in Pennsylvania.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether officials opposing the certification of elections acted in coordination with external political actors.

American Oversight is committed to transparency and makes the responses agencies provide to open records requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records. 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.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses

² American Oversight believes this request for records with the listed parties from two custodians for a narrow timeframe is “sufficiently specific” (see 65 P.S. §§. 67.703). However, we are available to discuss if you have concerns that any of the listed terms may yield a large volume of responsive records.

³ *See supra*, note 1.

⁴ American Oversight currently has approximately 15,600 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 23, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 23, 2020).

posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's State Accountability Project covering voting rights issues in various states;⁶ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁷ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the Trump administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁸ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers.⁹

Finally, this request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest.

Accordingly, American Oversight qualifies for a fee waiver.

⁵ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ See generally *State Accountability Project*, American Oversight, https://www.americanoversight.org/areas_of_investigation/state-local-investigations; see, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

⁷ See, e.g., *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

⁸ See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁹ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

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:

- 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Right-to-Know Law.¹⁰
- 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 under 65 P.S. § 67.706. 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.

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

¹⁰ See, e.g., *Barkeyville Borough v. Stearns*, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).

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 Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight



Right-To-Know Response Form

January 4, 2021

American Oversight
Attn: Austin P. Evers, Executive Director
1030 15th St. NW
Suite B255
Washington, DC 20005
Via email only to: records@americanoversight.org

RTK REQUEST #2020-204

Dear Mr. Evers:

Thank you for writing to Luzerne County with your request for information pursuant to the Pennsylvania Right- To-Know law ("RTKL").

Recently, the Luzerne County Office of Law received a request for documents from you in a Right To Know request. Please note that your request is denied. The request that you have submitted is not discoverable pursuant to the RTKL Statute §708 (b) (17) A record of an agency relating to a noncriminal investigation, including:

- (vi) A record that, if disclosed, would do any of the following: (A) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court. (B) Deprive a person of the right to an impartial adjudication. (C) Constitute an unwarranted invasion of privacy. (D) Hinder an agency's ability to secure an administrative or civil sanction. (E) Endanger the life or physical safety of an individual.

You have a right to appeal this denial of information in writing to Executive Director, Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, PA 17120.

If you choose to file an appeal, you must do so within 15 business days of the mailing date of the agency's response. Section 1101. If you have further questions, please contact Laura C. Dennis. Please be advised that this correspondence will serve to close this record with our office as permitted by law.

Respectfully,

Laura C. Dennis, Esq.
Luzerne County
Open Records Officer
200 North River Street
Wilkes-Barre, PA 18711