



July 22, 2020

VIA FACSIMILE

Kentucky Secretary of State
700 Capital Ave., Ste. 152
Frankfort, KY 40601
Fax: (502) 564-5687

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Kentucky Open Records Act (KORA), KRS §§ 61.870 et seq., American Oversight makes the following request for public records.

On March 27, 2020, President Donald Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law.¹ This Act includes \$400 million in Help America Vote Act (HAVA) emergency funds intended to prepare for and administer the 2020 elections.²

American Oversight seeks records to shed light on how Kentucky is distributing and utilizing CARES Act funds in preparation for the November 3, 2020 election.

Requested Records

American Oversight requests that your office produce copies of the following records within three business days:

1. Any guidance sent to county election officials regarding funding afforded through the CARES Act. This request includes, but is not limited to, guidance regarding the process of requesting CARES Act funds and the timeline of distributing the funds.
2. Records sufficient to identify how funds afforded through the CARES Act are being distributed and spent, including the recipient of the funds (for example, a county), the date of funding distribution, the amount distributed, and what the funds were used to purchase.

¹ EAC *Expediting Distribution of \$400 Million in CARES Act Election Funding for Coronavirus Response*, U.S. Election Assistance Comm'n, <https://www.eac.gov/news/2020/04/03/eac-expediting-distribution-400-million-cares-act-election-funding-coronavirus>.

² *Id.*



To the extent your agency maintains this data in aggregated form, such as in a spreadsheet or within a database or other format that can be readily exported to a spreadsheet, American Oversight requests responsive data in such format.

3. All email communications (including email messages, complete email chains, email attachments, calendar invitations, and any attachments thereto) sent by any of the officials or employees listed below containing any of the key terms listed below.

Secretary of State Officials and Employees:

- a. Michael Adams, Secretary of State, or anyone communicating on his behalf (such as a scheduler or assistant)
- b. Jennifer Scutchfield, Assistant Secretary of State, or anyone communicating on her behalf (such as a scheduler or assistant)
- c. Heather Quinn, Director of Administration and Elections, or anyone communicating on her behalf (such as a scheduler or assistant)
- d. Anyone serving in a role next in authority to the Director of Administration and Elections (such as a Deputy Elections Director or Assistant Elections Director)

Key Terms:

- a. "Help America Vote Act"
- b. HAVA
- c. "CARES Act"
- d. "CARES funding"
- e. "Personal protective equipment"
- f. PPE
- g. "Election Assistance Commission"
- h. EAC

In an effort to accommodate your agency and reduce the number of responsive records to be processed and produced, American Oversight has limited item 3 of its request to communications sent by the listed custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying the sent messages, the prior received messages, and any subsequent messages in each email chain. This means that a custodian's response to an email, the initial received message, and any prior or subsequent messages within the same email thread are responsive to this request and should be produced.

Please provide all responsive records from March 27, 2020, to the date the search is conducted.

Pursuant to KRS § 61.880(1), American Oversight requests that you notify us within three workdays as to whether you will comply with this request.

American Oversight insists that your office 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.

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 your office 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.

Statement of Noncommercial Purpose

This request is for noncommercial purposes, and American Oversight respectfully requests a waiver of any fees associated with processing this request for records. To the extent any fees are charged, pursuant to KRS § 61.874(3), American Oversight asks that such fees be limited to the actual cost of reproduction and exclude the cost of agency staff time.

This request is primarily and fundamentally for non-commercial purposes. American Oversight seeks records regarding the actions of Kentucky public officials in managing an election amid an ongoing public health crisis. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including how funds appropriated by the federal government in order to run elections during a pandemic are being distributed in Kentucky.

Furthermore, 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.³

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.⁴ 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;⁵ posting 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;⁶ 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;⁷ posting records regarding potential self-dealing at the

³ American Oversight currently has approximately 16,300 followers on Facebook and 104,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 15, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 15, 2020).

⁴ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁵ *State Accountability Project*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/state-accountability-project>.

⁶ *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>.

⁷ *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>.

Department of Housing & Urban Development and related analysis;⁸ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁹ 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.¹⁰

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your office 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 Emma Lewis at records@americanoversight.org or (202) 919-6303.

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

⁸ *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>.

⁹ *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>.

¹⁰ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.