

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF BARRY

AMERICAN OVERSIGHT,

Plaintiff,

Case No.

Hon.

v.

DAR LEAF, in his official  
capacity as Sheriff of Barry County,  
Michigan, SHERIFF'S OFFICE OF  
BARRY COUNTY, MICHIGAN,  
and BARRY COUNTY,  
MICHIGAN

Defendants.

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COMPLAINT FOR DISCLOSURE  
OF PUBLIC RECORDS ILLEGALLY  
WITHHELD FROM PUBLIC DISCLOSURE

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the Complaint.

/s/ Mark Brewer

Mark Brewer (P35661)

NOW COMES Plaintiff American Oversight, by and through its attorneys, Goodman Acker, P.C., pursuant to the Michigan Freedom of Information Act (FOIA), MCL 15.231 et seq., seeking a court order to compel disclosure of public records wrongfully withheld by Defendants, and in support of its Complaint states as follows:

### INTRODUCTION

1. Barry County Sheriff Dar Leaf (“Leaf” or the “Sheriff”) is a sworn County Sheriff, with specified duties provided by Michigan law and the authority to act within the confines of his office and constitutional principles, and to use appropriated funds for their authorized, nonpolitical purposes only.

2. For nearly two years, Leaf has repeatedly used his office for frivolous and/or partisan efforts to cast doubt on the 2020 election results, apparently relying on widely debunked conspiracy theories and unreliable sources. His so-called “investigation” has been widely criticized by bipartisan state and local officials as baseless or lacking predication.

3. Plaintiff American Oversight has sought, through a request for public records, to understand the influence of partisan actors and widely debunked conspiracy theories on this “investigation.”

4. Leaf, the Sheriff’s Office, and Barry County (the “Defendants”) have improperly withheld Sheriff’s Office communications with individuals and groups pushing the false narrative that the 2020 election was stolen. In response to American Oversight’s FOIA request, Defendants acknowledged communications exist between the Sheriff’s Office and representatives of True the Vote, an organization that pushes debunked election denial theories, but withheld those communications, claiming disclosure would interfere with law enforcement proceedings.

5. Leaf's attempt to cloak his pursuit of partisan and widely debunked conspiracy theories and falsehoods in the guise of "law enforcement" is an abuse of his position and subverts the public's right to know how the government is spending taxpayer resources.

6. By partnering with demonstrably unreliable sources and ignoring significant contradictory evidence, judicial opinions, and bipartisan analysis of his and similar investigations, Leaf is acting as a political partisan, and outside of his obligation to use his authority in a reasonable, impartial, and objective manner. Such conduct increases the public's interest in accessing his official records to understand how Leaf operates his public office.

7. Because Leaf's baseless "investigation" into the 2020 election is not legitimate law enforcement, release of the withheld records would not interfere with a legitimate "law enforcement proceeding."

8. Defendants also denied the existence of communications with other specified partisan actors and conspiracy theorists despite indications that Leaf is coordinating with those individuals, including public assertions from some of these individuals that they are working with Leaf on his purported "investigation." The claim that the Sheriff's Office does not have communications with those actors is not credible and demonstrates Defendants have not conducted a sufficient search for requested records or are otherwise failing to acknowledge the existence of such records.

## **PARTIES**

9. Plaintiff American Oversight is a nonpartisan, nonprofit organization dedicated to ensuring government transparency at all levels. Through research and requests for public records under the federal Freedom of Information Act and state public records laws, American Oversight uses the information it gathers, and its analysis of it, to educate the public about activities and

operations of state and federal governments through its reports, published analyses, press releases, and other media. American Oversight has developed a significant focus on voting rights and election oversight, including in Michigan, and seeks to ensure the public has access to government records that enable them to monitor the performance and priorities of their public officials. American Oversight is a “person” as defined in MCL 15.232(g).

10. Defendant Dar Leaf is the Sheriff of Barry County and the head of the County Sheriff’s Office, which are “public bod[ies]” under MCL 15.232(h)(iii) that create and maintain “public records” as defined in MCL 15.232(i).

11. Defendant Sheriff’s Office of Barry County, Michigan (the “Sheriff’s Office”) is a “public body” under MCL 15.232(h)(iii) that creates and maintains “public records” as defined in MCL 15.232(i).

12. Defendant Barry County, Michigan (the “County”) is a “public body” under MCL 15.232(h)(iii) that creates and maintains “public records” as defined in MCL 15.232(i).

### **JURISDICTION**

13. This Court has jurisdiction under MCL 15.240(l)(b). Venue is proper under MCL 15.240(4).

### **APPLICABLE LAW**

14. “It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.” MCL 15.231(2).

15. “[U]pon providing a public body’s FOIA coordinator with a written request that describes a public record sufficiently to enable the public body to find the public record, a person has a right to inspect, copy, or receive copies of the requested public record of the public body.” MCL 15.233(1).

16. “A public body may exempt from disclosure as a public record under [the FOIA] . . . [i]nvestigating records compiled for law enforcement purposes, but only to the extent that disclosure as a public record would . . . [i]nterfere with law enforcement proceedings . . . .” MCL 15.243(1)(b)(i). “[T]he FOIA is a prodisclosure statute, and the exemptions stated in § 13 [MCL 15.243] are narrowly construed.” *Herald Co. v. City of Bay City*, 463 Mich. 111, 119, 614 N.W.2d 873 (2000). “The burden of proof rests on the party asserting the exemption.” *Id.*

## FACTUAL ALLEGATIONS

### **The 2020 Election in Michigan.**

17. Approximately 5.5 million votes were cast in Michigan during the November 2020 presidential election. President Biden defeated former President Trump with a margin of more than 150,000 votes.

18. In the days and months after the election, supporters of former President Trump filed multiple court challenges to the results, none of which succeeded. *See, e.g., Bally v. Whitmer*, No. 1:20-cv-1088 (W.D. Mich. 2020) (plaintiffs voluntarily dismissed five days after filing); *Costantino v. City of Detroit*, No. 20-014780-AW (Mich. Cir. Ct., Wayne Cnty. 2020), No. 355443 (Mich. Ct. App. 2020), No. 162245 (Mich. Sup. Ct. 2020) (trial court denied plaintiffs’ motion for injunctive relief and plaintiffs’ motion for an audit of the election results; appeals and supreme courts denied request for leave to file appeal); *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-1083 (W.D. Mich. 2020) (plaintiffs voluntarily dismissed one week after filing);

*Johnson v. Benson*, No. 1:20-cv-1098 (W.D. Mich. 2020) (plaintiffs voluntarily dismissed three days after filing); *King v. Whitmer*, No. 20-13134 (E.D. Mich. 2020), No. 20-815 (S. Ct. 2021) (trial court denied motion and petition for expedited consideration denied by U.S. Supreme Court); *Stoddard v. City Election Comm’n*, No. 20-014604-CZ (Mich. Cir. Ct., Wayne Cnty. 2020) (trial court denied petition finding plaintiffs did not show likelihood of success on the merits).

19. Michigan’s Office of the Auditor General, the Republican-led Michigan State Senate Oversight Committee, and the Michigan Bureau of Elections have all issued reports rebutting allegations that there was widespread voter fraud during the 2020 election.

20. An exhaustive report released in July 2022 by a prominent group of self-described “political conservatives” summarizes the results in Michigan as follows: “All claims of any wrongdoing sufficient to affect the result of the 2020 Presidential Election in Michigan have been thoroughly investigated and refuted. There was no widespread voter fraud.” *Lost Not Stolen: The Conservative Case That Trump Lost and Biden Won the 2020 Presidential Election* 43 (July 2022).

**American Oversight’s FOIA Request.**

21. Notwithstanding the numerous unsuccessful election challenges and bipartisan findings that there was no widespread voter fraud, extreme partisan actors and activists have pushed a baseless narrative that the 2020 presidential election was stolen.

22. Leaf has devoted significant resources to an “investigation” of the 2020 election.

23. On August 31, 2022, American Oversight submitted to the Barry County FOIA coordinator a request (the “Request”) for the following records of Leaf and the Sheriff’s Office:

All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging

platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) between (a) Sheriff Dar Leaf or anyone acting as Sheriff Leaf's deputy or agent, or communicating on Sheriff Leaf's behalf, and (b) any of the external individuals or entities listed below (including, but not limited to, at the listed email addresses or domains).

For external individuals/entities 1 through 4, below, please provide all responsive records from November 19, 2021, through the date the search is conducted.

For external individuals/entities 5 through 9, below, please provide all responsive records from November 3, 2020, through the date the search is conducted.

External individuals and entities:

1. Catherine Engelbrecht, Courtney Kramer, or anyone communicating on behalf of True the Vote ([@truethevote.org](mailto:@truethevote.org))
2. Former National Security Advisor Michael Flynn, Joseph Flynn, Charles Flynn, Michael Flynn Jr., or anyone communicating on behalf of America's Future ([@generalflynn.com](mailto:@generalflynn.com) or [@americasfuture.net](mailto:@americasfuture.net))
3. Patrick Byrne, Mike Roman ([mikeroman@protonmail.com](mailto:mikeroman@protonmail.com)), or anyone communicating on behalf of the America Project ([@americaproject.com](mailto:@americaproject.com))
4. Arizona Representative Mark Finchem ([markfinchem@azleg.gov](mailto:markfinchem@azleg.gov), [markfinchem@me.com](mailto:markfinchem@me.com), [markfinchem@protonmail.com](mailto:markfinchem@protonmail.com), or anyone communicating from an email address ending in [@votefinchem.com](mailto:@votefinchem.com))
5. Any employee or representative of Protect America Now ([@protectamericanow.com](mailto:@protectamericanow.com))
6. Gregg Phillips ([gregg@opsec.group](mailto:gregg@opsec.group) or [@patriotgames.com](mailto:@patriotgames.com)), or anyone from OPSEC Group LLC ([@opsec.group](mailto:@opsec.group))
7. Mike Lindell ([mike@mypillow.com](mailto:mike@mypillow.com)), Michele Repogle, or anyone communicating from an email address ending in [@mypillow.com](mailto:@mypillow.com)
8. Kurt Olsen ([kurtols@protonmail.com](mailto:kurtols@protonmail.com))
9. Phill Kline ([phillklineva@gmail.com](mailto:phillklineva@gmail.com)), Luis Cornelio ([luis.cornelio@protonmail.com](mailto:luis.cornelio@protonmail.com), [lcornel001@citymail.cuny.edu](mailto:lcornel001@citymail.cuny.edu)), Timothy Griffin, or anyone communicating on behalf of the Thomas More Society

A copy of the Request is attached to this Complaint as **Exhibit 1**.

24. On September 8, 2022, American Oversight received an email from the Deputy County Administrator, copying several County officials, including Leaf, and attaching a Notice of Denial of FOIA Request (the “Denial”). A copy of the cover email and the Denial, with watermarking added by American Oversight, are attached to this Complaint as **Exhibit 2**.

25. The Denial stated two “[r]eason[s] for [d]enial.”

- a. The first reason for denial referred to “item #1,” which American Oversight understands to correspond to the first item on the list of external individuals and entities in its Request, namely its request for communications with “anyone communicating on behalf of True the Vote” (“TTV”). With respect to the request for TTV communications, the Denial stated: “Exempt from Disclosure: This item is exempt from disclosure under FOIA Section 13, Subsection (1)(b)(i) [MCL 15.243(1)(b)(i)] . . . because: (b) investigating records compiled for law enforcement purposes . . . (i) (would) interfere with law enforcement proceedings.”
- b. The second reason for denial refers to “items #2-#9,” which American Oversight understands to correspond to the second through ninth items on the list of external individuals and entities in its Request. With respect to those items, the Denial stated: “Record Does Not Exist: It is hereby certified, pursuant to Section 5(5)(b) of the FOIA, that your FOIA request is denied because, to the best of my knowledge, information and belief, no public records exist as of 9/8, 2022, under the name(s) set forth in your request, nor under another name reasonably known to the County.”

26. Defendants did not provide any further explanation for denying any part of American Oversight’s Request.

**Leaf’s and/or his Representatives’ Communications with True the Vote Are Not Exempt From Public Disclosure.**

***Leaf’s Baseless Election “Investigation” is Not a Legitimate Law Enforcement Proceeding.***

27. In the immediate aftermath of the election, Leaf and a group of plaintiffs alleging voter fraud sought an injunction related to the maintenance of election data. In December 2020, a federal court rejected Leaf’s suit, describing it as “invi[te] the Court to make speculative leaps towards a hazy and nebulous inference.” Order, *Leaf v. Whitmer*, No. 1:20-CV-1169 (W.D. Mich. Dec. 7, 2020). Leaf and the other plaintiffs later voluntarily dismissed the case. *See* Notice of Voluntary Dismissal, *Leaf v. Whitmer*, No. 1:20-CV-1169 (W.D. Mich. Feb. 6, 2021).

28. Since that time, Leaf has worked with a private investigator to question local election officials in an arrangement reports have described as “unorthodox.” Jonathan Oosting, *Michigan Sheriff Enlists Private Eye to Grill Clerks in Vote Fraud Probe*, Bridge Michigan (July 16, 2021), available at <https://www.bridgemi.com/michigan-government/michigan-sheriff-enlists-private-eye-grill-clerks-vote-fraud-probe>. Public reporting indicates that the Barry County Clerk, a Republican, has “criticized what she called a secretive investigation that has frightened local clerks.” *Id.*

29. Local law enforcement officials have repeatedly contradicted Leaf’s claims that he has evidence of fraud. For example, in or around July 2021, the Barry County Prosecutor stated: “[U]sually there’s some allegation that provides some basis for [fact-finding], and I’ve not seen it.” *Id.* She later was reported to have said that Leaf had turned over documents to her office, but she had not found evidence of election fraud. Rachel Van Gilder, *Barry County Prosecutor: Still*

*No Evidence of Voter Fraud*, WoodTV.com (July 21, 2022), available at <https://www.woodtv.com/news/barry-county/barry-county-prosecutor-still-no-evidence-of-voter-fraud/?ipid=promo-link-block1>.

30. In July 2022, Leaf gave a speech at the Constitutional Sheriffs & Peace Officers Association (CSPOA) convention in Las Vegas, Nevada. The CSPOA is a group of sheriffs that, according to its website, espouse the view that “[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county. The vertical separation of powers in the Constitution makes it clear that the power of the sheriff even supersedes the powers of the President.”

31. True the Vote and the CSPOA announced a partnership at the Las Vegas convention, with officials of TTV reportedly stating their intent to provide monetary grants and equipment to sheriffs investigating claims of voter fraud during the 2020 election. See Peter Eisler & Nathan Layne, *Right-Wing U.S. Sheriffs Vow to Probe 2020 Voter-Fraud Claims*, Reuters (July 20, 2022), available at <https://www.reuters.com/world/us/right-wing-us-sheriffs-vow-probe-2020-voter-fraud-claims-2022-07-20/>.

32. At the CSPOA convention, Leaf publicly stated he has “some good evidence” of election fraud and “probable cause” despite admitting the Barry County Prosecutor found the opposite. In making that statement, Leaf expressly referred to True the Vote, representatives of which were sharing the stage with Leaf, saying: “[W]hen we started looking into what we had in Barry County, these votes that were missing, and we were trying to figure out where they go, what’s going on, and then they come out with their video, and I’m going, ‘it all fits.’”

33. Leaf also asserted at the CSPOA convention that there were 690 votes “missing” from a township in Barry County. Reportedly in response to that claim, the Barry County

Prosecutor stated: “I do not have probable cause to believe there were 600 votes stolen from anywhere.” Rachel Van Gilder, *Barry County Prosecutor: Still No Evidence of Voter Fraud*, WoodTV.com (July 21, 2022), available at <https://www.woodtv.com/news/barry-county/barry-county-prosecutor-still-no-evidence-of-voter-fraud/?ipid=promo-link-block1>.

34. On October 25, 2022, Leaf and the Barry County Prosecutor appeared before the Barry County Board of Commissioners. During the meeting, the County Prosecutor indicated she had not authorized three warrants related to Leaf’s investigation due to lack of probable cause. According to the Prosecutor: “There was no probable cause. It wasn’t insufficient; there was *none*.” Kyle Mitchell, *Barry County Prosecutor Criticizes Sheriff’s Ongoing 2020 Election Probe*, WoodTV.com (Oct. 26, 2022), available at <https://www.woodtv.com/news/barry-county/barry-county-prosecutor-criticizes-sheriffs-ongoing-2020-election-probe/> (emphasis added). She also stated: “There is no evidence of wide voter fraud in this county. There just isn’t that I can see.” Barry County Board of Commissioners meeting (Oct. 25, 2022), available at <https://livestream.com/accounts/2432004/events/10063746/videos/233478453>.

35. Subsequent to the October 25 meeting, the Board of Commissioners voted to withdraw funding for a detective in the Sheriff’s Office. Jonathan Oosting, *Barry County to Dar Leaf: Election Probe Waste of Money, Defunds Detective*, Bridge Michigan (Oct. 28, 2022), available at <https://www.bridgemi.com/michigan-government/barry-county-dar-leaf-election-probe-waste-money-defunds-detective>.

36. Upon information and belief, no instances of voter fraud from 2020 have been charged in Barry County after nearly two years of investigation.

37. Leaf himself has recently admitted the lack of evidence underlying his investigation, stating in October 2022: “I don’t think there was anything that anybody did here in

Barry County that would constitute election fraud.” *Id.* Leaf also “suggested the probe may extend beyond his jurisdiction.” *Id.*

38. Leaf is currently under investigation by the Michigan State Police and the Michigan Department of Attorney General for his potential involvement in “a conspiracy to unlawfully obtain access to voting machines,” Petition for Appointment of Special Prosecutor, State of Michigan Office of the Attorney General (Aug. 5, 2022) ¶ 1, *available at* <https://www.documentcloud.org/documents/22128224-michigan-petition-for-appointment-of-special-prosecutor>. A special prosecutor has been appointed and according to public reports charges are under consideration. *See* Craig Mauger, *Special Prosecutor Named in Michigan Voting Machine Case*, The Detroit News (Sept. 8, 2022), *available at* <https://www.detroitnews.com/story/news/politics/2022/09/08/special-prosecutor-named-michigan-voting-machine-case/8021125001/>.

39. Apparently reacting to the state investigation, Leaf filed a complaint seeking to prevent state officials from “interfering with, encroaching upon, or otherwise usurping [his] exclusive constitutional duties.” *Leaf v. Nessel*, No. 22-000078-MB (Ct. Claims, June 3, 2022), ¶ 40. Although Leaf’s lawsuit was dismissed after Leaf failed to respond to the defendants’ motion to dismiss, his attorney has indicated he intends to continue to pursue the radical claims pushed in his complaint. *See* Jonathan Oosting, *Sheriff Dar Leaf Loses Legal Fight Over Michigan 2020 Election Probe*, Bridge Michigan (Aug. 29, 2022), *available at* <https://www.bridgemi.com/michigan-government/sheriff-dar-leaf-loses-legal-fight-over-michigan-2020-election-probe>.

40. Upon information and belief, by pursuing partisan electoral aims disguised as legitimate law enforcement activity and ignoring all credible evidence to the contrary of his claims,

Leaf is abusing his authority and misusing official resources for purposes outside of Leaf's actual sworn duties.

***True the Vote Cannot Be a Legitimate Partner in a Law Enforcement Proceeding.***

41. True the Vote is a Texas-based non-profit organization. TTV was founded by Catherine Engelbrecht ("Engelbrecht"), who remains one of the leaders of the organization. Upon information and belief, Gregg Phillips ("Phillips") is a contracted partner of TTV and also a leader of the organization.

42. TTV pushes repeatedly debunked theories that there was widespread fraud during the 2020 election. In particular, TTV has engaged in a pattern of alleging it has evidence of voter fraud when it does not. Engelbrecht and Phillips were executive producers of the film *2,000 Mules*, which relies on discredited evidence collected by TTV to falsely allege a conspiracy to steal the 2020 election through widespread voter fraud.

43. As of the date of American Oversight's Request, TTV had been widely discredited by numerous media outlets and bipartisan government officials. For example, in testimony before the United States Congress Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol, former United States Attorney General William Barr stated he was "unimpressed" with the evidence gathered by TTV and presented in *2,000 Mules*. See Barbara Sprunt, *Here's What the Jan. 6 Panel's References to '2,000 Mules' is About*, NPR (June 13, 2022), available at <https://www.npr.org/2022/06/13/1104647454/jan-6-2-000-mules-trump-election>.

44. A report released in July 2022 by a prominent group of self-described "political conservatives" describes TTV's unreliability as follows: "Trump claimed that ballots were sold in Georgia for \$10 each.[ ] The claim stems from an allegation made by a group, True the Vote, which has declined to produce supporting evidence.[ ] A similar allegation that the group made in

September 2021 was reviewed by the Georgia Bureau of Investigation, which determined that an investigation was not justified because of the lack of evidence supporting the allegation.[]” *Lost Not Stolen: The Conservative Case that Trump Lost and Biden Won the 2020 Presidential Election* 29 (July 2022).

45. At least one state law enforcement office has suggested a federal investigation of TTV may be warranted. In an October 14, 2022 letter made available on its website, the Office of the Arizona Attorney General Mark Brnovich wrote to the Federal Bureau of Investigation and the United States Internal Revenue Service to provide information about TTV “for review and potential further action as it relates to potential violations of the Internal Revenue Code by True the Vote, a 501(c)3 organization.” Letter from Office of the Attorney General, Criminal Division, dated October 14, 2022, available at <https://www.azag.gov/sites/default/files/2022-10/202210141445.pdf>.

46. The Office of the Arizona Attorney General letter states that TTV made “inaccurate” statements and “patently false” public assertions regarding providing law enforcement officials with information indicating voter fraud. *Id.* at 1, 2. According to the letter, TTV stated to staff of the Attorney General’s office that “they were working with the FBI as informants” but the FBI later “informed [the Attorney General’s office] that Ms. Engelbrecht and Mr. Phillips were not informants for the FBI.” *Id.* at 2. The letter also states, among other things, that “[d]espite repeated requests, TTV never did provide the information it purported to have in its possession” and, contrary to TTV’s public statements, “TTV has not provided us any information/evidence of election fraud in Arizona that has led us to initiating an investigation.” *Id.*

The letter concludes:

TTV has raised considerable sums of money alleging they had evidence of widespread voter fraud and their efforts would train the

public to protect election integrity at the polls and to help protect all voters' rights. They indicate they have provided the information to law enforcement agencies; in our case they have not after promising to do so. Another law enforcement agency has also stated they have not provided them the information, informing them they had given the information to us.

Given TTV's status as a nonprofit organization, it would appear that further review of its financials may be warranted.

*Id.* at 2.

47. TTV's conduct continues to raise serious questions as to its methods and credibility, rendering it unreliable in any law enforcement proceeding.

48. Most recently, on October 31, 2022, Engelbrecht and Phillips were held in contempt of court and jailed for refusing to release the name of a person relevant to litigation against them who they claim is an FBI informant under threat of drug cartels. *See* Jessica Huseman, *Two Leaders of True the Vote Jailed by Federal Judge for Contempt of Court*, Votebeat (Oct. 31, 2022), available at <https://www.texastribune.org/2022/10/31/true-the-vote-leaders-jailed/>.

49. At least one partisan actor has made public statements suggesting Leaf is sharing information with them that he is withholding from the public. In a video publicly posted on or about September 20, 2022, Patrick Byrne ("Byrne"), a prominent election denial activist who had been involved in efforts to overturn the 2020 election results, referred specifically to Michigan, Barry County, and Leaf and stated with respect to Michigan sheriffs' investigations: "I've not been talking about this with [his Internet followers] for 18 months because we wanted it to be all quiet, quiet, quiet." *See Michigan Sheriff Dar Leaf Exposes Domestic Extremism by State Officials* (published Sept. 20, 2022), available at <https://rumble.com/v1kuxd9-michigan-sheriff-dar-leaf-exposes-domestic-extremism-by-state-officials.html>.

50. Leaf’s selective disclosure to and/or coordination with partisan actors such as Byrne and TTV, as well as his selective public allegations of widespread voting irregularities without evidentiary support, and contrary to numerous credible reviews of the claims, negates the assertion that public disclosure would harm any legitimate, objective, and lawful investigation.

**Defendants Did Not Conduct a Sufficient Search For and Improperly Withheld Requested Records.**

51. Defendants have improperly denied other portions of American Oversight’s Request by failing to conduct an adequate search and/or improperly withholding records.

52. Byrne, who is named in item #3 of the Request, has expressly stated he had been keeping information regarding Leaf’s activities “quiet” over the past 18 months. Yet Defendants state that no records of communications in approximately the last year exist with that individual.

53. Defendants also state that there are no records of communications since the 2020 election between the Sheriff’s Office and Mike Lindell, a major organizer of activists pushing the view that the 2020 election was stolen and named in item #7 of the Request. But as reported in July 2022, “Lindell said in an interview that he and his team had offered the three sheriffs [including Leaf] ‘all of our resources,’ including computer experts and data on voters.” Alexandra Berzon & Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, New York Times (July 25, 2022, updated Aug. 2, 2022), available at <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>.

54. Likewise, Phillips is a leader of TTV and named in item #6 of the Request. Despite Leaf and TTV apparently coordinating (by Leaf’s own acknowledgement in the Denial), Defendants state that no records exist of communications with Phillips.

55. Based on the forgoing and upon information and belief, Defendants' response to items #2 through #9 of the Request is unreliable and indicative of an inadequate search for and improper withholding of those records.

### **COUNT I – VIOLATION OF FOIA**

56. Plaintiff adopts and incorporates by reference each and every allegation in Paragraphs 1-55 as if specifically set forth word for word and paragraph by paragraph.

57. The FOIA requires public bodies to disclose public records upon request.

58. Defendants have not and cannot meet their burden of proof that the records requested by American Oversight are “investigating records compiled for law enforcement purposes” the disclosure of which “would . . . [i]nterfere with law enforcement proceedings,” as required by MCL 15.243(1)(b)(i).

59. Defendants did not conduct an adequate search for the records requested by American Oversight.

60. Defendants' withholding of public records based on an inapplicable exemption and/or an improper search violates the FOIA.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiff prays that the Court:

1. Assign this action for hearing at the earliest practicable date and expedite it in every way pursuant to MCL 15.240(5);
2. Declare the Defendants violated the FOIA by improperly withholding the public records requested by Plaintiff on August 31, 2022;
3. Order the disclosure of all of the public records requested from Defendants by Plaintiff on August 31, 2022;

4. Award attorneys' fees, costs, and disbursements to Plaintiff pursuant to MCL 15.240(6);
5. Award punitive damages for the arbitrary and capricious refusal and/or delays by Defendants in providing copies of public records to Plaintiff pursuant to MCL 15.240(7); and
6. Award such other relief as is appropriate and just.

Respectfully submitted,

/s/ Mark Brewer

By: Mark Brewer (P35661)

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*\*Pro hac vice* application forthcoming

Attorneys for Plaintiff American Oversight

Dated: November 4, 2022

# **EXHIBIT 1**



August 31, 2022

**VIA EMAIL**

Michael C. Brown  
FOIA Coordinator  
Barry County Courthouse – Floor 3  
220 W. State Street  
Hastings, MI 49058  
[bcfoiacordinator@barrycounty.org](mailto:bcfoiacordinator@barrycounty.org)

**Re: Freedom of Information Act Request**

Dear FOIA Coordinator:

Pursuant to Michigan's Freedom of Information Act (FOIA), as codified at Mich. Comp. Laws Ann. §§ 15.231 *et seq.*, American Oversight makes the following request for records.

**Requested Records**

American Oversight requests that your office respond to this request for the following records within five business days:

All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments), text messages (including complete text message threads or conversations), and messages on messaging platforms (such as Slack, GChat, Google Hangouts, Lync, Skype, or WhatsApp) between (a) Sheriff Dar Leaf or anyone acting as Sheriff Leaf's deputy or agent, or communicating on Sheriff Leaf's behalf, and (b) any of the external individuals or entities listed below (including, but not limited to, at the listed email addresses or domains).

For external individuals/entities 1 through 4, below, please provide all responsive records from November 19, 2021, through the date the search is conducted.

For external individuals/entities 5 through 9, below, please provide all responsive records from November 3, 2020, through the date the search is conducted.

**External individuals and entities:**

1. Catherine Engelbrecht, Courtney Kramer, or anyone communicating on behalf of True the Vote (@truethevote.org)



2. Former National Security Advisor Michael Flynn, Joseph Flynn, Charles Flynn, Michael Flynn Jr., or anyone communicating on behalf of America's Future (@generalflynn.com or @americasfuture.net)
3. Patrick Byrne, Mike Roman ([mikeroman@protonmail.com](mailto:mikeroman@protonmail.com)), or anyone communicating on behalf of the America Project (@americaproject.com)
4. Arizona Representative Mark Finchem ([markfinchem@azleg.gov](mailto:markfinchem@azleg.gov), [markfinchem@me.com](mailto:markfinchem@me.com), [markfinchem@protonmail.com](mailto:markfinchem@protonmail.com), or anyone communicating from an email address ending in @votefinchem.com)
5. Any employee or representative of Protect America Now (@protectamericanow.com)
6. Gregg Phillips ([gregg@opsec.group](mailto:gregg@opsec.group) or @patriotgames.com), or anyone from OPSEC Group LLC (@opsec.group)
7. Mike Lindell ([mike@mypillow.com](mailto:mike@mypillow.com)), Michele Repogle, or anyone communicating from an email address ending in @mypillow.com
8. Kurt Olsen ([kurtols@protonmail.com](mailto:kurtols@protonmail.com))
9. Phill Kline ([phillklineva@gmail.com](mailto:phillklineva@gmail.com)), Luis Cornelio ([luis.cornelio@protonmail.com](mailto:luis.cornelio@protonmail.com), [lcornel001@citymail.cuny.edu](mailto:lcornel001@citymail.cuny.edu)), Timothy Griffin, or anyone communicating on behalf of the Thomas More Society

### **Fee Waiver Request**

In accordance with Mich. Comp. Laws Ann. § 15.234(2), American Oversight requests a waiver of fees associated with processing this request for records. A waiver of fees for this request “is in the public interest because searching for or furnishing copies of the public record[s] can be considered as primarily benefiting the general public.”<sup>1</sup>

The public has a significant interest in the potential influence of third-party actors on the actions of Sheriff Leaf.<sup>2</sup> Records with the potential to shed light on this matter will help American Oversight and the general public understand whether Sheriff Leaf has been in contact with individuals or entities seeking to undermine public confidence in elections.

American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the general public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available

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<sup>1</sup> Mich. Comp. Laws Ann. § 15.234(2).

<sup>2</sup> See Alexandra Berzon & Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, N.Y. Times, July 25, 2022, <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>.

on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>3</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.<sup>4</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's investigations into misconduct and corruption in state governments;<sup>5</sup> an ethics waiver received by a senior U.S. Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>6</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the federal administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>7</sup> posting records regarding potential self-dealing at the U.S. Department of Housing & Urban Development and related analysis;<sup>8</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>9</sup> and posting records and analysis regarding the U.S. Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.<sup>10</sup>

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<sup>3</sup> American Oversight currently has approximately 16,000 followers on Facebook and 119,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Aug. 26, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Aug. 26, 2022).

<sup>4</sup> *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>5</sup> *State Investigations*, American Oversight, <https://www.americanoversight.org/states>.

<sup>6</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>7</sup> See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>8</sup> *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, American Oversight, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

<sup>9</sup> *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, American Oversight, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

<sup>10</sup> *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

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

Accordingly, American Oversight qualifies for a fee waiver.

### **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of

the requested records.<sup>11</sup> If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **Conclusion**

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Sarah Colombo at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 869-5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarah Colombo  
Sarah Colombo  
on behalf of  
American Oversight

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<sup>11</sup> Mich. Comp. Laws Ann. § 15.234(14).

# **EXHIBIT 2**

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**Subject:** FOIA request and response  
**Date:** Thursday, September 8, 2022 at 2:32:39 PM Eastern Daylight Time  
**From:** Luella Dennison  
**To:** records@americanoversight.org  
**CC:** Michael Brown, Dar Leaf, Jason Sixberry, Angela Berdecia  
**Attachments:** FOIA request 22-0292.pdf, FOIA response 22-0292.pdf, image001.jpg

EXTERNAL SENDER

Hello, Ms. Colombo,

Please see attached a copy of your FOIA request received by email in the office of the Barry County FOIA Coordinator on 8/31/22. Please also see attached the response to your request. Thank you.

*Luella Dennison, Deputy County Administrator*  
Barry County Administration  
220 West State Street, Hastings, MI 49058  
p. 269-945-1415; f. 269-948-4884



Disclaimer: This electronic message, including any attachments, is intended solely for use of the intended recipient(s). This message may contain information that is privileged or otherwise protected from disclosure by applicable law. Any unauthorized disclosure, dissemination, use or reproduction is strictly prohibited. If you have received this message in error, you must delete it permanently and notify the sender immediately.

County: Keep original and provide copy of both sides, along with Public Summary, to Requestor at no charge.



Barry County
Barry County Courthouse – Floor 3
220 W State St
Hastings, MI 49058
Phone: (269) 945-1284

Denial Form

Notice of Denial of FOIA Request
Michigan Freedom of Information Act, Public Act 442 of 1976, MCL 15.231, et seq.

Request No.: 22-0292 Date Received: 8/31/22 Check if received via: [X] Email [ ] Fax [ ] Other Electronic Method
Date of This Notice: 9/8/22 Date delivered to junk/spam folder: \_\_\_\_\_

Table with 3 columns: Name, Firm/Organization, Street, City, State, Zip, Phone, Fax, Email. Contains details for Sarah Colombo at American Oversight.

(Please Print or Type) Date discovered in junk/spam folder: \_\_\_\_\_
Request for: [X] Copy [ ] Certified copy [ ] Record inspection [ ] Subscription to record issued on regular basis
Delivery Method: [ ] Will pick up [ ] Will make own copies onsite [ ] Mail to address above [X] Email to address above
[ ] Deliver on digital media provided by the County: \_\_\_\_\_

Record(s) You Requested: (Listed here or see attached copy of original request) A copy of your request is attached to the e-mail that this response is attached to.
Requested information in item #1 (see item #1 below)
Requested information in items #2-#9 (see item #2 below)

[X] All OR [ ] Part of your request for records has been denied. Please refer to this form for an explanation. If you have any questions regarding this denial, contact Michael Brown, FOIA Coordinator at (269) 945-1284

Reason for Denial:

[X] 1. Exempt from Disclosure: This item is exempt from disclosure under FOIA Section 13, Subsection (1)(b)(i) (insert number), because: (b)investigating records compiled for law enforcement purposes...(i) (would) interfere with law enforcement proceedings

[X] 2. Record Does Not Exist: It is hereby certified, pursuant to Section 5(5)(b) of the FOIA, that your FOIA request is denied because, to the best of my knowledge, information and belief, no public records exist as of 9/8, 2022, under the name(s) set forth in your request, nor under another name reasonably known to the County. If you believe this record does exist, provide a description that will enable us to locate the record: \_\_\_\_\_

[ ] 3. Redaction: A portion of the requested record had to be separated or deleted (redacted) as it is exempt under FOIA Section 13, Subsection \_\_\_\_\_ (insert number), because: \_\_\_\_\_

A brief description of the information that had to be separated or deleted: \_\_\_\_\_

Notice of Requestor's Right to Seek Judicial Review
You are entitled under Section 10 of the Michigan Freedom of Information Act, MCL 15.240, to appeal this denial to the County Board of Commissioners or to commence an action in the Circuit Court to compel disclosure of the requested records if you believe they were wrongfully withheld from disclosure.
Signature of FOIA Coordinator: [Signature] / Acting FOIA Coordinator Date: 9-8-22

## FREEDOM OF INFORMATION ACT (EXCERPT)

Act 442 of 1976

**15.240.amended Options by requesting person; appeal; actions by public body; receipt of written appeal; judicial review; civil action; venue; de novo proceeding; burden of proof; private view of public record; contempt; assignment of action or appeal for hearing, trial, or argument; attorneys' fees, costs, and disbursements; assessment of award; damages.**

Sec. 10.

(1) If a public body makes a final determination to deny all or a portion of a request, the requesting person may do 1 of the following at his or her option:

(a) Submit to the head of the public body a written appeal that specifically states the word "appeal" and identifies the reason or reasons for reversal of the denial.

(b) Commence a civil action in the circuit court, or if the decision of a state public body is at issue, the court of claims, to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request.

(2) Within 10 business days after receiving a written appeal pursuant to subsection (1)(a), the head of a public body shall do 1 of the following:

(a) Reverse the disclosure denial.

(b) Issue a written notice to the requesting person upholding the disclosure denial.

(c) Reverse the disclosure denial in part and issue a written notice to the requesting person upholding the disclosure denial in part.

(d) Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the head of the public body shall respond to the written appeal. The head of a public body shall not issue more than 1 notice of extension for a particular written appeal.

(3) A board or commission that is the head of a public body is not considered to have received a written appeal under subsection (2) until the first regularly scheduled meeting of that board or commission following submission of the written appeal under subsection (1)(a). If the head of the public body fails to respond to a written appeal pursuant to subsection (2), or if the head of the public body upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action under subsection (1)(b).

(4) In an action commenced under subsection (1)(b), a court that determines a public record is not exempt from disclosure shall order the public body to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Venue for an action against a local public body is proper in the circuit court for the county in which the public record or an office of the public body is located has venue over the action. The court shall determine the matter de novo and the burden is on the public body to sustain its denial. The court, on its own motion, may view the public record in controversy in private before reaching a decision. Failure to comply with an order of the court may be punished as contempt of court.

(5) An action commenced under this section and an appeal from an action commenced under this section shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(6) If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages under subsection (7).

(7) If the court determines in an action commenced under this section that the public body has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the public body to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

**History:** 1976, Act 442, Eff. Apr. 13, 1977 ;-- Am. 1978, Act 329, Imd. Eff. July 11, 1978 ;-- Am. 1996, Act 553, Eff. Mar. 31, 1997 ;-- Am. 2014, Act 563, Eff. July 1, 2015