



July 23, 2020

VIA EMAIL

Jillian Cringle
Acting FOIL Counsel & Records Access Officer
Executive Chamber
State Capitol
Albany, NY 12224
records.access@exec.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.¹ 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.²

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:

Any final directives, orders, decisions, policies, procedures, memoranda, protocols, or guidance from the Governor's Office to [1] correctional facilities, adolescent offender facilities, or residential treatment facilities operated by the New York State Department of Corrections and Community Supervision ("DOCCS"), [2] the New York State Office of mental Health's Corrections-Based Operations Department, and [3] municipal, county, and local jail administrations regarding the novel coronavirus, including but not limited to:

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

² *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>.



1. Social distancing measures designed to mitigate the virus's spread
2. Limiting interpersonal contact between inmates and/or staff such as quarantining, cohorting, distancing, limiting interfacility transport, limiting intake from county jails and other local facilities, or other forms of isolation
3. Measures designed to limit congregate programming, including:
 - Suspending rehabilitative programming and services (e.g. Comprehensive Alcohol and Substance Abuse Treatment, Alcohol and Substance Abuse Treatment, Aggression Replacement Therapy);
 - Suspending mental health programming and services (e.g. Residential Mental Health Treatment Units, Special Housing Unit Group Therapy Programs);
 - Suspending disability-related programming and services (e.g. Correctional Alternative Rehabilitation Unit, Correctional Alternative Rehabilitation Unit Group Therapy Program, Special Needs Units, Sensorially Disabled Units, Sensorially Disabled Programs); and
 - Suspending educational and vocational programming and services (e.g. Adult Basic Education, High School Equivalency Programming, special education programming)
4. The use of segregated confinement (e.g. Special Housing Unit, Special Housing Unit-200, Long-Term Keeplock) to mitigate the virus's spread
5. The use of Keeplock to mitigate the virus's spread
6. The suspension of transfers from the Special Housing Unit and/or Long-Term Keeplock to Residential Mental Health Treatment Units
7. The suspension of transfers from the Special Housing Unit and/or Long-Term Keeplock to the Correctional Alternative Rehabilitation Unit
8. Sanitation procedures to mitigate the virus's spread
9. The acquisition and provision of cleaning supplies (e.g. bleach, disinfectants, mops, rags) to mitigate the virus's spread
10. The acquisition and provision of CDC-recommended personal protective equipment (PPE) to mitigate the virus's spread
11. The acquisition and provision of handkerchiefs and other PPE alternatives³ to mitigate the virus's spread
12. The acquisition and provision of hygiene supplies, (e.g. soap, hand sanitizer) to mitigate the virus' spread
13. The acquisition and provision of medical supplies to attempt to treat the virus, including experimental drugs like hydroxychloroquine and chloroquine
14. Measures to reduce the populations of DOCCS facilities (e.g. the release of at-risk individuals, low-level offenders, pre-trial detainees or those nearing the end of their sentences
15. Measures to review and/or expedite applications for limited release, temporary release, leaves of absence, medical parole, commutations, and clemencies during the pandemic

³ Samantha Michaels, *New York Prisoners are Sewing Masks for Hospitals – But Most Don't Have Their Own*, Mother Jones, May 6, 2020, <https://www.motherjones.com/crime-justice/2020/05/new-york-prisoners-are-sewing-masks-for-hospitals-but-most-dont-have-their-own/>.

16. Protocols for transferring COVID-positive individuals to infirmaries, regional medical units, respiratory isolation units, and local hospitals
17. Protocols for returning COVID-positive individuals to DOCCS facilities from local hospitals
18. Protocols for administering of diagnostic testing to staff, contractors, pre-trial detainees, or inmates
19. Protocols for staff or contractors who have contracted or may have been exposed to the virus, such as use of sick leave or other emergency leave.

Please provide all responsive records from March 16, 2020, to the date of your receipt of this request.

American Oversight believes your agency is best positioned to determine where responsive records may reside. However, we request that at a minimum, you search the records of Governor Andrew M. Cuomo; Secretary to the Governor Melissa DeRosa; the Governor's Chief of Staff Jill DesRosiers; the Governor's Policy Director David Yassky; and the Governor's Director of Emergency Management Michael Kopy.

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.⁴ 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.⁵ The public has a significant interest in the state's response to the coronavirus pandemic, especially 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.

⁴ 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>.

⁵ 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).

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 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 flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight