



June 11, 2020

**VIA EMAIL**

Freedom of Information Officer  
U.S. Centers for Disease Control and Prevention  
1600 Clifton Road NE  
Building 57, Room MS D-54  
Atlanta, GA 30333  
[FOIARequests@cdc.gov](mailto:FOIARequests@cdc.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 your agency, American Oversight makes the following request for records.

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.<sup>1</sup> Since late 2019, the virus has spread across the globe, sickened millions of people, and resulted in hundreds of thousands of deaths, including more than 113,000 deaths in the U.S. alone.<sup>2</sup>

Even as many states have begun relaxing social distancing measures and reopening nonessential businesses,<sup>3</sup> the U.S. continues to lag behind other countries in testing capacity,<sup>4</sup> and the federal government has placed the burden of developing testing strategies upon individual states.<sup>5</sup> For months, the effort to expand testing has faced

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<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (June 11, 2020, 8:05 PM) <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

<sup>3</sup> Sarah Mervosh et al., *See How All 50 States Are Reopening*, N.Y. TIMES (May 23, 2020) <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

<sup>4</sup> Anne Gearan et al., *Trump Claims U.S. Outpaces World in Coronavirus Testing, But Numbers Tell Different Story*, WASH. POST (May 11, 2020, 7:44 PM), [https://www.washingtonpost.com/national/coronavirus-trump-testing/2020/05/11/c08766dc-938b-11ea-82b4-c8db161ff6e5\\_story.html](https://www.washingtonpost.com/national/coronavirus-trump-testing/2020/05/11/c08766dc-938b-11ea-82b4-c8db161ff6e5_story.html).

<sup>5</sup> Mike DeBonis et al., *White House Issues Coronavirus Testing Guidance That Leaves States in Charge*, WASH. POST (Apr. 27, 2020, 9:00 PM), <https://www.washingtonpost.com/politics/white-house-issues-coronavirus-testing->



logistical challenges<sup>6</sup> and limited support from the Trump administration.<sup>7</sup> This may obscure the true extent of the virus's spread and limit attempts to prevent or contain further outbreaks.

American Oversight seeks records with the potential to shed light on how the CDC has coordinated with state governments, public health laboratories, and public health organizations to address the public health emergency caused by coronavirus, especially with regards to coronavirus surveillance.

### **Requested Records**

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

The complete contents of the following discussion threads found in the "COVID-19 Discussion Forum" SharePoint site,<sup>8</sup> including all comments and reactions:

- a. "Extended use of PPE in long term care facilities"
- b. "Correction Facility Investigations"
- c. "COVID-19 testing refusal of residents/staff in LTCF"
- d. "Retesting Negative Resident Criteria"
- e. "COVID-19 and Nursing Homes - 2 things you've learned"
- f. "Question: Shift in COVID-19 Contact Investigations"
- g. "Criteria for readmission to SNFs"
- h. "COVID IP Training for LTC Surveyors"

Please provide all responsive records from March 1, 2020 through the date of the search.

References to the cited SharePoint site, including a past URL and the discussion threads named above, are attached as Exhibit A to aid your search.

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[guidance-that-leaves-states-in-charge/2020/04/27/c465cc9c-88a2-11ea-8ac1-bfb250876b7a\\_story.html](https://www.nytimes.com/2020/04/27/c465cc9c-88a2-11ea-8ac1-bfb250876b7a_story.html).

<sup>6</sup> Sheila Kaplan, *C.D.C. Labs Were Contaminated, Delaying Coronavirus Testing, Officials Say*, N.Y. TIMES, Apr. 18, 2020 (updated May 7, 2020), <https://www.nytimes.com/2020/04/18/health/cdc-coronavirus-lab-contamination-testing.html>.

<sup>7</sup> Aaron Rupa, *The White House Has 2 Testing Standards: One for Trump and Another for Everyone Else*, VOX (May 7, 2020, 3:20 PM), <https://www.vox.com/2020/5/7/21250428/white-house-coronavirus-testing-double-standard-trump>.

<sup>8</sup> We believe the CDC SharePoint site may be accessed with the following link: <https://cdcpartners.sharepoint.com/sites/NCEZID/DHQP/ELC/ProjectELCHOME/HAIC/COVID19>.

## 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."<sup>9</sup> The public has a significant interest in the CDC's role coordinating nationwide coronavirus testing and other means of surveillance of the virus's prevalence. Records with the potential to shed light on these matters would contribute significantly to public understanding of operations of the federal government, including how the federal government has instructed states to administer and prioritize testing, how this guidance has changed as health authorities learn more about the virus, and how states have responded to federal guidance. These issues are of particular concern given the Trump administration's decision to place the burden of testing and developing testing strategies on the states.<sup>10</sup> 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.<sup>11</sup> 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 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>12</sup>

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<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>10</sup> Aaron Rupa, *The White House Has 2 Testing Standards: One for Trump And Another for Everyone Else*, VOX (May 7, 2020, 3:20 PM), <https://www.vox.com/2020/5/7/21250428/white-house-coronavirus-testing-double-standard-trump>.

<sup>11</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>12</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 11, 2020); American

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>13</sup> 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;<sup>14</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>15</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>16</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>17</sup> 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.<sup>18</sup>

Accordingly, American Oversight qualifies for a fee waiver.

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Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 11, 2020).

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

<sup>14</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>15</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>16</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>.

<sup>17</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>18</sup> 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.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted.
- 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.<sup>19</sup> 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.<sup>20</sup>
- 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,<sup>21</sup> 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

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<sup>19</sup> 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).

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

<sup>21</sup> 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>.

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.

- 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, please contact Christine H. Monahan at [foia@americanoversight.org](mailto:foia@americanoversight.org)

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

Austin R. Evers  
Executive Director  
American Oversight

# EXHIBIT A



## Martha Framsted

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**From:** CDC HAI AR (CDC) <HAIAR@cdc.gov>  
**Sent:** Tuesday, April 7, 2020 9:20 AM  
**To:** Kimisha Causey; CDC HAI AR (CDC)  
**Cc:** Ashley, Michael (CDC/DDID/NCEZID/DHQP); Rebmman, Catherine A. (CDC/DDID/NCEZID/DHQP)  
**Subject:** RE: COVID-19 Discussion Forum Post

Hi Kimisha,

The site can be accessed at [https://cdcpartners.sharepoint.com/sites/NCEZID/DHQP/ELC/ProjectELCHOME/HAI\\_COVID19](https://cdcpartners.sharepoint.com/sites/NCEZID/DHQP/ELC/ProjectELCHOME/HAI_COVID19) or through the main ELC HAI/AR SharePoint site (look for the COVID-19 link on the left sidebar). You will need to login via SAMS as usual.

Let us know if you have additional questions.

Tiffany

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**From:** Kimisha Causey <kcausey@health.nv.gov>  
**Sent:** Tuesday, April 7, 2020 12:11 PM  
**To:** CDC HAI AR (CDC) <HAIAR@cdc.gov>  
**Cc:** Ashley, Michael (CDC/DDID/NCEZID/DHQP) <moa0@cdc.gov>; Rebmman, Catherine A. (CDC/DDID/NCEZID/DHQP) <csr9@cdc.gov>  
**Subject:** RE: COVID-19 Discussion Forum Post

Can you provide a link to the forum?

## Martha Framsted

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**From:** CDC HAI AR (CDC) <HAIAR@cdc.gov>  
**Sent:** Wednesday, April 29, 2020 12:28 PM  
**To:** CDC HAI AR (CDC)  
**Subject:** Join the conversations happening on the COVID-19 Discussion Forum

Dear HAI Coordinators,

Thank you for using the COVID-19 Discussion Forum to exchange input, information, and resources with your peers at other state, local, and territorial health departments. You may access the Discussion Forum in Sharepoint via this [link](#). In case you missed it, there has been increased activity on the Discussion Forum over the past week. We encourage you to share your thoughts and experiences, or post questions of your own.

New questions posed include:

- Extended use of PPE in long term care facilities—Has anyone done visual observations of staff in LTCFs and observed staff successfully using the strategy of extended PPE use, e.g., no touching their eye or face protection as much as possible, and if so, immediately performing hand hygiene?
- Correction Facility Investigations—Does anyone have any experience investigating COVID-19 cases at correctional facilities (prisons or jails)? Has anyone adapted an ICAR?
- COVID-19 testing refusal of residents/staff in LTCF—Has anyone that has performed swabbing in a LTCF due to outbreak concerns dealt with refusals of staff or residents on being tested?
- Home care resources—Has anyone developed resources for home care providers that you are able to share?
- Retesting Negative Resident Criteria—Is anyone aware of any guidance or recommendations for rescreening residents that started with respiratory symptoms and were tested negative?

There are also new replies to the following topics:

- COVID-19 Memory Care Units
- COVID-19 and Nursing Homes - 2 things you've learned
- Question: Shift in COVID-19 Contact Investigations
- Criteria for readmission to SNFs
- COVID IP Training for LTC Surveyors

A new CDC COVID-19 Outpatient Hemodialysis Facilities Toolkit was posted to the Discussion Forum and includes documents, tools, and links to resources such as webinars.

The home page of the Discussion Forum also provides quick links and a document repository. In the document repository you can find notes from the weekly COVID-19 listening sessions, Crisis CoAg Program Guidance, a LTC Toolkit, and other documents shared by your health department peers.

COVID-19 Discussion Forum User Tip: You can set up e-mail notifications to alert you to additions or changes to the Discussion Forum by navigating to "SharePoint Guide" from the left navigation bar of the Forum and clicking the link to manage your alerts/notifications for the site.

Sincerely,

DHQP Field Support Team  
Prevention and Response Branch