



June 5, 2020

**VIA ELECTRONIC MAIL**

Khadeja Farahmand  
Baltimore City Mayor's Office  
City Hall, Room 101  
100 N. Holliday Street  
Baltimore, MD 21202  
[Khadeja.Farahmand@baltimorecity.gov](mailto:Khadeja.Farahmand@baltimorecity.gov)

**Re: Public Information Act Request**

Dear Ms. Farahmand:

Pursuant to the Maryland Public Information Act ("MPIA"), codified at Title 4 of the General Provisions Article, American Oversight makes the following request for records.

On March 20, 2020, the *Miami Herald* reported that Dr. Merlynn Carson, daughter-in-law of U.S. Secretary of Housing and Urban Development (HUD) Ben Carson, would be assisting in the administration of "up to 1 million tests" in the fight against the coronavirus pandemic.<sup>1</sup> Merlynn Carson's company has previously received various government contracts, raising concerns about potential conflicts of interest.<sup>2</sup>

American Oversight seeks to determine whether and to what extent Dr. Merlynn Carson may be influencing government policymaking.

**Requested Records**

American Oversight requests that the Baltimore City Mayor's Office ("the Mayor's Office") produce the following records as soon as reasonably possible upon approval, and in no more than thirty days of receipt of this request:<sup>3</sup>

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<sup>1</sup> Douglas Hanks, *In Miami, a Former FEMA Director Offers a Quick Fix on Mass COVID-19 Tests*, MIAMI HERALD (Mar. 21, 2020, 7:44 PM),

<https://www.miamiherald.com/news/coronavirus/article241365501.html>.

<sup>2</sup> Emily Stewart, *Ben Carson's Family Ethics Drama, Explained*, VOX (Feb 3, 2018, 11:36 AM), <https://www.vox.com/policy-and-politics/2018/2/3/16967628/ben-carson-ethics-hud-son-baltimore>.

<sup>3</sup> Md. Gen. Provis. § 4-203(b)(1).



- 1) All email communications (including emails, email attachments, and calendar invitations) between government officials listed in Column A and the individuals listed in Column B:

Column A: Baltimore Government Individuals	Column B: External Individuals
<ul style="list-style-type: none"> <li>i. Charles Svehla, Acting Director, Mayor's Office of Emergency Management</li> <li>ii. Lester Davis, Chief of Communication and Government Relations</li> <li>iii. Sheryl Goldstein, Deputy Chief of Staff, Operations</li> <li>iv. Dana P. Moore, Acting City Solicitor</li> <li>v. Sunny Schnitzer, Deputy Chief of Staff, Public Safety</li> <li>vi. Daphney D. Williams, Director, Office of Constituent Services</li> <li>vii. Letitia Dzirasa, Health Commissioner</li> </ul>	<ul style="list-style-type: none"> <li>i. Dr. Merlynn Carson (including, but not limited to the email addresses <a href="mailto:Merlynnj21@hotmail.com">Merlynnj21@hotmail.com</a>, <a href="mailto:Merlynnj1386@gmail.com">Merlynnj1386@gmail.com</a>, <a href="mailto:Merlynnj@hotmail.com">Merlynnj@hotmail.com</a>, <a href="mailto:mcarson@myrriidian.com">mcarson@myrriidian.com</a>)</li> <li>ii. Anyone acting on behalf of Myrriidian or Interprise Partners, including anyone communicating from an email address ending in myrriidian.com or interprisepartners.com</li> <li>iii. HUD Secretary Ben Carson, or anyone communicating on behalf of Secretary Carson (including but not limited to Andrew Hughes, Chief of Staff, and Secretary Carson's scheduler)</li> <li>iv. Former FEMA director James Lee Witt</li> <li>v. Anyone acting on behalf of Witt Global Partners, including but not limited to any email address ending in @wittpartners.com</li> </ul>

- 2) Records sufficient to show:
- a. the number of coronavirus tests procured for the City by Witt Global Partners;
  - b. the price per coronavirus test procured for the City by Witt Global Partners;
  - c. the number of coronavirus tests procured for the City by Myrriidian;
  - d. the price per coronavirus test procured for the City by Myrriidian.
- 3) A complete copy of any contract, amendment, memorandum of understanding, or other written agreement between (a) the City and (b) any of the individuals or

entities listed in Column B above regarding any supplies or equipment related to testing for coronavirus.

Please provide all responsive records from March 1, 2020, to the date the search is conducted.

Pursuant to the MPIA, American Oversight is entitled to a prompt grant or denial of its request, to be issued no more than thirty days after receipt of the request.<sup>4</sup> Failure to provide a timely response will be considered a denial, and American Oversight will seek appropriate judicial relief in that event.<sup>5</sup> American Oversight intends to pursue all legal avenues to enforce its right of access under the MPIA, including litigation if necessary. Accordingly, the Mayor's Office is on notice that litigation is reasonably foreseeable.

### **Fee Waiver Request**

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest,"<sup>6</sup> given the public benefit in making available information likely to contribute significantly to public understanding of operations or activities of the government.<sup>7</sup> The public has a significant interest in whether personal connections of Baltimore city officials have influenced the distribution of government contracts. Records with the potential to shed light on this question would contribute significantly to public understanding of operations of the government, including whether these connections have produced conflicts of interest. American Oversight is committed to transparency and makes the responses agencies provide to public records 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. 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

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<sup>4</sup> Md. Gen. Provis. § 4-203(a).

<sup>5</sup> See Md. Gen. Provis. § 4-203(b)(3) (failure to produce the record or provide written notice within ten business days of the amount of time needed to comply with the request and reason for the delay); § 4-362(a)(1) (allowing for filing of complaint with the circuit court upon denial of a Public Records Act request).

<sup>6</sup> Md. Gen. Provis. § 4-206(e)(ii).

<sup>7</sup> See *Mayor of Baltimore v. Burke*, 67 Md. App. 147, 156-57, 506 A.2d 683, 688 (1985), *cert. denied*, 300 Md. 118, 507 A.2d 631 (1986) (recognizing public benefit of dissemination of information concerning government operations, and noting similarity of federal Freedom of Information Act fee provision, rendering interpretations of that provision "persuasive" in interpretation of MPIA); 81 Op. Att'y Gen. 154, 157-58 (1996) (citing cases interpreting the federal Freedom of Information Act (FOIA) fee waiver provision in discussion of MPIA fee waiver provision and recognizing a public interest in, *inter alia*, "an agency's performance of its public duties").

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.<sup>8</sup>

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.<sup>9</sup> 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;<sup>10</sup> 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;<sup>11</sup> 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;<sup>12</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>13</sup> posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi

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<sup>8</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 4, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 4, 2020).

<sup>9</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>10</sup> State Accountability Project, AMERICAN OVERSIGHT, <https://www.americanoversight.org/state-accountability-project>.

<sup>11</sup> 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>.

<sup>12</sup> 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>.

<sup>13</sup> 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>.

Arabia;<sup>14</sup> 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.<sup>15</sup>

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, 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.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records.
- If all or any part of this request is denied, American Oversight requests that you provide, with the denial itself or within ten business days following the denial, a written statement of the grounds for each denial, including citation to the law(s) or regulation(s) supporting your decision, and the available remedies for review of a denial.<sup>16</sup>
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

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<sup>14</sup> *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>.

<sup>15</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

<sup>16</sup> Md. Gen. Provis. § 4-203(c)(1).

requested records.<sup>17</sup> 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.<sup>18</sup> If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.<sup>19</sup>

- 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 Khahilia Shaw at [records@americanoversight.org](mailto:records@americanoversight.org) or

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<sup>17</sup> See *Blythe v. State*, 161 Md. App. 492, 519, *cert. granted*, 388 Md. 97 (2005); see also Md. Gen. Provis. § 4-203(c)(1)(ii).

<sup>18</sup> Md. Gen. Provis. § 4-203(c)(1)(ii).

<sup>19</sup> Md. Gen. Provis. § 4-203(c)(1)(i)(2).

202.549.6507. 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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight