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May 18, 2017

VIA ELECTRONIC AND CERTIFIED MAIL

Hon. Matthew Dunlap
Office of the Secretary of State
148 State House Station
Augusta, Maine 04333
Sos.office@maine.gov

Re: Request for Inspection and Copying of Public Records Pursuant to the Maine Freedom of Access Act, 1 M.R.S.A. § 408

Dear Secretary Dunlap:

Please regard this letter as a request for inspection and copying of public records pursuant to 1 M.R.S.A. § 408 filed on behalf of the American Civil Liberties Union of Maine.

Please be advised that, under § 402(3) of the Freedom of Access Act, the term “public record” is broadly defined as including:

any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, ...and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business....

It should be noted that the term “public record” includes, but is not limited to, electronic data stored on computers and electronic communications such as e-mail.

Because Freedom Can't Protect Itself.

Information “received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business...” includes, but is not limited to, information stored on the home computers of government officials and employees.

On May 11, 2017, the New York Times reported that President Trump had named you to the Presidential Advisory Commission on Election Integrity--a commission charged with investigating “improper voting,” including the President’s unsubstantiated claim that millions of noncitizens had illegally voted in the 2016 general election.¹ The Commission is to be chaired by Vice President Pence, and vice chaired by Kansas Secretary of State Kris Kobach.

This request is limited to public records in the possession of Secretary of State Matthew Dunlap and his staff. This request is limited to public records created after January 1, 2017.

Specifically, I request disclosure of the following public records:

1. All documents, notes, and internal/external communications—including but not limited to emails, letters, and texts—concerning the Presidential Advisory Commission on Election Integrity described in the President’s May 11, 2017 Executive Order, and Secretary of State Matthew Dunlap’s membership on this Commission.
2. All documents, notes, and internal/external communications—including but not limited to emails, letters, and texts—concerning changes or potential changes to any rules, regulations, guidance, or guidelines contemplated in connection with the Presidential Advisory Commission on Election Integrity.

¹ Julie Hirschfield Davis, “Trump Picks Voter ID Advocate for Election Fraud Panel,” NEW YORK TIMES (May 11, 2017), available at <https://nyti.ms/2pBCc6w>.

3. All documents, notes, and internal/external communications—including but not limited to emails, letters, and texts—concerning allegations of improper voter registration, improper voting, fraudulent voter registration, and/or fraudulent voting (as those terms are defined in the President’s May 11, 2017 Executive Order) in the November 2016 General Election.
4. Legal opinions, memoranda, findings, factual evidence, studies, audits or advisories concerning allegations of improper voter registration, improper voting, fraudulent voter registration, and/or fraudulent voting (as those terms are defined in the President’s May 11, 2017 Executive Order) in the November 2016 General Election.
5. Proposed findings, recommendations, policies, and/or draft legislation for enhancing “election integrity” or promoting “confidence in the integrity of the voting processes” in connection with the Presidential Advisory Commission on Election Integrity.

Under the Maine’s Freedom of Access Act, you have five (5) working days to respond to this request.

The requested records are not exempt from disclosure. If you deny all or any part of this request, please cite each specific applicable FOAA exemption and notify us of appeal procedures available under the law.

The requester is entitled to waiver of any fees under 1 M.R.S.A. §408(6)(B), as release of the records requested is in the public interest because they are likely to contribute significantly to public understanding of the operations or activities of government and are not primarily in the commercial interest of the requester. To the extent that fee-waiver is not granted, please notify the requester if the costs for retrieval, compiling and copying will be more than \$100.00.

For public records stored on computer, please verify that records have not been deleted by confirming the results of searches against the computer back-up system currently in use. In addition, please be advised that destruction of public records contrary to the retention rules promulgated by the Maine State Archivist's Office is a Class E crime.

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Zachary L. Heiden", with a long horizontal line extending to the right.

Zachary L. Heiden
Legal Director