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ANGIE SPARKS  
CLERK DISTRICT COURT

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FILED  
BY ~~MICHELLE WRAY~~  
DEPUTY

*Attorney for Petitioner*

**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

CAMPAIGN FOR ACCOUNTABILITY,	)	
	)	
Petitioner,	)	Cause No. CDV 2017-121
	)	
vs.	)	<b>PETITION</b>
	)	
STATE OF MONTANA, by and	)	KATHY SEELEY
through its LEGISLATIVE SERVICES	)	PRESIDING JUDGE
DIVISION and JENNIFER FIELDER	)	
	)	
Respondents.	)	
	)	

COMES NOW the Petitioner, through counsel, and for its petition in the captioned matter, states as follows:

**PARTIES AND JURISDICTION**

1. Petitioner Campaign for Accountability (CfA) is a not-for profit public interest organization nationally known for its work in investigating and reporting the manner in which public officials use and abuse power.
2. Respondent Legislative Services Division (LSD) is an agency of State

government tasked with recordkeeping, information technology and administrative functions for the Montana Legislature and is an “organization supported in whole or in part by public funds or expending public funds” as defined by §2-3-203(1) MCA and within the meaning of Article II, Section 9 of the Montana Constitution.

3. Respondent Jennifer Fielder is a duly elected member of the Montana State Senate and, at the same time, is employed privately as the Chief Executive Officer of an organization known as the American Lands Council (ALC). The primary purpose of ALC is to promote state control of federally-owned lands. Respondent Fielder is a “public officer” within the meaning of Montana open records laws (§2-3-1002(12) MCA.)

3. Respondents’ actions described below adversely affected Petitioner and prejudiced its right to know, guaranteed by Article II, Section 9 of Montana Constitution.

4. This Court has jurisdiction over this action pursuant to § 2-3-114, MCA, and § 2-3-213, MCA.

**COUNT ONE**  
**Constitutional Violation**

5. By letter dated February 11, 2016, the Petitioner requested the opportunity to inspect or obtain copies of public records of Respondent Fielder’s transactions of legislative business since January 1, 2013 related to federal lands, oil, gas, coal, mining, mineral products, timber, forestry, Utah State Representative

Ken Ivory, ALC, Americans for Prosperity, the American Legislative Exchange Council and Federalism in Action. CfA also requested access to records related to the office and travel expenses of Respondent Fielder and any of her staff members, including travel receipts, itineraries, furniture receipts, decorating receipts and other records documenting travel expenses and reimbursements.

6. On March 2, 2016 in response to a follow-up request from CfA, the Director of Respondent LSD, Susan Fox, reported that she had been working with Respondent Fielder to fulfill the request. According to Ms. Fox, Respondent Fielder would be “in Helena next week and we were going to compare notes and finish up the request.” On March 14, 2016, Ms. Fox indicated she would send Petitioner some of the requested records. Several days later, Petitioner received hard copies of some of the travel records and a thumb drive containing some emails apparently contained on the Legislative Services email server. Ms. Fox also indicated that her technical personnel were working with Respondent Fielder to obtain additional emails from Respondent Fielder’s other accounts.

7. On June 16, 2016, Ms. Fox emailed CfA apologizing for the delay in responding to the request, stating that she has “had trouble contacting Sen. Fielder, but I am working on this now directly and should get you the information by the end of June.”

8. Having received no response by the end of June, CfA emailed Ms. Fox

on July 26, 2016 asking for a status report. Ms. Fox indicated her IT staff had gathered certain documents and forwarded them to Respondent Fielder. Ms. Fox asked Respondent Fielder about her review of these records and was told: “Now that I (Fielder) have this document I will get through it as soon as I am able, although it is nearly 400 pages and I will have to work on it when I can find free time....As I understand it there is no specific time frame in which it must be completed but I will try to get it done before the election.”

9. On August 1, 2016, CfA contacted Respondent Fielder directly, asking about the status of the records request and offering to discuss how the request could be narrowed or limited to expedite the production of the records. After the election, on November 10, 2016, CfA sent another follow-up request to Ms. Fox asking for records up to the present.

10. As of the date of this Petition, neither Respondent has provided the additional records requested since March, 2016, nor has Petitioner been afforded the opportunity to inspect the requested public documents.

11. Petitioner has a right to review the records pursuant to Article II, Section 9, of the Constitution of the State of Montana, which states that “no person shall be deprived of the right to examine documents of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.”

Petitioner also asserts its claim under the Montana Open Records Act (Title 2, Chapter 6, MCA), which provides that “every person has a right to examine or obtain a copy of any public information of this state.” This includes information requested of public officers related to the transaction of official business, regardless of form (§ 2-6-1003(1)) MCA). § 2-6-1006, MCA requires the custodian of a document to “respond in a timely manner” either making the records available for inspection or “providing the requesting person with an estimate of the time it will take to fulfill the request in the most cost-efficient and timely manner possible.”

12. By its actions described above, Respondents have violated and deprived Petitioner of its right to examine documents of a public body and continue to violate Petitioner’s right to know, guaranteed by Article II, Section 9, Montana Constitution, and § 2-6-1003, MCA.

WHEREFORE, Petitioners respectfully ask the Court to grant relief as follows:

1. That the Court issue an order directing Respondents to permit Petitioner to inspect and receive copies of the following records: all documents sent to or from Respondent Fielder’s legislative office since January 1, 2013, related to federal lands, oil, gas, coal, mining, mineral products, timber forestry, Utah State Representative Ken Ivory, the American Lands Council, Americans for

Prosperity, the American Legislative Exchange Council, and Federalism in Action; documents related to office and travel expenses for Respondent Fielder and her staff, including travel receipts, travel itineraries, furniture receipts, decorating receipts and any email address ending in @americanlandscouncil.org. For the purposes of this request the word “document” includes, but is not limited to, all agreements, memoranda, reports, notes, diaries, calendars, telephone bills, internal communications, interoffice communications, e-mails, text messages, facsimiles, telegraphs, letters, books, brochures, manuals, directives, bulletins, worksheets, minutes and summaries of meetings, conversations, and communications of any type, including telephone conversations. “Document” also includes all copies not identical to the original. Excluded from this request are medical records, if any, documents subject to attorney-client privilege, if any, names of third party witnesses, if any, social security numbers and/or birth dates, and driver’s license numbers, if any.

2. That the Court order that Petitioner be reimbursed for all costs and attorney fees incurred in bringing this action, pursuant to § 2-6-1009, MCA; and

3. For such other and further relief as this Court may deem just and proper.

DATED this 13th day of February, 2017.

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By   
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