

EXHIBIT INDEX

Exhibit A: September 11, 2012 sample open records request

Submitted jointly by CMD and Common Cause to each Defendant. Individual requests included in Exhibit E-I.

Exhibit B: May 27, 2010 letter from ALEC to Wisconsin Government Accountability Board

Submitted on ALEC's behalf by attorney Mike B. Wittenwyler, describing, among other things, how state legislators "attend ALEC conferences on behalf of and for the benefit of the state."

Exhibit C: June 22, 2010 email from Rep. Jeremy Thiesfeldt's legislative assistant to ALEC asking "to send ALL ALEC material to the Representative's PERSONAL email . . . Please do not send his State account (@legis.wi.gov) any more updates."

Email sent from Rep. Thiesfeldt's official email account by his legislative staffer and records custodian Hariah Hutkowski to ALEC staffer Gavin Koester.

Exhibit D: April 29, 2011 ALEC "Education Task Force Meeting Minutes" with membership roster

Excerpts from an ALEC Education Task Force document showing Rep. Tyler August's contact email listed as a non-legislative "@charter.net" address. This document also shows that Rep. August and Rep. Thiesfeldt attended the meeting in their official capacity as Wisconsin legislators.

Exhibit E: Rep. Jeremy Thiesfeldt open records correspondence with CMD and Common Cause

(Records request emailed as attachment)

Exhibit F: Rep. Pat Strachota open records correspondence with CMD and Common Cause

(Records request emailed as attachment)

Exhibit G: Rep. Tyler August open records correspondence with CMD and Common Cause

(Records request emailed as attachment)

Exhibit H: Rep. Dan Knodl open records correspondence with CMD and Common Cause

(Records request emailed as attachment)

Exhibit I: Rep. Tom Larson open records correspondence with CMD and Common Cause

(Records request emailed as attachment)

EXHIBIT A

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



COMMON CAUSE

Holding Power Accountable

September 11, 2012

Rep. Tyler August
Room 119 West
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. August -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

EXHIBIT B

The following letter from ALEC to Wisconsin's Government Accountability Board, by way of its attorney Mike Wittenwyler, is included to show the organization has asserted to Wisconsin authorities that state legislators are involved with ALEC for official governmental business, for example stating on page two that Wisconsin legislators "attend ALEC conferences on behalf of and for the benefit of the state."

CMD does dispute ALEC's description of its corporate-funded "scholarship" program that pays for state legislators to attend ALEC meetings.¹ CMD has filed a complaint with the GAB alleging the "scholarship" program violates Wisconsin's ethics and lobbying laws by providing a conduit for corporate lobbying principals in the state to provide illegal gifts of flights, hotel rooms, and entertainment.²

¹ See Brendan Fischer, "CMD Documents ALEC's Contradictory Claims to Wisconsin Ethics Board," April 12, 2012, available at <http://www.prwatch.org/news/2012/04/11420/cmd-documents-alec%E2%80%99s-contradictory-claims-wisconsin-ethics-board>. Letter filed with GAB available at http://www.alecexposed.org/wiki/CMD%27s_Complaint_to_the_Wisconsin_Ethics_Board

² See Press Release, Center for Media and Democracy, "CMD Asks Wisconsin Ethics Board to Examine Corporate-Funded Gifts to ALEC Legislators," Mar. 23, 2012, available at <http://www.prwatch.org/news/2012/03/11372/cmd-asks-wisconsin-ethics-board-examine-corporate-funded-gifts-alec-legislators>

May 27, 2010

VIA HAND DELIVERY

Jonathan Becker
Ethics and Accountability Division
Government Accountability Board
212 East Washington Ave., Third Floor
Madison, WI 53703

ALEC Conferences and Scholarships for State Legislators

Dear Mr. Becker:

We are writing to you on behalf of the American Legislative Exchange Council ("ALEC"). As we have discussed, ALEC is in the process of conducting a compliance audit of its practices involving its conferences and the scholarships it offers for state legislators to attend these and other ALEC events. To that end, we would like to verify that ALEC's intended actions and practices are appropriate under Wisconsin law.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Established in 1973, ALEC is the nation's largest nonpartisan, voluntary membership association of state legislators – with nearly 1,800 members and with the participation of legislators from all 50 states. ALEC is a tax-exempt organization, recognized by the Internal Revenue Service as a section 501(c)(3) educational organization and, as such, is prohibited from engaging in political activities. ALEC is *not* registered as a lobbying principal in Wisconsin.

On a regular basis, ALEC works to bring together state legislators from across the United States in settings that facilitate an exchange of ideas and the formulation of model legislation on a multitude of public policy issues. In 2009-10, the policy issues considered by ALEC and its members have included health care reform, prison overcrowding, climate change, education funding, prescription drug policies and pension fund reform. In addition to holding its conferences and other events, ALEC continually educates policymakers and the general public on these and other issues through its periodical publications, the general news media, its website and several comprehensive reports that it publishes each year. These materials and other information about ALEC are available on its website: www.alec.org.

To advance its mission of policy formation and education, ALEC establishes numerous task forces that serve as clearinghouses and idea exchanges for state legislators on specific policy

Jonathan Becker
Government Accountability Board
May 27, 2010
Page 2

issues. With input from both the public and private sectors, model legislation is developed that is then distributed to a broader audience. During the past 35 years, ALEC's task forces have considered, written and approved hundreds of model bills on a wide range of issues. Each year, close to 1,000 bills are introduced in state legislatures that are based at least in part on ALEC's model legislation.

ALEC CONFERENCES AND SCHOLARSHIPS

Several times each year, ALEC holds conferences at different locations in the United States. For example, its upcoming conferences include: the ALEC Annual Meeting in San Diego, CA (Aug. 5-8, 2010); the States & Nation Policy Summit in Washington, D.C. (Dec. 1-3, 2010); and, the Spring Task Force Summit in Cincinnati, OH (Apr. 29-30, 2011). Enclosed is a copy of the agenda from the most recent 2010 Spring Task Force Summit that was held in St. Louis, MO on April 23-24, 2010.

State legislator members are invited and encouraged to attend ALEC's conferences. In some instances, legislators make formal presentations to those attending the conference as well as actively participate in task force forums and meetings. In other instances, legislators may only attend educational sessions and meetings – listening to what others at the conferences have to say on public policy issues.

ALEC has recognized that the expense associated with participating in its task forces, forums and conferences may create a barrier for many legislators. To help defray the cost of attending these events, ALEC maintains a scholarship fund that will reimburse legislators for their travel expenses and registration fees. Expenses that will be reimbursed include the reasonable cost of transportation, meals and lodging. Decisions on how scholarships are awarded and in what amounts are made by ALEC staff.

The ALEC scholarship fund is supported with financial donations from hundreds of organizations. Some of these organizations include businesses that are registered as lobbying principals in Wisconsin. Fundraising efforts for the scholarship fund are overseen by ALEC staff members with the involvement of its private sector members – some of whom are individuals registered as Wisconsin lobbyists. Wisconsin state legislators, however, are *not* involved in these fundraising efforts.

Consistent with the Wisconsin Government Accountability Board's (the "G.A.B.") published guidelines for public officials, state legislators who attend ALEC conferences on behalf of and for the benefit of the state may submit a request for reimbursement of their travel expenses from the ALEC scholarship fund. In the event that a state legislator makes a personal outlay for the travel expenses (rather than ALEC making a reimbursement directly to the State or to a legislator's campaign account), ALEC will now direct the state legislator to disclose the ALEC scholarship fund reimbursement on the legislator's statement of economic interest.

Jonathan Becker
Government Accountability Board
May 27, 2010
Page 3

CONCLUSION

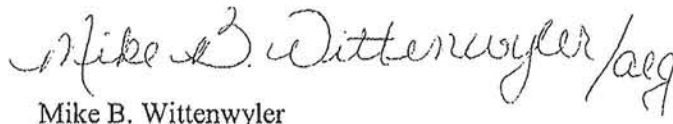
To the extent that they involve Wisconsin's lobbying and ethics laws, we request a written opinion of the G.A.B.'s staff confirming that ALEC's intended actions and practices are appropriate:

- ALEC may raise donations for its scholarship fund from organizations that may include Wisconsin lobbying principals;
- As part of its fundraising efforts for its scholarship fund, ALEC may work with individuals who are employees of Wisconsin lobbying principals and/or registered lobbyists in Wisconsin;
- Funds raised from Wisconsin organizations for the ALEC scholarship fund may be used to reimburse state legislators who attend ALEC conferences and other events for the legislator's registration fees and reasonable travel expenses including transportation, lodging and meal costs;
- To ensure compliance with state law, ALEC may require written confirmation that the state legislator is attending on behalf of and for the benefit of the state – ideally, written confirmation that attendance has been authorized by someone other than the attendee and, in a legislative leadership position (majority or minority); and,
- In the event that ALEC directly reimburses a state legislator (rather than ALEC making payment to the State of Wisconsin or a legislator's campaign account), ALEC should expect that the scholarship fund reimbursement will appear on the legislator's statement of economic interest.

In addition to receiving a timely staff opinion, we also request that an opinion to ALEC be confirmed pursuant to Wis. Stat. § 5.05(6a) by the G.A.B. itself at its next meeting on July 21 and 22, 2010.

Please let us know if you have questions or need any additional information. We look forward to receiving your reply.

GODFREY & KAHN, S.C.



Mike B. Wittenwyler

Enclosure

cc: Michael Bowman
5002480_2

EXHIBIT C

Hutkowski, Hariah

From: Hutkowski, Hariah
Sent: Friday, June 22, 2012 1:04 PM
To: ✓ 'Gavin Koester'
Subject: RE: Gavin Koester has invited you to a collaborative folder on Box
Sorry, I forgot the name scrolling up and down to grab your email. Thanks,

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
1-888-529-0052
FAX: 608-282-3652

From: Gavin Koester [mailto:gkoester@alec.org]
Sent: Friday, June 22, 2012 12:05 PM
To: Rep.Thiesfeldt
Subject: RE: Gavin Koester has invited you to a collaborative folder on Box

Bryan,

Here is an email update for a representative...I think they thought my name was Greg.

-Gavin

From: Rep.Thiesfeldt [mailto:Rep.Thiesfeldt@legis.wisconsin.gov]
Sent: Friday, June 22, 2012 12:10 PM
To: Gavin Koester
Subject: RE: Gavin Koester has invited you to a collaborative folder on Box

Greg,

Please send ALL ALEC material to the Representative's PERSONAL email at [REDACTED] from now on. Please do not send his State account (@legis.wi.gov) any more updates. He will keep up through his personal account.

Sincerely,

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
1-888-529-0052
FAX: 608-282-3652

9/12/2012

EXHIBIT D

ALEC

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Education Task Force Meeting Minutes

ALEC's 2011 Spring Task Force Summit | Friday, April 29, 2011

2:00 p.m. – 5:00 p.m.

Legislative Members in Attendance (16)

Rep. Tyler C. August, Wisconsin Legislature
Rep. John Daniel Burris, Arkansas General Assembly
Sen. Rich Crandall, Arizona Legislature
Sen. Jane D. Cunningham, Missouri Legislature
Rep. Scott D. Dieckhaus, Missouri Legislature
Rep. Mike Dudgeon, Georgia General Assembly
Rep. Greg Forristall, Iowa Legislature
Rep. Timothy W. Jones, Missouri Legislature
Rep. Howard Marklein, Wisconsin Legislature
Del. John Overington, West Virginia Legislature
Rep. Kristina D. Roegner, Ohio Legislature
Rep. Jacqueline Sly, South Dakota Legislature
Sen. Nancy Spence, Colorado Legislature
Sen. Howard A. Stephenson, Utah Legislature
Rep. Jeremy Thiesfeldt, Wisconsin Legislature
Rep. Addia K. Wuchner, Kentucky Legislature

Private Sector Members in Attendance (18)

Anna Davis, National Board for Professional Teaching Standards
Brandon Dutcher, Oklahoma Council of Public Affairs
Robert Enlow, The Foundation for Educational Choice
Bob Fairbank, K12
Bryan Flood, K12
Collin Hitt, Illinois Policy Institute
Scott Jensen, Alliance for School Choice
Tim Keller, Institute for Justice Arizona Chapter
Don P. Lee, K12
Kenneth Meyer, Scantron
Brian Newman, Association of Private Sector Colleges and Universities
Susan Patrick, International Association for K-12 Online Learning
Michael Poliakoff, American Council of Trustees & Alumni
Jeffrey W. Reed, The Foundation for Educational Choice
Mickey Revenaugh, Connections Academy
Terry Stoops, John Locke Foundation
Craig Thibadeau, National Board for Professional Teaching Standards
Richard Vedder, Ohio University

Others in Attendance (11)

Rich Danker, American Principles Project
Rep. Timothy Derickson, Ohio Legislature

Rep. Susan Emerson, New Hampshire Legislature
Rep. Paul Farrow, Wisconsin Legislature
Del. Eric Householder, West Virginia Legislature
Rep. Ken Ivory, Utah Legislature
Rep. Renee Kosel, Illinois Legislature
David Little, The Little Family Real Estate Holding Company, LLC
David McCloud, Advocacy Group
Rabbi A.D. Mortzen, Agudath Israel
Rep. Ken Weyler, New Hampshire Legislature

Staff in Attendance (3)

Dave Myslinski, ALEC Education Task Force Director
Monica Mastracco, ALEC Education Legislative Assistant
Briana Mulder, ALEC Membership

The Education Task Force meeting began at 2:00 p.m.

The meeting began with introductions by Mickey Revenaugh, Private Sector Task Force Chair, and Colorado State Sen. Nancy Spence, acting Public Sector Task Force Chair followed by the introduction of the newly appointed Subcommittee and Executive Committee members.

The Education Task Force saw several presentations on various topics, including “Current State of Higher Education” from Michael Poliakoff of American Council of Trustees and Alumni, “Competency-Based Learning” from Susan Patrick of International Association of K–12 Online Learning (iNACOL), “25 Ways to Reduce Costs” from Dr. Richard Vedder of The Center for College Affordability and Productivity, “Private School Choice Across the States” from Scott Jensen of American Federation for Children, “School Choice Week” from Robert Enlow of The Foundation for Educational Choice, and finally “State Authorization” from Brian Newman, Association of Private Sector Colleges and Universities.

The first model bill the Education Task Force members considered was the *Higher Education Transparency Act*, sponsored by Michael Poliakoff of American Council of Trustees and Alumni. After discussion, the legislation passed both the public sector with 16 Yeas, 0 Nays, and the private sector with 9 Yeas, and 0 Nays. The *Higher Education Transparency Act* was approved.

Finally, Education Task Force members considered the *Education Savings Account Act*, sponsored by Scott Jensen of American Federation for Children. After discussion, the legislation passed both the public sector with 13 Yeas, 0 Nays, and the private sector with 9 Yeas, and 0 Nays. The *Education Savings Account Act* was approved.

The meeting adjourned at 5:00 p.m.

Education
As of 7/1/2011

Kathy Afzali
Legislative Member
Maryland Delegate
Maryland Legislature
Lowe House Office Building
6 Bladen Street
Annapolis, MD 21401
Work Phone: (410) 841-3288
Email: kathy.afzali@house.state.md.us

James Anderson
Legislative Member
Wyoming Senator
Wyoming Legislature
92 Running Dutchman
Glenrock, WY 82637
Work Phone: (307) 777-7711
Fax: (307) 777-5466
Email: Jamesda1@msn.com

Marlene Anielski
Legislative Member
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Tyler C August
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Mississippi Legislature
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Fax: (601) 359-3728
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Stanton D. Anderson
Private Sector Member (M2)
Executive Vice President and Chief Legal Officer
U.S. Chamber Institute for Legal Reform
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Email: sanderson@uschamber.com

Tom Apodaca
Legislative Member
North Carolina Senator
North Carolina General Assembly
1504 Fifth Avenue West
Hendersonville, NC 28739
Work Phone: (919) 733-5745
Fax: (919) 755-2770
Email: Tom.Apodaca@ncleg.net

Nan A. Baker
Alternate
Ohio Representative
Ohio Legislature
Vern Riffe Center
77 South High Street
Columbus, OH 43215-6111
Work Phone: (614) 466-0961
Fax: (614) 719-3998
Email: district16@ohr.state.oh.us

Randi Becker
Legislative Member
Washington Senator
Washington Legislature
Irving R. Newhouse Building
215 Sid Snyder Avenue, SW
Olympia, WA 98504
Work Phone: (360) 786-7573
Fax: (360) 786-1999
Email: Becker.Randi@leg.wa.gov; rbecker873@hotmail.com

EXHIBIT E

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



COMMON CAUSE

Holding Power Accountable

September 11, 2012

Rep. Jeremy Thiesfeldt
Room 16 West
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. Thiesfeldt -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

From: brendan fischer <brendan@prwatch.org>
Sent: Tuesday, September 11, 2012 5:06 PM
To: Rep.Thiesfeldt
Subject: open records request

Please see attached.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: **Hutkowski, Hariah** Hariah.Hutkowski@legis.wisconsin.gov
Sent: Wed, Sep 12, 2012 at 9:04 AM
To: brendan fischer <brendan@prwatch.org>, "Thiesfeldt, Jeremy"
<Jeremy.Thiesfeldt@legis.wisconsin.gov>
Subject: open records request

Brendan, After a 30 minute search in all possible email folders there are no records per your request from the official emails of "Rep.Thiesfeldt@legis.wi.gov or Jeremy.Thiesfeldt@legis.wi.gov or any documents on our allocated hard drives in regards to ALEC for the period of Dec. 1, 2011 - Sept. 5th, 2012. I did not find any ALEC related items on our calendar either. Your request has been completed. I look forward to your next annual request.

Thank You and Sincerely!

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
[1-888-529-0052](tel:1-888-529-0052)
FAX: [608-282-3652](tel:608-282-3652)

From: brendan fischer <brendan@prwatch.org>,
Sent: Wednesday, September 12, 2012 9:12 AM
To: Hutkowski, Hariah
Cc: Thiesfeldt, Jeremy
Subject: Re: open records request

Hi Hariah

Thank you for looking. I will remind you that the request was for all emails sent and received on both official email accounts and any other email accounts used for official business. If you see page three of Attorney General Van Hollen's recently-released open records compliance guide:

http://www.doj.state.wi.us/dls/OMPR/2012OMCG-PRO/2012_Pub_Rec_Outline.pdf, you will note that: "E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

Thank you!

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: **Hutkowski, Hariah** Hariah.Hutkowski@legis.wisconsin.gov
Sent: Wed, Sep 12, 2012 at 4:11 PM
To: brendan fischer <brendan@prwatch.org>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>
Subject: open records request

Brendan,

Thanks for pointing out the compliance guide, especially the definition of "record." Based on point ii below from the guide I checked my account for records as well. I understood the request to be for Rep. Thiesfeldt only and did not include my "Hariah.Hutkowski@legis.wi.gov" email communications in my original search. I apologize for the confusion as the request was extremely vague on seeking staff's records in addition to Rep. Thiesfeldt's records.

Upon learning of my oversight, I turned up one record and it is attached. Also, I discovered some printed materials on a back shelf from ALEC sent to our office that I missed in my initial discovery process. These records (4 publications) are not easily scan-able so I will send them to the Assembly Chief Clerk to photocopy, mail, and bill to you.

Upon reading the guide, taking an additional 2 hours of my time, I can attest that this request is now complete (once you are mailed the records) and accurate to the best of my ability.

3. "Record" includes:
- a. Handwritten, typed, or printed documents.
 - b. Maps and charts.

- c. Photographs, films, and tape recordings.
- d. Computer tapes and printouts, CDs and optical discs.
- e. Electronic records and communications.

i. Information regarding government business kept or received by an elected official on her website, "Making Salem Better," more likely than not constitutes a record. OAG I-06-09, at 2-3.

ii. E-mail sent or received on an authority's computer system is a record. This includes personal e-mail sent by officers or employees of the authority. *Schill*, 2010 WI 86, ¶ 152, 327 Wis. 2d 572, ¶ 152, 786 N.W.2d 177, ¶ 152 (Bradley, J., concurring); *Id.*, ¶ 173 (Gableman, J., concurring); *Id.*, ¶ 188 (Roggensack, J., dissenting).

iii. E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record.

Sincerely,
Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
1-888-529-0052
FAX: 608-282-3652

From: brendan fischer <brendan@prwatch.org>,
Sent: Wednesday, September 12, 2012 4:50 PM
To: Hutkowski, Hariah
Cc: Thiesfeldt, Jeremy; Nick Surgey
Subject: Re: open records request

Hi Hariah,

Thank you for spending the time reviewing the compliance guide and searching your records. I appreciate that you complied with part (ii) of the compliance guide pasted below, but please also see part (iii), which I also excerpted in my email to you this morning.

As you are aware, a "record" includes all emails sent and received on Rep. Thiesfeldt's personal account, whenever that account is used for official business -- which certainly includes the requested ALEC-related communications. Because this request was directed at Rep. Thiesfeldt and asked not only for all emails sent and received on his official account but also "any other email accounts that have been used for official business," there can be no ambiguity that this request is intended to encompass his personal email accounts.

For additional proof of this, please note that it is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); State ex rei. Youmans v. Owens, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Finally, I am sure you know that an authority may not destroy a record after receipt of a request for that record until at least sixty days after denial or until related litigation is completed. Wis. Stat. § 19.35(5).

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: **Hutkowski, Hariah** Hutkowski@legis.wisconsin.gov
Sent: Wed, Sep 12, 2012 at 4:59 PM
To: brendan fischer <brendan@prwatch.org>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>
Subject: open records request

Brendan,

He has no records per part iii. I double checked too. Thanks for the additional clarification.

Sincerely,

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
[1-888-529-0052](tel:1-888-529-0052)
FAX: [608-282-3652](tel:608-282-3652)

From: brendan fischer <brendan@prwatch.org>,
Sent: Wednesday, September 12, 2012 5:25 PM
To: Hutkowski, Hariah
Cc: Thiesfeldt, Jeremy; Nick Surgey
Subject: Re: open records request

I just want to confirm that, per our original request, you did a search for all emails sent and received on Rep. Thiesfeldt's personal email accounts for any

and all records containing the words "ALEC" and/or "American Legislative Exchange Council," including any records in the "trash" folder of those accounts.

I ask because the one record you have released shows that since June of last year all ALEC-related emails are going to his personal accounts. I also ask because you said it took 30 minutes to search his official email accounts but in less than nine minutes you apparently managed to search and double check -- his personal account and then send me an email.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: **Hutkowski, Hariah** Hariah.Hutkowski@legis.wisconsin.gov
Sent: Thu, Sep 13, 2012 at 8:16 AM
To: brendan fischer <brendan@prwatch.org>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>
Subject: open records request

I have complied with your request.
Thanks,

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
[1-888-529-0052](tel:1-888-529-0052)
FAX: [608-282-3652](tel:608-282-3652)

From: brendan fischer <brendan@prwatch.org>,
Sent: Thursday, Sep 13, 2012 at 11:13 AM
To: Hutkowski, Hariah
Cc: Thiesfeldt, Jeremy; Nick Surgey
Subject: Re: open records request

Mr. Hutkowski

We are directly asking you to confirm that, per our request, you not only searched for the requested records on the office's official email accounts, but also any other emails accounts (including personal email accounts) that have been used for official business. You have been reminded of the specific

parameters of our request and the fact that the state Open Records Law encompasses the records we are seeking.

Please note that if we obtain a court order mandating the release of these records and the court finds that your office "acted in a willful or intentional manner" in withholding access, your office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that your office "has arbitrarily and capriciously denied or delayed response to a request," your office will be responsible for punitive damages. § 19.37(3).

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: "brendan@prwatch.org" <brendan@prwatch.org>
Date: Friday, September 14, 2012 11:49 AM
To: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Cc: "BJ.Dernbach@legis.wisconsin.gov" <BJ.Dernbach@legis.wisconsin.gov>, "rep.knobl@legis.wi.gov" <rep.knobl@legis.wi.gov>, "Mark.Florian@legis.wisconsin.gov" <Mark.Florian@legis.wisconsin.gov>, "rep.larson@legis.wi.gov" <rep.larson@legis.wi.gov>, "Rep.Pridemore@legis.wisconsin.gov" <Rep.Pridemore@legis.wisconsin.gov>, "luke.bacher@legis.wi.gov" <luke.bacher@legis.wi.gov>, "Rep.August@legis.wisconsin.gov" <Rep.August@legis.wisconsin.gov>, "Rep.Strachota@legis.wisconsin.gov" <Rep.Strachota@legis.wisconsin.gov>, "Hariah.Hutkowski@legis.wisconsin.gov" <Hariah.Hutkowski@legis.wisconsin.gov>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <nsurgey@commoncause.org>
Subject: Responsibilities under Wisconsin Open Records Law

September 14, 2012
Assembly Chief Clerk Patrick Fuller
17 West Main St #401
Madison WI 53703

Mr. Fuller:

It appears that some records custodians in the Assembly are confused about their responsibilities under Wisconsin's Open Records Law. I respectfully ask that you inform all records custodians that fully complying with the Open Records Law is "an integral part of the routine duties" of their position, as declared in Wis. Stat. § 19.31.

On September 11, we submitted requests to multiple offices for all records containing the term "American Legislative Exchange Council" or the word "ALEC," including for emails sent and received on the Representatives' personal email accounts, whenever those accounts have been used for official government functions. We are not seeking any emails that are purely personal, we are only seeking communications related to ALEC, which are indisputably connected to government functions -- namely, legislation, and planning for meetings where proposed legislation will be discussed.

As you are aware, a "record" for purposes of the Open Records Law does indeed include emails sent on a legislator's personal email account, whenever that account is used for official business.

For example, on page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

The Wisconsin Supreme Court has concluded that "the policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" as to allow a government employee to "subvert the purpose of the public records law in seconds and with several strokes on a keyboard simply by logging onto a free personal email account." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 156, 327 Wis. 2d 572 ¶ 156, 786 N.W.2d 177, ¶ 156 (Bradley, J., concurring).

It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. "In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government function." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 140, 327 Wis. 2d 572 ¶ 140, 786 N.W.2d 177, ¶ (Abrahamson, C.J., lead opinion). A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); *State ex rei. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Some records custodians have asserted that they have no responsibility under Wisconsin's Open Records Law to search a Representative's personal email account for the requested official records. Others have repeatedly issued evasive responses when we have directly asked for confirmation that they conducted a search of personal email accounts. None have issued an official denial stating what part of the law they believe entitles them to deny this request, as required by Wis. Stat. § 2219.35(4)(a).

I trust that you will inform all Assembly records custodians as to their responsibilities under the Open Records Law.

I have also included those six records custodians who have evaded our requests on this email so there can be no ambiguity or confusion about what the law requires. Further denials, unnecessary delays, or evasive responses from these offices after this point will be construed as willful and intentional, and possibly arbitrary and capricious.

Please note that our next step will be to obtain a court order mandating the release of these records. If the court finds that any of their offices "acted in a willful or intentional manner" in withholding access, the office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that an office "has arbitrarily and capriciously denied or delayed response to a request," that office will be subject to punitive damages. § 19.37(3).

Sincerely,

Brendan Fischer
SBN 1089027

CC:

BJ Dernbach (Office of Representative Dan Knodl)
Mark Florian (Office of Representative Tom Larson)
Bill Savage (Office of Representative Don Pridemore)
Luke Bacher (Office of Representative Tyler August)
Heather Moore (Office of Representative Pat Strachota)
Hariah Hutkowski (Office of Representative Jeremy Thiesfeldt)

Nick Surgey (Common Cause)

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: brendan fischer <brendan@prwatch.org>
Date: Mon, Sep 17, 2012 at 11:16 AM
Subject: Re: open records request
To: "Hutkowski, Hariah" <Hariah.Hutkowski@legis.wisconsin.gov>
Cc: "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <NSurgey@commoncause.org>

Mr. Thiesfeldt --

Please let us know the status of this request.

--

Brendan M Fischer

Staff Counsel

Center for Media and Democracy

www.prwatch.org

EXHIBIT F

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



September 11, 2012

Rep. Pat Strachota
Room 324 East
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. Strachota -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

From: brendan@prwatch.org
Sent: Tuesday, September 11, 2012 5:03 PM
To: Rep.Strachota
Subject: open records request

Please see attached

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

On Wed, Sep 12, 2012 at 9:20 AM, Rep.Strachota:

Rep.Strachota@legis.wisconsin.gov Wrote

Hi Brendan,

We have sent you all records that our office has pertaining to ALEC beginning with your request back on Dec. 8, 2011 in which you had requested documentation from Oct. 1, 2010 to Dec. 1, 2011 and your follow up to that request which was verified by our Assembly Chief Clerk that it was given to you on Dec. 13, 2011. Our office no longer handles any email correspondence, receives mail, and does no scheduling for ALEC which has been in effect since November of 2011. The representative does this on her own personal time.

Thanks,

Heather Moore
Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058

From: brendan@prwatch.org
Sent: Wednesday, September 12, 2012 9:55 AM
To: Rep.Strachota
Cc: Nick Surgey
Subject: Re: open records request

Is this a denial?

Please note that if you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request.

Wis. Stat. § 2219.35(4)(a)

Also note that a record is anything "created or kept in connection with official

purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); State ex rei. Youmans v. Owens, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Also note that it is the content determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

On Wed, Sep 12, 2012 at 10:05 AM, Rep.Strachota:
Rep.Strachota@legis.wisconsin.gov Wrote:

Hi Brendan,
This is not a denial, this office has nothing pertaining to ALEC from the dates in which you have requested.

Heather Moore
Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058

From: brendan@prwatch.org
Sent: Wednesday, September 12, 2012 10:18 AM
To: Rep.Strachota
Cc: Nick Surgey; Fuller, Patrick E.
Subject: Re: open records request

As I noted in my last email, a record for purposes of an open records request is anything "created or kept in connection with official purpose or function of the agency," regardless of where it is stored.

For clarification, are you asserting that ALEC is not related to the official functions of the legislative office? I will remind you that the request was for all emails sent and received on both official email accounts and any other email accounts used for official business. If you see page three of Attorney General Van Hollen's recently-released open records compliance guide <http://www.doj.state.wi.us/dls/OMPR/2012OMCG-PRO/2012_Pub_Rec_Outline.pdf> you will note that: "E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

Finally, I am sure you know that an authority may not destroy a record after receipt of a request for that record until at least sixty days after denial or until related litigation is completed. Wis. Stat. § 19.35(5).

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

On Wed, Sep 12, 2012 at 10:20 AM, Rep.Strachota
Rep.Strachota@legis.wisconsin.gov wrote:

There is nothing in this office.

Heather Moore
Office of Pat Strachota
Office (608) 264-8486
Toll-Free (888) 534-0058

From: "brendan@prwatch.org" <brendan@prwatch.org>
Date: Friday, September 14, 2012 11:49 AM
To: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Cc: "BJ.Dernbach@legis.wisconsin.gov" <BJ.Dernbach@legis.wisconsin.gov>, "rep.knodl@legis.wi.gov" <rep.knodl@legis.wi.gov>, "Mark.Florian@legis.wisconsin.gov" <Mark.Florian@legis.wisconsin.gov>, "rep.larson@legis.wi.gov" <rep.larson@legis.wi.gov>, "Rep.Pridemore@legis.wisconsin.gov" <Rep.Pridemore@legis.wisconsin.gov>, "luke.bacher@legis.wi.gov" <luke.bacher@legis.wi.gov>, "Rep.August@legis.wisconsin.gov" <Rep.August@legis.wisconsin.gov>, "Rep.Strachota@legis.wisconsin.gov" <Rep.Strachota@legis.wisconsin.gov>, "Hariah.Hutkowski@legis.wisconsin.gov" <Hariah.Hutkowski@legis.wisconsin.gov>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <nsurgey@commoncause.org>
Subject: Responsibilities under Wisconsin Open Records Law

Assembly Chief Clerk Patrick Fuller
17 West Main St #401
Madison WI 53703

Mr. Fuller:

It appears that some records custodians in the Assembly are confused about their responsibilities under Wisconsin's Open Records Law. I respectfully ask

that you inform all records custodians that fully complying with the Open Records Law is "an integral part of the routine duties" of their position, as declared in Wis. Stat. § 19.31.

On September 11, we submitted requests to multiple offices for all records containing the term "American Legislative Exchange Council" or the word "ALEC," including for emails sent and received on the Representatives' personal email accounts, whenever those accounts have been used for official government functions. We are not seeking any emails that are purely personal, we are only seeking communications related to ALEC, which are indisputably connected to government functions -- namely, legislation, and planning for meetings where proposed legislation will be discussed.

As you are aware, a "record" for purposes of the Open Records Law does indeed include emails sent on a legislator's personal email account, whenever that account is used for official business.

For example, on page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

The Wisconsin Supreme Court has concluded that "the policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" as to allow a government employee to "subvert the purpose of the public records law in seconds and with several strokes on a keyboard simply by logging onto a free personal email account." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 156, 327 Wis. 2d 572 ¶ 156, 786 N.W.2d 177, ¶ 156 (Bradley, J., concurring).

It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. "In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government function." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 140, 327 Wis. 2d 572 ¶ 140, 786 N.W.2d 177, ¶ (Abrahamson, C.J., lead opinion). A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); *State ex rei. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Some records custodians have asserted that they have no responsibility under Wisconsin's Open Records Law to search a Representative's personal email account for the requested official records. Others have repeatedly issued evasive responses when we have directly asked for confirmation that they conducted a search of personal email accounts. None have issued an official

denial stating what part of the law they believe entitles them to deny this request, as required by Wis. Stat. § 2219.35(4)(a).

I trust that you will inform all Assembly records custodians as to their responsibilities under the Open Records Law.

I have also included those six records custodians who have evaded our requests on this email so there can be no ambiguity or confusion about what the law requires. Further denials, unnecessary delays, or evasive responses from these offices after this point will be construed as willful and intentional, and possibly arbitrary and capricious.

Please note that our next step will be to obtain a court order mandating the release of these records. If the court finds that any of their offices "acted in a willful or intentional manner" in withholding access, the office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that an office "has arbitrarily and capriciously denied or delayed response to a request," that office will be subject to punitive damages. § 19.37(3).

Sincerely,

Brendan Fischer
SBN 1089027

CC:

BJ Dernbach (Office of Representative Dan Knodl)
Mark Florian (Office of Representative Tom Larson)
Bill Savage (Office of Representative Don Pridemore)
Luke Bacher (Office of Representative Tyler August)
Heather Moore (Office of Representative Pat Strachota)
Hariah Hutkowski (Office of Representative Jeremy Thiesfeldt)

Nick Surgey (Common Cause)

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: brendan@prwatch.org
Sent: Monday, September 17, 2012 11:14 AM
To: Rep.Strachota
Cc: Nick Surgey; Fuller, Patrick E.
Subject: Re: open records request

Ms. Moore --

Please let us know the status of this request.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

EXHIBIT G

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



September 11, 2012

Rep. Tyler August
Room 119 West
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. August -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

From: Nick Surgey
[mailto:NSurgey@commoncause.org<NSurgey@commoncause.org>]
Sent: Tuesday, September 11, 2012 5:44 PM
To: Rep.August
Subject: Open Records Request- ALEC
Importance: High

Please see attached.

Nick Surgey

Staff Counsel, Common Cause
152 W.Johnson St., Suite 212, Madison, WI 53703
Cell. 202-713-8869
Commoncause.org | Facebook/CommonCause | @NickSurgeyCC

From: Bacher, Luke <Luke.Bacher@legis.wisconsin.gov>
Date: Wednesday, September 12, 2012 1:01 PM
To: Nick Surgey nsurgey@commoncause.org
Cc: "Rep.August" Rep.August@legis.wisconsin.gov
Subject: RE: Open Records Request- ALEC

Mr. Surgey

We have received your open records request and our search came up with no results. Please consider this request completed.

Sincerely,

Luke

Luke Bacher

Legislative Assistant
State Representative Tyler August
608-266-1190
luke.bacher@legis.wi.gov
http://repaugust.com

From: Nick Surgey
[mailto:NSurgey@commoncause.org<NSurgey@commoncause.org>]
Sent: Wednesday, September 12, 2012 1:16 PM
To: Bacher, Luke
Cc: Rep.August; brendan@prwatch.org
Subject: Re: Open Records Request- ALEC
Importance:High

Dear Luke-

Thank you for for your response. I will remind you that the request was for all emails sent and received on both official email accounts and any other email accounts used for official business. Can you please confirm that your search included all email accounts, including personal email accounts used by Rep. August. If you see page three of Attorney General Van Hollen's recently-released open records compliance guide

<http://www.doj.state.wi.us/dls/OMPR/2012OMCG->

[PRO/2012 Pub Rec Outline.pdf](#) you will note that: "E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

Thank you.

Nick Surgey

Staff Counsel, Common Cause

152 W.Johnson St., Suite 212, Madison, WI 53703

Cell. 202-713-8869

Commoncause.org | [Facebook/CommonCause](#) | [@NickSurgeyCC](#)

From: Bacher, Luke Luke.Bacher@legis.wisconsin.gov

Date: Wednesday, September 12, 2012 1:25 PM

To: Nick Surgey nsurgey@commoncause.org

Cc: "Rep.August" Rep.August@legis.wisconsin.gov

Subject: RE: Open Records Request- ALEC

Mr. Surgey,

Our office has no records.

Sincerely,

Luke Bacher

Legislative Assistant

State Representative Tyler August

608-266-1190

luke.bacher@legis.wi.gov

<http://repaugust.com>

From: Nick Surgey

[\[mailto:NSurgey@commoncause.org\]](mailto:NSurgey@commoncause.org) <NSurgey@commoncause.org>

Sent: Wednesday, September 12, 2012 1:30 PM

To: Bacher, Luke

Cc: Rep.August; brendan@prwatch.org
Subject: Re: Open Records Request- ALEC
Importance: High

Luke- I do appreciate your speedy response. So as to avoid any confusion, could you please confirm whether your search included Rep. August's personal email addresses, as is stated as is required and outlined in the AG's open records compliance guide
http://www.doj.state.wi.us/dls/OMPR/2012OMCG-PRO/2012_Pub_Rec_Outline.pdf

With thanks,

Nick

Nick Surgey

Staff Counsel, Common Cause
152 W.Johnson St., Suite 212, Madison, WI 53703
Cell. [202-713-8869](tel:202-713-8869)
Commoncause.org | [Facebook/CommonCause](https://www.facebook.com/CommonCause) | [@NickSurgeyCC](https://twitter.com/NickSurgeyCC)

From: Bacher, Luke <Luke.Bacher@legis.wisconsin.gov>
Date: Wednesday, September 12, 2012 1:34 PM
To: Nick Surgey <nsurgey@commoncause.org>
Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>, "Rep.August" <Rep.August@legis.wisconsin.gov>
Subject: RE: Open Records Request- ALEC

Mr. Surgey
Our office has no records.
Sincerely,

Luke Bacher

Legislative Assistant
State Representative Tyler August
[608-266-1190](tel:608-266-1190)
luke.bacher@legis.wi.gov
<http://repaugust.com>

From: brendan fischer <brendan@prwatch.org>
Sent: Wednesday, September 12, 2012 2:01 PM
To: Bacher, Luke
Cc: Fuller, Patrick E.; Rep.August; Nick Surgey
Subject: Re: FW: Open Records Request- ALEC

Mr. Bacher,

Please note that even if a record is not contained within the physical bounds of your office or computer system, it is still subject to the open records law. A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); State ex rei. Youmans v. Owens, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965). It is the content determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1.

I will remind you that the request was for all emails sent and received on both official email accounts and any other email accounts used for official business. If you see page three of Attorney General Van Hollen's recently-released open records compliance guide http://www.doj.state.wi.us/dls/OMPR/2012OMCG-PRO/2012_Pub_Rec_Outline.pdf you will note that: "E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record." If this is a denial, the law requires you to state this in writing and declare what part of the law you believe entitles you to deny this request. Wis. Stat. § 2219.35(4)(a)

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

On Wed, Sep 12, 2012 2:08 PM, Bacher, Luke
Luke.Bacher@legis.wisconsin.gov wrote:

Mr. Fischer -

Our office does not have any records.
Sincerely,

Luke Bacher
Legislative Assistant
State Representative Tyler August
608-266-1190
luke.bacher@legis.wi.gov
<http://repaugust.com>

From: "brendan@prwatch.org" <brendan@prwatch.org>
Date: Friday, September 14, 2012 11:49 AM
To: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Cc: "BJ.Dernbach@legis.wisconsin.gov" <BJ.Dernbach@legis.wisconsin.gov>,
"rep.knodl@legis.wi.gov" <rep.knodl@legis.wi.gov>, "Mark.Florian@legis.wisconsin.gov"
<Mark.Florian@legis.wisconsin.gov>, "rep.larson@legis.wi.gov" <rep.larson@legis.wi.gov>,
"Rep.Pridemore@legis.wisconsin.gov" <Rep.Pridemore@legis.wisconsin.gov>,
"luke.bacher@legis.wi.gov" <luke.bacher@legis.wi.gov>, "Rep.August@legis.wisconsin.gov"
<Rep.August@legis.wisconsin.gov>, "Rep.Strachota@legis.wisconsin.gov"
<Rep.Strachota@legis.wisconsin.gov>, "Hariah.Hutkowski@legis.wisconsin.gov"
<Hariah.Hutkowski@legis.wisconsin.gov>, "Thiesfeldt, Jeremy"
<Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <nsurgey@commoncause.org>
Subject: Responsibilities under Wisconsin Open Records Law

September 14, 2012

Assembly Chief Clerk Patrick Fuller
17 West Main St #401
Madison WI 53703

Mr. Fuller:

It appears that some records custodians in the Assembly are confused about their responsibilities under Wisconsin's Open Records Law. I respectfully ask that you inform all records custodians that fully complying with the Open Records Law is "an integral part of the routine duties" of their position, as declared in Wis. Stat. § 19.31.

On September 11, we submitted requests to multiple offices for all records containing the term "American Legislative Exchange Council" or the word "ALEC," including for emails sent and received on the Representatives' personal email accounts, whenever those accounts have been used for official government functions. We are not seeking any emails that are purely personal, we are only seeking communications related to ALEC, which are indisputably connected to government functions -- namely, legislation, and planning for meetings where proposed legislation will be discussed.

As you are aware, a "record" for purposes of the Open Records Law does indeed include emails sent on a legislator's personal email account, whenever that account is used for official business.

For example, on page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

The Wisconsin Supreme Court has concluded that "the policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" as to allow a government employee to "subvert the purpose of the public records law in

seconds and with several strokes on a keyboard simply by logging onto a free personal email account." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 156, 327 Wis. 2d 572 ¶ 156, 786 N.W.2d 177, ¶ 156 (Bradley, J., concurring).

It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. "In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government function." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 140, 327 Wis. 2d 572 ¶ 140, 786 N.W.2d 177, ¶ (Abrahamson, C.J., lead opinion). A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); *State ex rei. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Some records custodians have asserted that they have no responsibility under Wisconsin's Open Records Law to search a Representative's personal email account for the requested official records. Others have repeatedly issued evasive responses when we have directly asked for confirmation that they conducted a search of personal email accounts. None have issued an official denial stating what part of the law they believe entitles them to deny this request, as required by Wis. Stat. § 2219.35(4)(a).

I trust that you will inform all Assembly records custodians as to their responsibilities under the Open Records Law.

I have also included those six records custodians who have evaded our requests on this email so there can be no ambiguity or confusion about what the law requires. Further denials, unnecessary delays, or evasive responses from these offices after this point will be construed as willful and intentional, and possibly arbitrary and capricious.

Please note that our next step will be to obtain a court order mandating the release of these records. If the court finds that any of their offices "acted in a willful or intentional manner" in withholding access, the office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that an office "has arbitrarily and capriciously denied or delayed response to a request," that office will be subject to punitive damages. § 19.37(3).

Sincerely,

Brendan Fischer
SBN 1089027

CC:

BJ Dernbach (Office of Representative Dan Knodl)
Mark Florian (Office of Representative Tom Larson)
Bill Savage (Office of Representative Don Pridemore)
Luke Bacher (Office of Representative Tyler August)
Heather Moore (Office of Representative Pat Strachota)
Hariah Hutkowski (Office of Representative Jeremy Thiesfeldt)

Nick Surgey (Common Cause)

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: brendan fischer <brendan@prwatch.org>
Sent: Monday, September 17, 2012 11:13 AM
To: Bacher, Luke
Cc: Nick Surgey; Rep.August
Subject: Re: FW: Open Records Request- ALEC

Mr. Bacher -- Please let us know the status of this request.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

On Mon, Sep 17, 2012 at 1:46 PM, Bacher, Luke
Luke.Bacher@legis.wisconsin.gov wrote:

Mr. Fischer --

We have received your open records request and our search came up with no results.

Please consider this request completed.

Sincerely,

Luke

Luke Bacher
Legislative Assistant
State Representative Tyler August
608-266-1190
luke.bacher@legis.wi.gov
<http://repaugust.com>

From: brendan fischer <brendan@prwatch.org>
Date: Mon, Sep 17, 2012 at 1:55 PM
Subject: Re: FW: Open Records Request- ALEC
To: "Bacher, Luke" <Luke.Bacher@legis.wisconsin.gov>
Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>, Nick Surgey <NSurgey@commoncause.org>

Mr. Bacher -- As we asked on Sept 12, will you please confirm that your search included Rep. August's personal email addresses. I have no doubt that you are now aware of the precise parameters of our request and your responsibilities under the Open Records Law.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org



Tyler August

State Representative • 32nd Assembly District

September 18, 2012

Nick Surgey
Common Cause
152 W. Johnson St., Suite 212
Madison, WI 53703

Dear Mr. Surgey:

This letter is written in response to your open records request addressed to me, dated September 11, 2012, in which you request: a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC."

My staff and I have searched through our records and have located 14 items that are responsive to this portion of your request.

Please note that some of the records we located contained information received from constituents or other private citizens. For those records, I have redacted personally identifying information, including names, telephone numbers, and personal e-mail addresses. Please note that I am not denying you access to entire records that contain such personal citizen information. Rather, I am providing you with the content of those records, redacting only the name and personal contact information of the citizen. Further, where there is clear intent of the citizen to have information shared publicly, I have provided it.

The applicability of Wisconsin's Public Records Law to specific citizen contacts on a particular issue requires me to balance the strong public interest in disclosing the record against any applicable public interest favoring nondisclosure. Based on this assessment, and for all the reasons stated below, I have determined that personal citizen information is not required to be produced under Wisconsin's Public Records Law:

- Pursuant to Wis. Const. Art. IV, Secs. 1 and 16, legislators have not only the right but also the responsibility to receive input from citizens regarding governmental concerns and undertake whatever investigations or inquiries the legislators think are appropriate to resolve those concerns. The potential disclosure of personal citizen information would constitute undue interference with legislators' constitutional rights and responsibilities, would act as an unconstitutional barrier to free and open communication between legislators and citizens, and would chill free speech and debate in the legislative process. As a result of Wis. Const. Art. IV, Secs. 1 and 16, the personal citizen information you seek is not subject to Wisconsin's Open Records Law.

- Any attempt to obtain the personal citizen information you seek also constitutes an undue interference with that citizen's rights to petition his or her government under U.S. Const. Amend. I and Wis. Const. Art. I, Sec. 4. Such interference chills free speech and debate and operates as a prior restraint of rights. As a result, the personal citizen information you seek is not subject to Wisconsin's Open Records Law.
- Pursuant to the exercise of legislative power authorized under, and the separation of powers principles established in, the Wisconsin Constitution, each legislator may choose to withhold or release documents concerning citizens who contact him or her about issues concerning public policy. See, for example, Wis. Const. Art. IV, Sec. 10. This principle is further exemplified by the Senate Policy Manual, which was adopted pursuant to Wis. Const. Art. IV, Sec. 8, and which exempts from disclosure under the public records law any information that identifies, discusses, or refers to proposed legislation that has not been introduced into the legislative process. Furthermore, the Wisconsin Legislative Council's Legislator Briefing Book indicates that although constituent correspondence is generally a public record, in certain circumstances a legislator may redact personally identifiable information about a constituent. It is vital to the proper functioning of the legislative branch of government that each legislator has the authority to enhance citizen involvement in the process by protecting personal citizen information. As a result, the personal citizen information you seek is not subject to Wisconsin's Open Records Law.

Furthermore, even if this personal citizen information were subject to the Open Records Law, it would be my opinion that the public interest in disclosing this personal citizen information is outweighed by the public interest in protecting the confidentiality of that information. Citizens must have total freedom to contact me on issues of concern to them, without fear that their personal citizen information will be made public and that they will be put at risk of harassment, reprisal, identity theft, etc. If personal citizen information is made public, citizens will hesitate to exercise their Constitutional right to contact their elected officials for assistance.

I have a Constitutional duty to help citizens with their problems related to public policy and to hear their views concerning the issues of the day, a duty which I have taken an oath to uphold. I cannot take steps, such as disclosing their personal citizen information, which contradict my duty as an elected state legislator. For all of these reasons and the additional reasons stated above, it is my opinion that the public interest in disclosing this information is outweighed by the public interest in withholding the information. Sec. 19.35(1) (a), Wis. Stats

If you have any questions concerning my response, please feel free to contact me. Pursuant to s. 19.35 (4) (b), Wis. Stats., this reply is subject to review by mandamus under s. 19.37 (1), Wis. Stats., or upon application to the Attorney General or a district attorney.

Sincerely,



Tyler August
State Representative
32nd District

EXHIBIT H

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



COMMON CAUSE

Holding Power Accountable

September 11, 2012

Rep. Dan Knodl
Room 218 North
State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. Knodl -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Tuesday, September 11, 2012 5:53 PM
To: Rep.Knodl
Subject: Open Records Request

Please see attached.

Nick Surgey
Staff Counsel, Common Cause
152 W.Johnson St., Suite 212, Madison, WI 53703
Cell. [202-713-8869](tel:202-713-8869)
Commoncause.org | [Facebook/CommonCause](https://www.facebook.com/CommonCause) | [@NickSurgeyCC](https://twitter.com/NickSurgeyCC)

From: "Rep.Knodl" <Rep.Knodl@legis.wisconsin.gov>
Date: Wednesday, September 12, 2012 2:34 PM
To: Nick Surgey <nsurgey@commoncause.org>
Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Subject: RE: Open Records Request

I've attached a .zip file with all the messages pertaining to your request.

Please let me know if you have any other questions

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
[\(608\) 266-3796](tel:608-266-3796)

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Wednesday, September 12, 2012 4:58 PM
To: Rep.Knodl
Cc: Fuller, Patrick E.; brendan@prwatch.org
Subject: Re: Open Records Request

Thank you for responding so promptly, which is appreciated.

Can you please confirm for me whether this search included all emails sent and received on both official email accounts and any other email accounts used for official business.

If you see page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

I understand that Rep. Knodl is an alternate member of ALEC's Health and Human Services Task Force. From open record requests that Common Cause has made to other legislators, we have received numerous communications from ALEC to all members of this task force. None of these communications appear in the materials that you provided today.

Please confirm that your search included all email accounts, including personal email accounts used by Rep. Knodl.

Thank you again for your assistance.

Regards,

Nick

Nick Surgey

Staff Counsel, Common Cause

152 W. Johnson St., Suite 212, Madison, WI 53703

Cell. 202-713-8869

Commoncause.org | Facebook/CommonCause | @NickSurgeyCC

From: <Dernbach>, BJ <BJ.Dernbach@legis.wisconsin.gov>

Date: Thursday, September 13, 2012 9:09 AM

To: Nick Surgey <nsurgey@commoncause.org>

Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>

Subject: RE: Open Records Request

Nick,

Thank you for your email.

I did conduct another search of all the office records in the office database.

There were 9 emails that were inadvertently not included in your request. They were in our constituent folder and one calendar item.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Thursday, September 13, 2012 9:18 AM
To: Dernbach, BJ
Cc: Fuller, Patrick E.; brendan@prwatch.org
Subject: Re: Open Records Request - Knodl

Thank you for conducting an additional search of the office database. So as to avoid any confusion, as previously requested would you please confirm that your search included personal email accounts used for government business. There is no doubt that communications from ALEC should be considered government business. Please note that it is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); State ex rei. Youmans v. Owens, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

With thanks,

Nick

Nick Surgey
Staff Counsel, Common Cause
152 W. Johnson St., Suite 212, Madison, WI 53703
Cell. 202-713-8869
Commoncause.org | Facebook/CommonCause | @NickSurgeyCC

From: <Dernbach>, BJ <BJ.Dernbach@legis.wisconsin.gov>
Date: Thursday, September 13, 2012 10:25 AM
To: Nick Surgey <nsurgey@commoncause.org>
Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Subject: RE: Open Records Request - Knodl

The search included all records pertaining to your request.

BJ Dernbach
Office of Representative Dan Knodl

24th Assembly District

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Thursday, September 13, 2012 11:18 AM
To: Dernbach, BJ
Cc: Fuller, Patrick E.; brendan@prwatch.org
Subject: RE: Open Records Request - Knodl

Mr. Dernbach,

We are directly asking you to confirm that, per our request, you not only searched for the requested records on the office's official email accounts, but also any other emails accounts (including personal email accounts) that have been used for official business. You have been reminded of the specific parameters of our request and the fact that the state Open Records Law encompasses the records we are seeking.

Please note that if we obtain a court order mandating the release of these records and the court finds that your office "acted in a willful or intentional manner" in withholding access, your office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that your office "has arbitrarily and capriciously denied or delayed response to a request," your office will be responsible for punitive damages. § 19.37(3).

Regards,

Nick Surgey
Staff Counsel, Common Cause
152 W. Johnson St., Suite 212, Madison, WI 53703
Cell. [202-713-8869](tel:202-713-8869)
Commoncause.org | [Facebook/CommonCause](https://www.facebook.com/CommonCause) | [@NickSurgeyCC](https://twitter.com/NickSurgeyCC)

From: <Dernbach>, BJ <BJ.Dernbach@legis.wisconsin.gov>
Date: Thursday, September 13, 2012 2:22 PM
To: Nick Surgey <nsurgey@commoncause.org>
Cc: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Subject: RE: Open Records Request - Knodl

The search included all records pertaining to your request.

If you have any other questions regarding this request, I would refer you to Pat Fuller.

Thanks.

BJ Dernbach
Office of Representative Dan Knodl
24th Assembly District
(608) 266-3796

From: "brendan@prwatch.org" <brendan@prwatch.org>
Date: Friday, September 14, 2012 11:49 AM
To: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Cc: "BJ.Dernbach@legis.wisconsin.gov" <BJ.Dernbach@legis.wisconsin.gov>, "rep.knodl@legis.wi.gov" <rep.knodl@legis.wi.gov>, "Mark.Florian@legis.wisconsin.gov" <Mark.Florian@legis.wisconsin.gov>, "rep.larson@legis.wi.gov" <rep.larson@legis.wi.gov>, "Rep.Pridemore@legis.wisconsin.gov" <Rep.Pridemore@legis.wisconsin.gov>, "luke.bacher@legis.wi.gov" <luke.bacher@legis.wi.gov>, "Rep.August@legis.wisconsin.gov" <Rep.August@legis.wisconsin.gov>, "Rep.Strachota@legis.wisconsin.gov" <Rep.Strachota@legis.wisconsin.gov>, "Hariah.Hutkowski@legis.wisconsin.gov" <Hariah.Hutkowski@legis.wisconsin.gov>, "Thiesfeldt, Jeremy" <Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <nsurgey@commoncause.org>
Subject: Responsibilities under Wisconsin Open Records Law

September 14, 2012

Assembly Chief Clerk Patrick Fuller
17 West Main St #401
Madison WI 53703

Mr. Fuller:

It appears that some records custodians in the Assembly are confused about their responsibilities under Wisconsin's Open Records Law. I respectfully ask that you inform all records custodians that fully complying with the Open Records Law is "an integral part of the routine duties" of their position, as declared in Wis. Stat. § 19.31.

On September 11, we submitted requests to multiple offices for all records containing the term "American Legislative Exchange Council" or the word "ALEC," including for emails sent and received on the Representatives' personal email accounts, whenever those accounts have been used for official government functions. We are not seeking any emails that are purely personal, we are only seeking communications related to ALEC, which are indisputably connected to government functions -- namely, legislation, and planning for meetings where proposed legislation will be discussed.

As you are aware, a "record" for purposes of the Open Records Law does indeed include emails sent on a legislator's personal email account, whenever that account is used for official business.

For example, on page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

The Wisconsin Supreme Court has concluded that "the policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" as to allow a government employee to "subvert the purpose of the public records law in seconds and with several strokes on a keyboard simply by logging onto a free personal email account." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 156, 327 Wis. 2d 572 ¶ 156, 786 N.W.2d 177, ¶ 156 (Bradley, J., concurring).

It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. "In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government function." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 140, 327 Wis. 2d 572 ¶ 140, 786 N.W.2d 177, ¶ (Abrahamson, C.J., lead opinion). A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); *State ex rei. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Some records custodians have asserted that they have no responsibility under Wisconsin's Open Records Law to search a Representative's personal email account for the requested official records. Others have repeatedly issued evasive responses when we have directly asked for confirmation that they conducted a search of personal email accounts. None have issued an official denial stating

what part of the law they believe entitles them to deny this request, as required by Wis. Stat. § 2219.35(4)(a).

I trust that you will inform all Assembly records custodians as to their responsibilities under the Open Records Law.

I have also included those six records custodians who have evaded our requests on this email so there can be no ambiguity or confusion about what the law requires. Further denials, unnecessary delays, or evasive responses from these offices after this point will be construed as willful and intentional, and possibly arbitrary and capricious.

Please note that our next step will be to obtain a court order mandating the release of these records. If the court finds that any of their offices "acted in a willful or intentional manner" in withholding access, the office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that an office "has arbitrarily and capriciously denied or delayed response to a request," that office will be subject to punitive damages. § 19.37(3).

Sincerely,

Brendan Fischer
SBN 1089027

CC:

BJ Dernbach (Office of Representative Dan Knodl)
Mark Florian (Office of Representative Tom Larson)
Bill Savage (Office of Representative Don Pridemore)
Luke Bacher (Office of Representative Tyler August)
Heather Moore (Office of Representative Pat Strachota)
Hariah Hutkowski (Office of Representative Jeremy Thiesfeldt)

Nick Surgey (Common Cause)

From: brendan@prwatch.org
Date: Monday, September 17, 2012 11:06 AM
To: <Dernbach>, BJ <BJ.Dernbach@legis.wisconsin.gov>
Cc: Nick Surgey <nsurgey@commoncause.org>
Subject: RE: Open Records Request - Knodl

Mr. Dernbach --

Please let us know the status of this request.

EXHIBIT I

The Center for Media and Democracy

520 University Avenue, Suite 260

Madison, Wisconsin 53703

Phone: 608-260-9713 • Fax: 608-260-9714



September 11, 2012

Rep. Tom Larson
Room 18 West
State Capitol
P.O. Box 8953
Madison, WI 53708

Re: Open Records Request, Wis. Stat. §§ 19.31-19.39

Rep. Larson -

Pursuant to the state open records law, Wis. Stat. §§ 19.31-19.39, I request access to and a copy of all records containing the words "American Legislative Exchange Council" and/or "ALEC," including but not limited to correspondence, emails sent and received, memoranda, informational materials, agendas, financial records (including receipts and expense reports), and other records, for the period December 1, 2011 through September 5, 2012. Please note that this request includes all emails sent and received on official email accounts as well as any other email accounts that have been used for official business, and also applies to records that may be in the "trash" folder of these email accounts. Also please note that this request applies to all files or documents downloaded to any computer or hard drive that has been used for official business, including records in the "trash" folder on these computers.

Please produce copies of the records in the most expedient and cost-effective manner possible. If electronic copies on a CD or by email can be produced at a lower cost than paper copies, please provide the copies in such an electronic format.

Please also be aware that the Open Records law "shall be construed in every instance with the presumption of complete public access consistent with the conduct of governmental business. The denial of access generally is contrary to the public interest and only in exceptional cases can access be denied." If you deny this request, or any part of this request, the law requires you to do so in writing and state what part of the law you believe entitles you to deny this request, or any part of this request. Wis. Stat. § 2219.35(4)(a).

As you know, the law requires you to respond to this request "as soon as practicable and without delay." Please confirm receipt of this request. Thank you for your time and consideration.

Sincerely,

Brendan Fischer
Staff Counsel
Center for Media and Democracy

Nick Surgey
Staff Counsel
Common Cause

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Tuesday, September 11, 2012 5:58 PM
To: Rep.Larson
Subject: Open Records Request
Importance: High

Please see attached.

Nick Surgey
Staff Counsel, Common Cause
152 W.Johnson St., Suite 212, Madison, WI 53703
Cell. [202-713-8869](tel:202-713-8869)
Commoncause.org | [Facebook/CommonCause](https://www.facebook.com/CommonCause) | [@NickSurgeyCC](https://twitter.com/NickSurgeyCC)

From: <Florian>, Mark <Mark.Florian@legis.wisconsin.gov>
Date: Wednesday, September 12, 2012 10:28 AM
To: Nick Surgey <nsurgey@commoncause.org>
Subject: RE: Open Records Request

Hello Nick,

Thank you for contacting our office. After looking through our records in order to accommodate your open records request I was unable to find any items containing the phrase "American Legislative Exchange Council" or "ALEC" for the period from December 1, 2011 through September 5, 2012. If you have any further questions please feel free to contact us.

Thanks and best,

Mark Florian
LTE
Office of Rep. Tom Larson

From: Nick Surgey [<mailto:NSurgey@commoncause.org>]
Sent: Wednesday, September 12, 2012 10:56 AM
To: Florian, Mark
Cc: brendan@prwatch.org
Subject: Re: Open Records Request
Importance: High

Dear Mark-

Thank you for looking. I will remind you that the request was for all emails sent and received on both official email accounts and any other email accounts used for official business. Can you please confirm that your search included all email accounts, including personal email accounts used by Rep. Larson.

If you see page three of Attorney General Van Hollen's recently-released [open records compliance guide](#), you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

Thank you!

Nick Surgey

Staff Counsel, Common Cause

152 W. Johnson St., Suite 212, Madison, WI 53703

Cell. [202-713-8869](tel:202-713-8869)

Commoncause.org | [Facebook/CommonCause](https://www.facebook.com/CommonCause) | [@NickSurgeyCC](https://twitter.com/NickSurgeyCC)

From: <Florian>, Mark <Mark.Florian@legis.wisconsin.gov>

Date: Thursday, September 13, 2012 9:25 AM

To: Nick Surgey <nsurgey@commoncause.org>

Subject: RE: Open Records Request

Hello Nick,

Apologies for the typo on the last email, please disregard it. We have thoroughly searched our records and have complied with the open records request.

Thanks and best,

Mark Florian

LTE

Office of Rep. Tom Larson

From: brendan@prwatch.org

Sent: Thursday, September 13, 2012 10:59 AM

To: Florian, Mark

Cc: Nick Surgey

Subject: Re: FW: Open Records Request- Larson

Mr. Florian --

You have been reminded of the specific parameters of our request and the fact that the state Open Records Law encompasses the records we are seeking. A "record" includes all emails sent and received on Rep. Larson's personal account, whenever that account is used for official business -- which certainly includes the requested ALEC-related communications. It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); State ex rei. Youmans v. Owens, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Please note that complying with the Open Records Law is "an integral part of the routine duties" of your position and that "the denial of public access generally is contrary to the public interest." Wis. Stat. § 19.31.

Please note that if we obtain a court order mandating the release of these records and the court finds that your office "acted in a willful or intentional manner" in withholding access, your office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that your office "has arbitrarily and capriciously denied or delayed response to a request," your office will be responsible for punitive damages. § 19.37(3).

We are directly asking you to confirm that, per our request, you not only searched for the requested records on the office's official email accounts, but also any other emails accounts that have been used for official business.

On Thu, Sep 13, 2012 at 3:09 PM, Florian,
Mark <Mark.Florian@legis.wisconsin.gov> wrote:

Hello Brendan,

Thank you for the additional clarification. As stated earlier, we have complied with the open records request.

All the best,

Mark Florian
LTE
Office of Rep. Tom Larson

From: "brendan@prwatch.org" <brendan@prwatch.org>
Date: Friday, September 14, 2012 11:49 AM

To: "Fuller, Patrick E." <Patrick.Fuller@legis.wisconsin.gov>
Cc: "BJ.Dernbach@legis.wisconsin.gov" <BJ.Dernbach@legis.wisconsin.gov>,
"rep.knobl@legis.wi.gov" <rep.knobl@legis.wi.gov>, "Mark.Florian@legis.wisconsin.gov"
<Mark.Florian@legis.wisconsin.gov>, "rep.larson@legis.wi.gov" <rep.larson@legis.wi.gov>,
"Rep.Pridemore@legis.wisconsin.gov" <Rep.Pridemore@legis.wisconsin.gov>,
"luke.bacher@legis.wi.gov" <luke.bacher@legis.wi.gov>, "Rep.August@legis.wisconsin.gov"
<Rep.August@legis.wisconsin.gov>, "Rep.Strachota@legis.wisconsin.gov"
<Rep.Strachota@legis.wisconsin.gov>, "Hariah.Hutkowski@legis.wisconsin.gov"
<Hariah.Hutkowski@legis.wisconsin.gov>, "Thiesfeldt, Jeremy"
<Jeremy.Thiesfeldt@legis.wisconsin.gov>, Nick Surgey <nsurgey@commoncause.org>
Subject: Responsibilities under Wisconsin Open Records Law

September 14, 2012

Assembly Chief Clerk Patrick Fuller
17 West Main St #401
Madison WI 53703

Mr. Fuller:

It appears that some records custodians in the Assembly are confused about their responsibilities under Wisconsin's Open Records Law. I respectfully ask that you inform all records custodians that fully complying with the Open Records Law is "an integral part of the routine duties" of their position, as declared in Wis. Stat. § 19.31.

On September 11, we submitted requests to multiple offices for all records containing the term "American Legislative Exchange Council" or the word "ALEC," including for emails sent and received on the Representatives' personal email accounts, whenever those accounts have been used for official government functions. We are not seeking any emails that are purely personal, we are only seeking communications related to ALEC, which are indisputably connected to government functions -- namely, legislation, and planning for meetings where proposed legislation will be discussed.

As you are aware, a "record" for purposes of the Open Records Law does indeed include emails sent on a legislator's personal email account, whenever that account is used for official business.

For example, on page three of Attorney General Van Hollen's recently-released open records compliance guide, you will note that:

"E-mail conducting government business sent or received on the personal e-mail account of an authority's officer or employee also constitutes a record."

The Wisconsin Supreme Court has concluded that "the policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" as to allow a government employee to "subvert the purpose of the public records law in seconds and with several strokes on a keyboard simply by logging onto a free personal email account." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 156, 327 Wis. 2d 572 ¶ 156, 786 N.W.2d 177, ¶ 156 (Bradley, J., concurring).

It is the content that determines whether a document is a "record," not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. "In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government function." *Schill v. Wisconsin Rapids Sch. Dist.*, 2010 WI 86 ¶ 140, 327 Wis. 2d 572 ¶ 140, 786 N.W.2d 177, ¶ (Abrahamson, C.J., lead opinion). A record is anything "created or kept in connection with official purpose or function of the agency." 72 Op. Att'y Gen. 99, 101 (1983); *State ex rei. Youmans v. Owens*, 28 Wis. 2d 672, 679, 137 N.W.2d 470, 473 (1965).

Some records custodians have asserted that they have no responsibility under Wisconsin's Open Records Law to search a Representative's personal email account for the requested official records. Others have repeatedly issued evasive responses when we have directly asked for confirmation that they conducted a search of personal email accounts. None have issued an official denial stating what part of the law they believe entitles them to deny this request, as required by Wis. Stat. § 2219.35(4)(a).

I trust that you will inform all Assembly records custodians as to their responsibilities under the Open Records Law.

I have also included those six records custodians who have evaded our requests on this email so there can be no ambiguity or confusion about what the law requires. Further denials, unnecessary delays, or evasive responses from these offices after this point will be construed as willful and intentional, and possibly arbitrary and capricious.

Please note that our next step will be to obtain a court order mandating the release of these records. If the court finds that any of their offices "acted in a willful or intentional manner" in withholding access, the office will be responsible for actual damages. Wis. Stat. § 19.37(2)(b). If the court finds that an office "has arbitrarily and capriciously denied or delayed response to a request," that office will be subject to punitive damages. § 19.37(3).

Sincerely,

Brendan Fischer
SBN 1089027

CC:

BJ Dernbach (Office of Representative Dan Knodl)
Mark Florian (Office of Representative Tom Larson)
Bill Savage (Office of Representative Don Pridemore)
Luke Bacher (Office of Representative Tyler August)
Heather Moore (Office of Representative Pat Strachota)
Hariah Hutkowski (Office of Representative Jeremy Thiesfeldt)

Nick Surgey (Common Cause)

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org

From: brendan@prwatch.org
Sent: Monday, September 17, 2012 11:09 AM
To: "Florian, Mark" <Mark.Florian@legis.wisconsin.gov>
Cc: Nick Surgey <NSurgey@commoncause.org>, rep.larson@legis.wi.gov
Subject: Re: FW: Open Records Request- Larson

Mr. Florian --

Please let us know the status of this request.

--

Brendan M Fischer
Staff Counsel
Center for Media and Democracy
www.prwatch.org