

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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ATTORNEY GENERAL

May 7, 2025

Ms. Catherine Edwards, Deputy General Counsel
Office of the General Counsel
N-821 House Office Building
P.O. Box 30014
Lansing, Michigan 48909

Re: House Oversight Committee Subpoenas

Dear Ms. Edwards:

The Department of State and Secretary of State (together “DOS”) are in receipt of the House Oversight Committee’s subpoenas dated April 22, 2025. They have requested representation by the Department of Attorney General to assist in further discussions regarding the subpoenas.

The subpoenas are identical and seek the production of:

The current full, complete, and unredacted training materials used to train Michigan clerks and their staffs on Michigan elections, including but not limited to all of the materials found in the Department of State's eLearning Center.

This includes all materials listed on the attached list of documents that the Department of State withheld from disclosure to the Michigan House of Representatives.

The purpose of this letter is to interpose objections to the subpoenas and to request a narrowing of the scope of material requested. But first, it may be helpful to recount the facts leading to the issuance of these subpoenas and DOS’s good faith efforts to comply with earlier document requests.

Summary of Requests and Records Produced

On November 20, 2024, staff for Representative Rachelle M. Smit emailed a request to DOS for “electronic copies of all training materials offered or otherwise provided to elections clerks.” (Attachment 1, Burns 11.20.24 email.) DOS’s FOIA

Coordinator responded the next day advising that the FOIA request could not be processed because it did not sufficiently describe the records sought as required by MCL 15.233(1). (Attachment 2, Hines 11.21.24 email & Burns 12.10.24 email.) The FOIA Coordinator suggested that the request be refined. (*Id.*)

On December 10, 2024, staff for Representative Smit submitted a refined request seeking twelve (12) categories of records:

1. All indexes and/or lists of materials used by MDOS to train clerks to run/manage/supervise/administer/oversee Michigan elections;
2. A sitemap of all public and non-public facing internet pages for the Bureau of Elections;
3. A sitemap of the e learning portal (<https://mielections.csod.com/client/mielections/default.aspx>)
4. The leadership/personnel organizational chart for MDOS;
5. The leadership/personnel organizational chart for the Bureau of Elections;
6. The electronic mail distribution list for all Michigan clerks used by the Bureau of Elections to disseminate Guidance – including but not limited to opinion letters from Director Jonathan Brater;
7. The US mail distribution list for all Michigan clerks used by the Bureau of Elections to disseminate Guidance – including but not limited to opinion letters from Director Jonathan Brater;
8. **(Time period 2018 to present)** All opinions of the Secretary of State interpreting Michigan elections law and /or regulations and/or administrative rules (this includes but is not limited to letters /guidance issued to clerks);
9. **(Time period 2018 to present)** All opinions of the Director of Elections Jonathan Brater interpreting Michigan elections law and /or regulations and/or administrative rules (this includes but is not limited to letters and/or guidance issued to clerks);
10. **(Time period 2018 to present)** All administrative rules and/or regulations created by the Secretary of State, Director Brater, and/or any rulemaker and/or rulemaking body within MDOS pertaining to

Michigan elections (this includes but is not limited to letters/guidance issued to clerks);

11. All training materials made available to clerks relating to the management, running, administering, and/or supervising of elections – a specific description of the documents can be found here:
<https://www.michigan.gov/sos/elections/admin-info>;

12. All training materials made available to clerks relating to any aspect of elections found in this following portal:
<https://mielections.csod.com/client/mielections/default.aspx>.
[Attachment 2, Hines 11.21.24 email & Burns 12.10.24 email.]

On December 18, 2024, the FOIA Coordinator advised Smit’s staff that DOS was taking the extension for responding to the request, and that a notice would be provided by January 7, 2025. (Attachment 3, 12.18.24 Hines letter.)

On January 7, 2025, the FOIA Coordinator provided notice to Smit’s staff that the request was granted as to existing, non-exempt records, and estimating a processing fee of \$8,781.75, of which half was due to commence processing. (Attachment 4, Hines 1.7.25 letter.)

Smit’s staff did not respond to the January 7, 2025, letter. Instead, on February 6, 2025, staff from Smit’s office sent a “new” request for information on behalf of the House Election Integrity Committee of which Representative Smit was now Chair. (Attachment 5, 2.6.25 Burns email.) The February 6, 2025 communication sought the same information requested previously (see above). (*Id.*) The communication also suggested that Representative Smit be provided login credentials to access certain categories of information. (*Id.*)

On March 7, 2025, DOS responded to the February 6 request. (Attachment 6, 3.7.25 Brady Letter.) Of note, DOS responded to all 12 requests for records by either providing records or providing website links¹ to where the records were readily accessible, with the exception of records maintained in the “eLearning Center” portal. (*Id.*) To that request, DOS responded that it would not provide immediate, unlimited access to the requested information because doing so would raise security concerns:

MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access

¹ The FOIA expressly permits providing website links. MCL 15.234(5).

is critical to ensure the ongoing integrity of our election systems and thereby the integrity of our elections. [*Id.*]

DOS did, however, provide a copy of a list of training materials available to clerks in the eLearning Center. (*Id.*)

On March 11, 2025, Representative Smit appeared before the House Oversight Committee and complained of DOS's purported lack of cooperation, wrongly asserting DOS had provided none of the records she sought.² Although Smit later admitted she had received the majority of the information sought by that date, she asked the Committee to issue a subpoena for the remaining records.³ Representative Jay DeBoyer, Chair of the House Oversight Committee, declined to issue a subpoena at that time, stating he would send a letter to DOS requesting production of the remaining records instead.⁴

The next day, on March 12, 2025, Chair DeBoyer sent a letter to DOS on behalf of Representative Smit, raising concerns with respect to DOS's response to all 12 categories of requested information. (Attachment 7, 3.12.25 DeBoyer Letter.) With respect to materials in the "eLearning Center" portal, the Chair requested that "login credentials and full and unobstructed access to the portal" be provided. (*Id.*)

On March 19, 2025, DOS responded to each concern stated by the Chair and produced additional records. (Attachment 8, 3.19.25 Brady Letter.) With respect to the eLearning Center request, DOS declined to provide login credentials to access the portal:

[A]s noted in our March 7, 2025, response to Rep. Smit, MDOS remains committed to the safe and secure administration of elections for the citizens of Michigan. We strive to provide as much transparency as the law allows while fulfilling our duty to protect the security and integrity of our collective election systems. Again, as noted in our March 7, 2025, response to Rep. Smit, MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access is critical to ensure the ongoing integrity of our election systems and thereby the integrity of our elections. Lest there be any question as to the necessity or wisdom

² See Benson Threatened With House Panel Subpoena, March 12, 2025, available at <https://home.mirs.news/post/benson-threatened-with-house-panel-subpoena> (accessed May 7, 2025.)

³ (*Id.*)

⁴ (*Id.*)

of complying with industry “need to know” standards in the protection of critical infrastructure and sensitive information, unfortunately, we need look no further than the ongoing criminal prosecution of individuals (including a former state representative from during her time in office) who are alleged to have attempted to gain unauthorized and illegal access to voting machines for their own personal and political purposes. [*Id.*]

DOS further responded that producing records from the eLearning Center portal would be burdensome due to the scale of the material and the need to review each record for redactions to protect sensitive information:

As for the eLearning Center, it contains over 500 training materials in a variety of different formats, including written documents, videos, recorded training presentations, online classes, and software. The materials hosted on the eLearning Center contain sensitive information regarding the cybersecurity and physical security of election systems and election machines. If training materials were to be released, each item would require individual review and redaction to ensure no protected information is released which may jeopardize the security and integrity of Michigan elections. For materials such as videos or online classes, this review may necessitate video and audio editing to ensure protected information is not released. [*Id.*]

DOS stated that if specific materials were identified for production, it could produce a more detailed estimate of the time and cost required to produce the materials. (*Id.*)

On April 4, 2025, the Chair responded, again requesting *all* materials in the eLearning Center be produced without redaction or that login credentials be provided for the portal. (Attachment 9, 4.4.25 DeBoyer Letter.) The Chair did not acknowledge or address DOS’s stated election security concerns with producing these materials or the burden in doing so. (*Id.*)

On April 14, 2025, DOS responded to the Chair’s letter, maintaining its objections but stating that it would individually review the items in the eLearning Center portal to determine which items presented security concerns, and would provide what documents it could on a rolling basis:

[A]s noted in our prior responses, MDOS maintains a secure portal for election clerks which contains sensitive training materials regarding the cyber security and physical security of election systems and election machines. This limited access is critical to ensure the ongoing

integrity of our election systems and thereby the integrity of our elections; therefore, read access login credentials will not be provided.

In an effort to assist the Election Integrity Committee in its previously stated goal of reviewing election documents to identify areas of improvement for election administration, the Department will conduct an individual review of each of the items included on the e-learning portal to prevent disclosure of protected information which, if released, may jeopardize the security and integrity of Michigan elections. In our March 7, 2025 response, MDOS offered to assist the Committees by asking the Committees to identify which specific materials they were most interested in reviewing, so that these materials could be prioritized for production. Because we did not receive any response to this offer of assistance, MDOS will provide the materials, following a security review, on a rolling basis. [Attachment 10, 4.14.25 Craine Letter.]

DOS stated an initial production of materials would be made available by April 30, 2025. (*Id.*)

Despite DOS's commitment to review all materials in the eLearning Center portal and to provide records, where possible and with appropriate redactions, the House Oversight Committee, at the Chair's request, approved the issuance of the instant subpoenas on April 15, 2025. The subpoenas were later served on April 22, 2025.

On May 2, 2025, consistent with DOS's stated intent in its April 14 letter, DOS provided a set of documents to you.

Objections to the Subpoenas in the Manner and Form Presented

Violation of Statutes and House Rule 36

MCL 4.101 provides that “[c]ommittees . . . of or appointed by the legislature may by resolution of the legislature be authorized to . . . subpoena witnesses and/or to examine the books and records of any persons, partnerships or corporations involved in a matter properly before any of such committees or commissions.” MCL 4.541 similarly provides that “any standing or select committee of . . . the house of representatives . . . shall be authorized to subpoena and have produced before any such committee, or inspect the records and files of any state department, board, institution or agency[.]” MCL 4.541 also provides that “[s]uch records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created.”

Nothing in MCL 4.401 or MCL 4.541, or the House Standing Rules,⁵ allows a standing committee to issue a subpoena on behalf of *another* standing committee. As detailed above, the information sought by the subpoenas was clearly requested by Representative Smit—first in her capacity as a legislator, then in her capacity as Chair of the Election Integrity Committee, which is a standing committee per the House Rules. Representative Smit is not a member of the House Oversight Committee. Despite this, the House Oversight Committee interceded on that committee’s behalf via the March 12, 2025, letter. And then did so again by authorizing the instant subpoenas.⁶ The House Oversight Committee’s authorization of a subpoena on behalf of another committee runs directly counter to statute and the House’s own rules.

But the purpose of state law and presumably House Rule 36 is to check a committee’s authority to wield subpoena power by ensuring it is used for an appropriate legislative purpose and “only in connection with the jurisdiction and purposes for which the committee was created.”⁷ The House Oversight Committee, by acting on behalf of the Election Integrity Committee, usurped this authority, violating the House Rules by issuing the instant subpoenas, seriously undermining any claim that the subpoenas have a proper scope or legitimate legislative purpose. Additionally, having one committee subpoena sensitive information for another committee blurs the lines of who potentially has access to that information, making it clear that the House fails to appreciate the sensitive nature of certain of the information requested.

Further, the subpoena to the Secretary is redundant and unauthorized. Both subpoenas are identical and seek the same information. So, there is no need for both. And under MCL 4.541, a standing committee is authorized to subpoena “the records and files of any state department, board, institution or agency.” The Department of State is the holder of such records and files, not the Secretary herself. A single subpoena to the Department of State is all that was necessary.

⁵ See Standing Rules of the House of Representatives, available at [house_rules.pdf](#) (accessed May 7, 2025.)

⁶ See Michigan House GOP to subpoena Jocelyn Benson for election training docs, available at [Michigan House GOP to subpoena Jocelyn Benson for election training docs | Bridge Michigan](#) (accessed May 7, 2025.)

⁷ See MCL 4.541; see also MCL 4.101, which provides that any subpoena involve “a matter properly before any of such committees or commissions.”

Lack of legislative purpose

A legislative subpoena is only valid to the extent it serves a *legislative purpose* of the committee that issues the subpoena. See MCL 4.541 (“Such records and files shall be subpoenaed, examined or used only in connection with the jurisdiction and purposes for which the committee was created.”) Investigations “must be in aid of a legislative purpose and the information sought must be pertinent to the inquiry made.” See OAG, 1975-1976, No 4998, p 421 (April 22, 1976).) See also *Trump v Mazars USA, LLP*, 591 US 848, 862-863 (2020); *Barenblatt v United States*, 360 US 109, 111-112 (1959); *Watkins v United States*, 354 US 178, 187 (1957). Investigations aid a legislative purpose if the investigation seeks to “determine what action or inaction had been effected by [] departments and agencies,” which may spur a change in the laws or alter the organization or operations of the relevant departments and agencies. (*Id.*)

A legislative investigation may “pursue its legitimate course,” but “the legislative power to compel disclosure of information by the executive branch may not be used for ‘irrelevant purposes’ [and] must respect the ‘traditional independence’ of another ‘constitutionally established’” branch. See OAG, 1981-1982, No 5994, p 394 (September 30, 1981), quoting OAG, 1967-1968, No 4606, p 109 (September 20, 1967). “Investigations conducted solely for the personal aggrandizement of the investigators or to ‘punish’ those investigated are indefensible.” *Watkins*, 354 US at 178.

Here, the subpoenas issued by the House Oversight Committee disclose no legislative purpose. Nowhere do they explain the committee’s purpose in requesting the training materials or how the requested materials are pertinent to the Oversight Committee’s purpose. Nor did the Chair provide any explanation of the Oversight Committee’s purpose and why it requires the materials on the record during the April 15, 2025, meeting at which it approved issuing the subpoenas.

Overbreadth and Burden

Narrowing of the requested materials

The subpoenas seek all training materials in the eLearning Center portal. As shown by the Excel sheet attached to the subpoenas, there are at least 517 discreet items in the portal. There are videos, documents, forms, online trainings, and powerpoints. It is estimated that the portal contains 22 gigabytes of information. And, as was explained to both Representative Smit and Chair DeBoyer previously, the majority of these items must be individually reviewed to determine whether they contain security feature information or other sensitive information, the release

of which could jeopardize the security of Michigan’s electoral process. Such information is generally exempt from disclosure. See MCL 15.243(1)(d), (y), (z).

To conduct this individualized review, DOS will have to move what materials it can into a platform so that the information may be reproduced in a format capable of redaction and production to the committee. It is estimated that the cost to DOS of hosting the information on the platform will be \$9,000, in addition to the labor costs for reviewing the material.⁸ Further, deploying staff to engage in hours of review in the midst of the May 6, 2025 election burdens DOS’s performance of a core mission—the administration of free and fair elections in Michigan. See OAG No 5994, p 394 (legislature’s “power of investigation has been limited to the extent necessary to avoid encroachment on other constitutionally independent prerogatives.”) But, as explained in DOS’s previous communications, the cost and burden on DOS could be alleviated, at least to some extent, if the House Oversight Committee would agree to narrow the scope of the materials requested. *Mazars*, 591 US at 870 (“[T]o narrow the scope of possible conflict between the branches” when a subpoena is directed at a coequal branch of government “the subpoena must be “no broader than reasonably necessary to support [the] legislative objective.”); *McLaughin v Montana State Legislature*, 405 Mont 1; 493 P3d 980, 994-995 (Mont, 2021) (legislature’s subpoenas were “sweepingly overbroad”). Refining the request should also result in more timely production of information by DOS. This is a reasonable request by DOS, which has so far been ignored.

DOS will not produce sensitive information

DOS anticipates that the response to its concerns will be that the expense and burden may be avoided if DOS simply provides the House Oversight Committee with unredacted material or provides login credentials so that the information may be reviewed electronically by the committee. But, as it has stated in every correspondence, DOS cannot provide sensitive election information to persons not entitled by the law to possess such information and maintain its legal duty to ensure the security of Michigan elections. See, e.g., OAG No 5994 at p 394; *Barenblatt*, 360 US at 111-112.

Section 21 of the Michigan Election Law makes the Secretary the “chief election officer” and she “shall have supervisory control over local election officials in the performance of their duties under the provisions of this act.” MCL 168.21. Further, under § 31, the Secretary “shall . . . [a]dvice and direct local election officials as to the proper methods of conducting elections.” MCL 168.31(1)(b). These sections provide the Secretary with broad authority to issue instructions, directions, and

⁸ DOS previously provided estimated costs in its January 7, 2025, FOIA fee estimate to Representative Smit of the labor required to review the material. (Attachment 4.)

advice for the proper conduct of elections and to require adherence to those instructions by the election officials over whom she exercises supervisory control. See, e.g., *Davis v Secy of State*, 333 Mich App 588, 597 (2020); *Hare v Berrien Co Bd of Election Commr's*, 373 Mich 526, 531 (1964); MCL 168.931(1)(h).

This authority plainly includes issuing directives to safeguard voting equipment and associated programming and software. See OAG, 2021-2022, No. 7316 (August 6, 2021) (“The Secretary of State, in her role as the Chief Elections Officer, may exercise supervisory authority over local elections officials responding to a request for access to voting equipment by the Auditor General by issuing directions that access to voting equipment should not be permitted, given the need to protect the physical integrity and security of the equipment consistent with state and federal law.”)⁹ Since the November 2020 general election, unprecedented efforts to gain unlawful access to voting equipment have occurred.¹⁰ Other individuals have sought to obtain sensitive, proprietary information through FOIA requests, which DOS has successfully defended against.¹¹

To be clear, DOS is not imputing to members of the House Oversight Committee any nefarious intent to use or share sensitive information with those who would harm or disrupt Michigan elections.¹² But it is concerning that the committee, including Chair DeBoyer as a former clerk, has failed to appreciate the sensitive nature of information pertaining to the functioning of Michigan’s qualified voter file and election equipment. DOS recognizes that the Special Rules for the House Oversight Committee generally limit the receipt of confidential information to committee members and staff, and prohibit releasing confidential information to third parties, which presumably also precludes providing that information to members of other committees and their staff. Special Rule 2.0. But the Chair has discretion to direct otherwise. (*Id.*). In other words, the Chair could direct the

⁹ Available at [Opinion #7316 \(state.mi.us\)](#) (accessed May 7, 2025). See also, OAG, 2009-2010, No. 7247 (May 13, 2010) (Secretary of State may exercise supervisory authority over local elections officials responding to a FOIA request for voted ballots by issuing directions for the review of the ballots in order to protect their physical integrity and the security of the voted ballots.), available at [Opinion #7247 \(state.mi.us\)](#) (accessed May 7, 2025).

¹⁰ Again, it should not be lost on the House Oversight Committee that a former House member was one of several individuals charged with conspiring to obtain and improperly access voting equipment. See [DePerno, Rendon charged in Michigan voting machine probe](#) (accessed May 7, 2025.)

¹¹ See [Attorney General: Macomb County Judge Rules FOIA Requests for Sensitive Election Data Were Properly Denied](#) (accessed May 7, 2025.)

¹² DOS is concerned regarding the prospective sharing of information with Representative Smit, a former clerk, who continues to claim that the 2020 election was “stolen,” and has defended various individuals now charged with election-related crimes. See [2020 election skeptic to head Michigan House election integrity committee | Bridge Michigan](#) (accessed May 7, 2025.)

release of DOS's information to anyone the Chair so desires, rendering any protection afforded by the confidentiality provision potentially meaningless.¹³

Again, as discussed above, no appropriate legislative purpose has been advanced by the House Oversight Committee in support of subpoenaing any of the training materials—let alone sensitive information raising election security concerns. *Mazars*, 591 US at 870-871 (The legislative body must “adequately identif[y] its aims and explai[n] why the [requested] information will advance its consideration of the possible legislation.”); *State ex rel Joint Committee of Government & Finance of West Virginia Legislature v Bonar*, 159 W Va 416, 423-424; 230 SE2d 629 (W Va, 1976) (legislative committee failed to establish need for subpoenaed records.) There simply has been no explanation as to why the House Oversight Committee needs this sensitive information. As a result, moving forward, DOS will produce those materials that require no redactions in full, other materials will be redacted making as few redactions as possible. Material that cannot be appropriately redacted will not be produced.

Conclusion

The Secretary of State firmly believes transparency in the administration of Michigan elections is vitally important. To that end, DOS's Elections website is replete with information concerning all aspects of the voting process—from registering to vote, to tabulating ballots, to post-election audits, and everything in between.¹⁴ But just as important is protecting the security and integrity of the voting process itself. Releasing material that would reveal security feature information or other sensitive information, jeopardizes the process. This is true even if those seeking the information are well-intentioned, because each time sensitive information is released, its potential for intentional or accidental disclosure to those who would misuse it increases.

We are hopeful that the House Oversight Committee will thoughtfully consider the Secretary's and DOS's concerns, including their request to narrow the scope of documents requested, and will expressly confirm that the committee is no longer seeking sensitive information. Even so, the Secretary and DOS are committed to

¹³ Importantly, MCL 4.541 limits a committee's use of subpoenaed records such that they may be used “only in connection with the jurisdiction and purposes for which the committee was created.” Attorney General Opinion No. 4998 opines that, through this provision in MCL 4.541, “the legislature has restricted the use of information obtained by an investigative committee solely to the exact purposes of that committee.” OAG, 1975-1976, No 4998, p 421 (April 22, 1976.) Thus, while a committee may subpoena information, the committee does not have unfettered use of such information.

¹⁴ See <https://www.michigan.gov/en/sos/elections> (accessed May 7, 2025.)

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producing all material that can be produced with any appropriate redactions. Given the scope of material requested and the need for review, combined with DOS's pre- and post-election duties regarding the May 6 election, it is unlikely that production can be fully completed by the May 13, 2025, deadline set forth in the subpoenas.

Please feel free to contact me should you have any questions concerning any of the above. We look forward to your response.

Sincerely,



Heather S. Meingast
Division Chief
Civil Rights & Elections Division

HSM/lsa