



June 9, 2020

**VIA EMAIL**

New York City Department of Health & Mental Hygiene  
42-09 28th St  
7th Floor CN 81  
Long Island City, NY 11101  
[recordsaccess@health.nyc.gov](mailto:recordsaccess@health.nyc.gov)

**Re: Freedom of Information Law Request**

Dear Records Access Officer,

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

The coronavirus pandemic has disproportionately killed people living in nursing homes. According to the *New York Times*, as of May 11, 2020, nursing home residents and staff have comprised one-third of all coronavirus deaths in the United States.<sup>1</sup> New York State nursing homes alone have had 5,637 documented cases and 5,403 deaths, representing roughly 20% of the state's total deaths.<sup>2</sup>

**Requested Records**

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

1. Records sufficient to identify any directive, order, decision, protocol, assessment, or guidance from your agency to care centers regarding the novel coronavirus, including but not limited to measures to prevent or mitigate the virus's spread.
2. All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by any of the officials listed below that include any of the key terms listed below.

**Officials:**

- a. Deputy Commissioner Demetre Daskalakis
- b. Commissioner Oxiris Barbot, MD
- c. Chief of Staff Nellie Afshar, MPH
- d. Assistant Commissioner Hannah Gould
- e. Deputy Commissioner Charon Gwynn
- f. Deputy Commissioner Beth Maldin Morgenthau

<sup>1</sup> Karen Yourish et al., *One-Third of All U.S. Coronavirus Deaths Are Nursing Home Residents or Workers*, N.Y. TIMES, May 11, 2020 (updated), <https://www.nytimes.com/interactive/2020/05/09/us/coronavirus-cases-nursing-homes-us.html>.

<sup>2</sup> *Id.*



**Key Terms:**

- |               |                |
|---------------|----------------|
| i. Franklin   | vii. Amsterdam |
| ii. Cobble    | viii. Isabella |
| iii. Sapphire | ix. Nursing    |
| iv. Plaza     | x. Elderly     |
| v. Citadel    | xi. ALF        |
| vi. Menorah   |                |

In an effort to accommodate New York City Department of Health & Mental Hygiene and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Deputy Commissioner Morgenthau’s response to an email with the listed key terms and the initial received message are responsive to this request and should be produced.

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

**Fee Waiver Request**

American Oversight requests that your agency consider waiving any fees associated with processing this request for records pursuant to 21 NYCRR § 1401.8(g). 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.<sup>3</sup> The public has a significant interest in how New York responded to coronavirus clusters in nursing homes. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the New York City and New York State governments, including helping policy makers around the state and the rest of the country prevent coronavirus clusters within their nursing homes.

To the extent your agency anticipates charging any fees in connection with this request for records, American Oversight requests that you inform us in advance of doing so.

**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:

<sup>3</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 9, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 9, 2020)

- 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 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 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.
- 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 Emma Lewis at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 919-

6303. 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