



July 23, 2020

**VIA EMAIL**

Records Access Officer  
Department of Corrections and Community Supervision  
Harriman State Campus  
1220 Washington Avenue  
Albany, NY 12226-2050  
[FOIL@doccs.ny.gov](mailto:FOIL@doccs.ny.gov)

**Re: Freedom of Information Law Request**

Dear Records Access Officer:

Pursuant to the Freedom of Information Law, N.Y. Pub. Off. Law §§ 84-90 (FOIL), 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 more than 140,000 deaths in the U.S. alone.<sup>2</sup>

American Oversight seeks records with the potential to shed light on New York officials' response to the pandemic.

**Requested Records**

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

Records sufficient to identify within your facilities:

1. The number of coronavirus (SARS-CoV-2) tests requested by and provided to your facilities
2. The number of individuals, including inmates and staff, who have been tested for coronavirus (SARS-CoV-2)

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<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (July 21, 2020, 2:07 PM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.



3. The number of tests which (a) returned a positive determination (i.e. confirmed the presence of coronavirus) and (b) returned a negative determination (i.e. did not confirm the presence of coronavirus), including among incarcerated people, DOCCS staff, or any contractors employed at DOCCS facilities.
4. The number of coronavirus-related fatalities, including among pre-trial detainees, inmates, DOCCS staff, or any contractors employed at DOCCS facilities.

Please provide all responsive records from February 6, 2020, through the date of the search.

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. In addition to records in the form of spreadsheets and tables, this request encompasses records in the form of final memoranda, reports, and talking points. To be clear, American Oversight is not requesting details about individual's medical records or cases and does not object to the redaction of such details, e.g., names or other identifying information, from records responsive to this request. American Oversight further notes that, while your agency is best positioned to identify the location of responsive records, your agency's leadership offices, including those of Acting Commissioner Anthony Annucci; Acting Deputy Commissioner for Correctional Facilities James O'Gorman; Chief Medical Officer John Morley; and Health Services Director Chung Lee are likely to possess responsive records in light of the extraordinary threat of this national emergency.

### **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.<sup>3</sup> 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>4</sup> The public has a significant interest in the state's response to the coronavirus pandemic, especially

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<sup>3</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; see e.g. *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>.

<sup>4</sup> American Oversight currently has approximately 15,560 page likes on Facebook and 104,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 21, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 21, 2020).

with regards to vulnerable populations. The requested records have the potential to contribute to public understanding of the conditions within New York's correctional facilities during an unprecedented public health emergency.

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**

American Oversight seeks all 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that your agency 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; 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 pursuant to N.Y. Pub. Off. Law § 87(2), 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.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIL, including litigation if necessary. Accordingly, your agency is on notice that litigation is reasonably foreseeable.

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 you 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.

### **Conclusion**

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, have any questions, or foresee any problems in fully releasing the requested records, please contact Megan Field at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 897-2465. 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