



July 17, 2020

VIA EMAIL

Records Access Office
New York State Department of Health
Corning Tower, Room 2364
Albany, NY 12237-0044
foil@health.ny.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.

Technology surveillance companies have responded to the pandemic by offering their products to federal, state, and local government agencies. At the same time, many experts have raised concerns about the privacy implications of these collaborations.¹

American Oversight requests records to help the public better understand COVID response efforts and surveillance companies.

Requested Records

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

All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between (A) the officials in Column A, and (B) anyone communicating on behalf

¹ See, e.g., Nick Paton Walsh, *9/11 Saw Much of Our Privacy Swept Aside. Coronavirus Could End It Altogether*, CNN (May 16, 2020, 1:27 PM),

<https://www.cnn.com/2020/05/16/tech/surveillance-privacy-coronavirus-npw-intl/index.html>; Opinion, Christine Wilson, *Coronavirus Demands a Privacy Law*, Wall St. J. (May 13, 2020, 6:58 PM), <https://www.wsj.com/articles/congress-needs-to-pass-a-coronavirus-privacy-law-11589410686>; Sue Halpern, *Can We Track COVID-19 and Protect Privacy at the Same Time*, The New Yorker, Apr. 27, 2020, <https://www.newyorker.com/tech/annals-of-technology/can-we-track-covid-19-and-protect-privacy-at-the-same-time>.



of the entities listed in Column B, including, but not limited to, anyone communicating with an email address ending in the domain(s) provided.

Column A: Government Officials	Column B: Companies
<ul style="list-style-type: none"> i. Commissioner Howard Zucker ii. Executive Deputy Commissioner Sally Dreslin iii. Chief of Staff Danielle Greene iv. Chief Health Information officer Mahesh Nattanmai 	<ul style="list-style-type: none"> i. Palantir Technologies (@palantir.com or @palantirtech.com) ii. Clearview AI, Inc. (@clearview.ai) iii. Vantiq (@vantiq.com) iv. Camber Systems (@cornea.is) v. NSO (@nsogroup.com) vi. AiRISTA Flow (@airistaflow.com) vii. SuperCom (@supercom.com)

Please provide all responsive records from March 15, 2020, to the date of the search.

We understand that your office’s capacity may be impacted by the COVID-19 outbreak and response efforts. Should that be the case, we would be happy to discuss potential streamlining or narrowing of our request, reasonable delays in processing this request, or other accommodations. Please feel free to contact us at the telephone number listed in the final paragraph of this letter; we look forward to working with you.

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.²

²American Oversight currently has approximately 15,600 page likes on Facebook and 104,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 30, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 30, 2020).

The public has a significant interest in how the New York State government has responded to the coronavirus pandemic, and specifically whether government agencies are considering using software from surveillance companies. This issue is a subject of substantial public interest in New York, and broadly across the nation. Many people, including New Yorkers, are concerned about the government using digital contact tracing and the consequences of the state having that much access to their private information.³ Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the New York state government, including what privacy and security protections are in place while using surveillance software.

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records 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

³ Matt Richtel, *Contact Tracing with Your Phone: It's Easier but There Are Tradeoffs.*, NY. Times (June 3, 2020), <https://www.nytimes.com/2020/06/03/health/coronavirus-contact-tracing-apps.html>.

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, have any questions, or foresee any problems in fully releasing the requested records, please contact Christine Monahan at records@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 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