



April 1, 2020

VIA ELECTRONIC MAIL

Lauren Downey
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548
publicrecords@texasattorneygeneral.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

On Sunday, March 22, 2020, Governor Greg Abbott announced an executive order requiring healthcare facilities and providers to postpone “all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death.”¹ The following day, Attorney General Ken Paxton clarified this statement to include abortions within the scope of procedures to be postponed.²

District Court Judge Lee Yeakel has temporarily stayed this order, allowing abortion clinics to remain open at least until April 13, 2020,³ writing that a national emergency did not curtail a woman’s right to an abortion as previously established by the Supreme Court.⁴ American Oversight seeks records with the potential to shed light on how the Offices of the Governor and Attorney General reached a decision temporarily banning abortions and other medical procedures, including

¹ Tex. Exec. Order No. GA 09 (Mar. 22, 2020), https://gov.texas.gov/uploads/files/press/EO-GA_09_COVID-19_hospital_capacity_IMAGE_03-22-2020.pdf.

² *Health Care Professionals and Facilities, Including Abortion Providers, Must Immediately Stop All Medically Unnecessary Surgeries and Procedures to Preserve Resources to Fight COVID-19 Pandemic*, <https://www.texasattorneygeneral.gov/news/releases/health-care-professionals-and-facilities-including-abortion-providers-must-immediately-stop-all#.XnkW2CKrfO8.twitter>.

³ Alice Miranda Ollstein, *Judge Blocks 3 States from Enforcing Abortion Bans Pegged to Pandemic*, POLITICO (Mar. 30, 2020, 9:31 PM), <https://www.politico.com/news/2020/03/30/judge-lifts-texas-abortion-ban-pegged-to-coronavirus-pandemic-156210>.

⁴ Ashley Lopez, *Federal Judge Temporarily Blocks Texan Ban on Abortions During Coronavirus Spread*, KUT, Mar. 30, 2020, <https://www.kut.org/post/federal-judge-temporarily-blocks-texas-ban-abortions-during-coronavirus-spread>.



whether and to what extent these offices coordinated with the federal government and external interest groups.

Requested Records

American Oversight requests that the Office of the Attorney General promptly produce the following:

All email communications (including complete email chains, email attachments, calendar invitations, and attachments thereto) sent by any of the officials in the Office of the Attorney General listed in Column A regarding executive order Executive Order GA-09 and the accompanying ban on medical procedures deemed not “medically necessary.”

American Oversight believes that records containing the terms listed below in Column B are likely to be responsive records, and requests that the Public Information Officer, at a minimum, employ these search terms to identify responsive records:

Column A: Officials in the Office of the Attorney General	Column B: Suggested Search Terms
<ul style="list-style-type: none"> i. Attorney General Ken Paxton, or anyone communicating on his behalf, such as a scheduler or assistant ii. First Assistant Attorney General, Jeffrey C. Mateer iii. Special Counsel to the First Assistant Attorney General, David Hacker iv. Chief of Staff, Katherine Cary v. Solicitor General, Kyle Hawkins vi. Senior Legislative Advisor, Ben Williams vii. Senior Counsel to the Attorney General, Zina Bash viii. Director of Scheduling, Elizabeth Landry Jones ix. Scheduler, Elise Karstens 	<ul style="list-style-type: none"> i. Coronavirus ii. Corona iii. COVID-19 iv. Epidemic v. Pandemic vi. PPE vii. N95 viii. Masks ix. Gloves x. Gowns xi. “shoe covers” xii. Abortion xiii. Pregnancy xiv. Terminate xv. Termination xvi. Fetus xvii. Telemedicine xviii. Telecare xix. TeleAbortion xx. Nonessential xxi. Elective xxii. “medically unnecessary” xxiii. “medically necessary” xxiv. “hospital capacity” xxv. Mifepristone xxvi. Mifeprex

	xxvii.	Misoprostol
	xxviii.	Cytotec
	xxix.	Oral
	xxx.	Medicative
	xxxi.	“waiting period”
	xxxii.	Postpone
	xxxiii.	Clinic
	xxxiv.	“woman’s health”
	xxxv.	“women’s health”
	xxxvi.	“women’s clinic”
	xxxvii.	“reproductive services”
	xxxviii.	“Planned Parenthood”
	xxxix.	PP
	xl.	PPFA
	xli.	“right to life”
	xlii.	“for life”

Please provide all responsive records from March 10, 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.

American Oversight insists that the Office of the Attorney General 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; governmental authorities may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority’s officer or employee constitutes a record for purposes of the Texas Public Information Act.⁵

⁵ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

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 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.

Please take appropriate steps to ensure that records responsive to this request are not deleted by your office 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.

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 the Office of the Attorney General 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.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The public has a significant interest in understanding whether and to what extent the Offices of the Governor and Attorney General communicated with the federal government and external interest groups regarding the state’s response to the public health emergency caused by the coronavirus. Records with the potential to shed light on this matter would contribute significantly to public understanding of the factors considered by those offices in mandating the postponement of all elective medical procedures, interpreted to include abortion.

Release of the requested records will primarily benefit the public.⁶ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide

⁶ Tex. Code § 552.267(a).

to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities 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.⁷ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior United States Department of Justice (DOJ) attorney,⁸ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.⁹ As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.¹⁰ American Oversight similarly intends to engage with media outlets in Texas to ensure that the general public within the state has access to the information American Oversight obtains.

Accordingly, American Oversight qualifies for a fee waiver. If the Office of the Attorney General denies a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with the Office of the Attorney General 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 Khahilia Shaw at foia@americanoversight.org or

⁷ American Oversight currently has approximately 16,100 followers on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 30, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 30, 2020).

⁸ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

⁹ *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>.

¹⁰ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

202.539.6507. 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 stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight