



April 1, 2020

VIA ONLINE PORTAL

Michigan Department of Health and Human Services
ATTN: FOIA Coordinator
235 S Grand Ave.
Lansing, Michigan 48909

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

Pursuant to Michigan's Freedom of Information Act (FOIA), as codified at Mich. Comp. Laws Ann. § 15.231 et seq., American Oversight makes the following request for records.

Requested Records

American Oversight requests that the Michigan Department of Health and Human Services (MDHHS) respond to this request for the following records within five business days:

All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) 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, hhs.gov, fda.gov, fema.dhs.gov, or eop.gov**, containing any of the key terms listed below.

Specified Officials:

- a. Director, Robert Gordon
- b. Senior Chief Deputy Director, Jonathan Warsh
- c. Chief Deputy for Health, Joneigh Khaldun
- d. Senior Executive Management Assistant, Leslie Egelski
- e. Director of the Bureau of Epidemiology and Population Health and State Epidemiologist, Sarah Lyon-Callo
- f. Executive Secretary, Janese Bouters
- g. State Assistant Administrator, Matthew Buck

Key Terms:

1. Coronavirus
2. Corona
3. COVID
4. "SARS-cov-2"
5. "2019-nCoV"
6. Test



- | | |
|------------------------|------------------------------|
| 7. Tests | 38. Distancing |
| 8. Testing | 39. "face mask" |
| 9. Kit | 40. N95 |
| 10. Primer | 41. Ventilator |
| 11. RNA | 42. Ventilators |
| 12. Reagent | 43. Respirator |
| 13. Swabs | 44. Respirators |
| 14. EUA | 45. ICU |
| 15. "Emergency Use" | 46. Capacity |
| 16. LDT | 47. "disaster relief" |
| 17. CLIA | 48. "field hospital" |
| 18. 564 | 49. "convention center" |
| 19. Vaccine | 50. MEMS |
| 20. Hydroxychloroquine | 51. Surge |
| 21. Chloroquine | 52. "MI-TESA" |
| 22. Antiviral | 53. TESA |
| 23. Antiretroviral | 54. "drive-thru" |
| 24. Defect | 55. "drive thru" |
| 25. Epidemic | 56. "drive-through" |
| 26. Pandemic | 57. "drive through" |
| 27. Isolate | 58. Abbott |
| 28. Isolation | 59. PPE |
| 29. Contagious | 60. Shortage |
| 30. Contagion | 61. Shortages |
| 31. Infect | 62. Stockpile |
| 32. Infection | 63. SNS |
| 33. Infections | 64. "Defense Production Act" |
| 34. Transmission | 65. DPA |
| 35. Asymptomatic | 66. Nationalize |
| 36. Quarantine | 67. POTUS |
| 37. Quarantined | |

Please provide all responsive records from February 24, 2020, to March 31, 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.

Fee Waiver Request

In accordance with Mich. Comp. Laws Ann. § 15.234(2), American Oversight requests a waiver of fees associated with processing this request for records. A waiver of fees for this request “is in the public interest because searching for or furnishing copies of the public record[s] can be considered as primarily benefiting the general public.”¹

The public has a significant interest in the MDHHS’s response to the novel coronavirus, including what role the federal government played in coordinating the administering of diagnostic tests, and advising the agency in containing the virus’s spread. Records with the potential to shed light on this question will help American Oversight and the general public understand what steps were taken to address an emerging public health crisis.

American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the general public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records. 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 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

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.³ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization’s State Accountability Project covering voting rights issues in various states;⁴ an ethics waiver received by a senior U.S. Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;⁵ posting records received as part of American Oversight’s “Audit the

¹ Mich. Comp. Laws Ann. § 15.234(2).

² American Oversight currently has approximately 15,400 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 31, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 31, 2020).

³ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁴ State Accountability Project, AMERICAN OVERSIGHT, <https://www.americanoversight.org/state-accountability-project>.

⁵ 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

Wall” project to gather and analyze information related to the federal administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁶ posting records regarding potential self-dealing at the U.S. Department of Housing & Urban Development and related analysis;⁷ posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;⁸ and posting records and analysis regarding the U.S. 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.⁹

Finally, this request is primarily and fundamentally for non-commercial purposes. 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.

Accordingly, American Oversight qualifies for a fee waiver.

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.
- 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

OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁶ 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>.

⁷ *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>.

⁸ *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>.

⁹ *Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

messages sent or received in that email chain, as well as any attachments to the email.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. 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.
- 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.¹⁰ 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, please contact Christine H. Monahan at foia@americanoversight.org

¹⁰ Mich. Comp. Laws Ann. § 15.234(14).

or (202) 869-5244. 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,

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

Austin R. Evers
Executive Director
American Oversight