



March 20, 2020

VIA ELECTRONIC MAIL

The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

Catrina Pavlik-Keenan
Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
ice-foia@dhs.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

The continued deaths of people held in the custody of DHS components remain an issue of significant public concern. On March 8, 2020, a Guatemalan detainee who had passed her initial “credible fear” screening died in Immigration and Customs Enforcement (ICE) custody at a Texas hospital of yet-unknown causes a month after receiving gallbladder surgery.¹ A few weeks earlier on February 21, a Mexican citizen was found dead in his cell at Northeast Ohio Correctional Center, apparently of self-inflicted strangulation.² Eight individuals in total have been confirmed as dying in ICE custody since October 2019, already equaling the total number of deaths in fiscal year 2019.³ On May 20, 2019, 16-year-old Guatemalan boy Carlos Gregorio Hernandez Vasquez died in

¹ Hamed Aleaziz, *Another Immigrant Has Died in ICE Custody. She’s the Eight Since October*, BUZZFEED (March 8, 2020, 8:46 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/immigrant-died-ice-custody-healthcare-hospital-asylum>.

² *ICE Detainee from Mexico Passes Away in Ohio*, Feb. 21, 2020, <https://www.ice.gov/news/releases/ice-detainee-mexico-passes-away-ohio#wcm-survey-target-id>.

³ See Aleaziz *supra*, note 1.



Customs and Border Protection (CBP) custody in his cell at a Border Patrol station in Weslaco, Texas.⁴ CBP officials chose to keep Carlos in their custody for six days, twice the federal limit of 72 hours,⁵ despite his flu diagnosis and high fever. Video evidence obtained by ProPublica shows that Carlos’s cellmate found him lying dead in a pool of his own blood, contradicting CBP’s claim that Border Patrol agents had discovered his condition during routine monitoring.⁶ In response to media scrutiny of Carlos’s death, the House Oversight and Reform Committee opened an investigation into the medical treatment of immigrant detainees, issuing letters to Acting DHS Secretary Chad Wolf⁷ and Acting Director of ICE Matthew Albence⁸ requesting documentation pertaining to all detainee deaths in custody since January 20, 2017.

To the extent that the public has been informed of the context for deaths in DHS custody, there are few available internal reviews detailing whether responsible agency officials adhered to prescribed procedures in the events leading to each detainee’s death. Accordingly, it is in the public interest to understand how DHS has investigated deaths occurring in its custody. American Oversight seeks records with the potential to shed light on the treatment of vulnerable detainees and whether or to what extent DHS officials are upholding the standards of care prescribed by federal law and agency guidance.

Requested Records

American Oversight requests that DHS & ICE produce the following within twenty business days:

Copies of the “Healthcare and Security Compliance Analysis” reports—or equivalent internal procedural compliance analysis—completed by or for ICE Office of Professional Responsibility as part of the detainee death reviews for each of the following individuals who died in custody:

- a. Roylan Hernandez-Diaz
- b. Nebane Abienwi
- c. Roberto Rodriguez-Espinoza
- d. Pedro Arriago-Santoya
- e. Yimi Alexis Balderramos-Torres

⁴ Robert Moore, et al., *Inside the Cell Where a Sick 16 Year-Old Boy Died in Border Patrol Care*, PROPUBLICA (Dec. 5, 2019, 1:30 PM), <https://www.propublica.org/article/inside-the-cell-where-a-sick-16-year-old-boy-died-in-border-patrol-care>.

⁵ 8 U.S.C. § 1232 (b) (3).

⁶ See Moore *supra*, note 4.

⁷ Ltr. From Committee on House Oversight and Reform to Chad Wolf, Acting Sec., U.S. Department of Homeland Security, Dec. 23, 2019, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-12-23.CBM%20to%20Wolf%20re%20Death%20in%20Custody.pdf>.

⁸ Ltr. From Committee on House Oversight and Reform to Ronald Vitiello, Acting Dir., U.S. Immigration and Customs Enforcement, Dec. 23, 2019, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-12-23.JR%20to%20ICE%20re%20Whistleblower%20Complaints.pdf>.

- f. Simratpal Singh
- g. Abel Reyes-Clemente
- h. Guerman Volkov
- i. Mergensana Amar
- j. Wilfredo Padron
- k. Augustina Ramirez-Arreola
- l. Efrain Romero De La Rosa
- m. Huy Chi Tran

American Oversight expects that this request for a small volume of readily-identifiable documents will be assigned to the Simple track and processed expeditiously.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”⁹ This request relates directly to the work of DHS and its components, including some of the most important responsibilities of the Department—the safety and care of the individuals it has detained and deprived of liberty. This request seeks records that would shed light on how DHS is treating people it has detained, and how the Department responds when the life and safety of detainees is threatened. These are matters of significant public and congressional concern,¹⁰ and the requested records will provide the public with information necessary to hold DHS accountable for its actions and policies. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.¹¹ 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. 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

⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁰ See *supra* note 7; *supra* note 8.

¹¹ See 5 U.S.C. § 552(a)(4)(A)(iii).

other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹²

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.¹³ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;¹⁴ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁵ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁶ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁷ and posting records and analysis regarding the 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.¹⁸

Accordingly, American Oversight qualifies for a fee waiver.

¹² American Oversight currently has approximately 15,400 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited March 4, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited March 4, 2020).

¹³ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹⁴ *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>.

¹⁵ *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>.

¹⁶ *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>.

¹⁷ *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>.

¹⁸ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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.
- 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 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁹ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.²⁰
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,²¹ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

¹⁹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

²⁰ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²¹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

- 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. 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, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. 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,



Austin R. Evers
Executive Director
American Oversight