



March 31, 2020

VIA EMAIL

Jillian Cringle
Acting FOIL Counsel & Records Access Officer
Executive Chamber
State Capitol
Albany, NY 12224
records.access@exec.ny.gov

Re: Freedom of Information Law Request

Dear Records Access Officer:

Pursuant to the Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90 (FOIL), American Oversight makes the following request for records.

In the midst of the national emergency caused by the novel coronavirus outbreak, multiple reports have suggested that the president has left state governors without significant federal support.¹ American Oversight seeks public records with the potential to shed light on whether and to what extent the federal government has lagged in its response to states' pleas for federal aid.

Requested Records

American Oversight requests that your agency produce the following within five business days:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and attachments thereto) **sent** by A) the specified officials in the Office of the Governor **to** B) representatives of the federal government with **email addresses ending in cdc.gov, fema.dhs.gov, hhs.gov, fda.gov, eop.gov, or mail.mil**, containing any of the key terms listed below.

¹ Quint Forgey, 'We're Not a Shipping Clerk': Trump Tells Governors to Step Up Efforts to Get Medical Supplies, POLITICO (Mar. 19, 2020, 3:30 PM), <https://www.politico.com/news/2020/03/19/trump-governors-coronavirus-medical-supplies-137658>; Jonathan Martin, *Trump to Governors on Ventilators: 'Try Getting It Yourselves'*, N.Y. TIMES, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/us/politics/trump-coronavirus-respirators.html>; Eric Lipton et al., *Trump Slowly Enlisting More Agencies in 'Whole of Government' Response to Virus*, N.Y. TIMES, Mar. 17, 2020, <https://www.nytimes.com/2020/03/17/us/politics/coronavirus-government-army-corps.html>.



Specified Officials:

- a) Governor, Andrew Cuomo
- b) Chief of Staff, Jill DesRosiers
- c) Communications Director, Dani Lever
- d) Director of Washington Office and Counsel for Federal Affairs, Alexander Cochran
- e) Assistant Secretary for Intergovernmental Affairs, Lisa Santeramo
- f) Assistant Secretary for Human Affairs, Kerri Neifield
- g) Executive Deputy Secretary, Joseph Rabito

Key Terms:

- 1) Test
- 2) Testing
- 3) Kit
- 4) Defect
- 5) coronavirus
- 6) COVID
- 7) "SARS-cov-2"
- 8) "2019-nCoV"
- 9) Wuhan
- 10) Hubei
- 11) EUA
- 12) "Emergency Use"
- 13) LDT
- 14) CLIA
- 15) 564
- 16) Epidemic
- 17) Pandemic
- 18) Contagion
- 19) Infect
- 20) Isolate
- 21) Quarantine
- 22) Lockdown
- 23) R0
- 24) "Army Corps"
- 25) ACE
- 26) "face mask"
- 27) N95
- 28) Ventilator
- 29) ICU
- 30) "surge capacity"
- 31) hospital
- 32) Panic
- 33) Alarm
- 34) Desperate

- 35) Disaster
- 36) Relief
- 37) Primer
- 38) "Viral RNA"
- 39) Reagent
- 40) Swabs
- 41) "Drive-thru"
- 42) "drive thru"
- 43) PPE
- 44) Shortage
- 45) Shortages
- 46) "Defense Production Act"
- 47) DPA
- 48) Nationalize
- 49) Wadsworth
- 50) "medical ship"
- 51) "The Comfort"
- 52) "New Rochelle"
- 53) "Young Israel"
- 54) "containment area"

Please provide all responsive records from February 4, 2020, through March 20, 2020.

American Oversight has limited its request to sent messages to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a government official sent a response to an incoming message containing one of the key terms above, the email chain containing the initially received message and the response is responsive to this request.

We understand that your office's capacity may be impacted by the COVID-19 outbreak and response efforts. Should that be the case, we would be happy to discuss potential streamlining or narrowing of our request, reasonable delays in processing this request, or other accommodations. Please feel free to contact us at the telephone number listed in the final paragraph of this letter; we look forward to working with you.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

In the event some portions of the requested records are properly exempt from disclosure pursuant to N.Y. Pub. Off. Law § 87(2), please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIL, including litigation if necessary. Accordingly, your agency is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 you can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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. **Please consult with American Oversight on any fees the agency expects it may assess.**

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission 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 on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.²

² American Oversight currently has approximately 15,000 page likes on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 24, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 24, 2020).

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 Christine Monahan at foia@americanoversight.org or (202) 869-5244.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight