



August 10, 2020

VIA EMAIL

Texas Department of State Health Services
Open Records Request
1100 West 49th Street
Austin, TX 78756
openrecords@dshs.texas.gov

Re: Public Information Request

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public 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 The virus has killed over 160,000 people in the United States alone.² Texas has been identified as a hotspot which is at heightened risk and should take cautionary measures to prevent further spread.³ This is a rapidly evolving situation that is demanding coordinated attention and action between the state and federal government.

American Oversight seeks records with the potential to shed light on how the state and federal government are handling a public health emergency.

Requested Records

American Oversight requests that your office promptly produce the following:

All email communications (including complete email chains, email attachments, calendar invitations, and attachments thereto) sent by (A) the specified government officials to (B) representatives of the federal government with email addresses ending in cdc.gov, fda.gov, hhs.gov, fema.dhs.gov, mail.mil, army.mil, navy.mil, or eop.gov.

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

² *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Aug. 10, 2020, 8:16 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

³ Betsy Klein, *Task Force Report Says 18 States in Coronavirus 'Red Zone' Should Roll Back Reopening*, CNN (July 17, 2020, 10:30 AM), <https://www.cnn.com/2020/07/17/politics/white-house-states-hot-spots-task-force/index.html>.



1. Commissioner John Hellerstedt (john.hellerstedt@dshs.texas.gov)
2. Deputy Commissioner Jennifer Sims (jennifer.sims@dshs.texas.gov)
3. Assistant Commissioner of Laboratory and Infectious Disease Services Imelda Garcia (imelda.garcia@dshs.texas.gov)

Please provide all responsive records from the following date ranges:

- April 15, 2020 through April 18, 2020
- May 5, 2020 through May 9, 2020
- June 14, 2020 through June 19, 2020
- June 23, 2020 through June 26, 2020
- June 29, 2020 through July 3, 2020
- July 10, 2020 through July 31, 2020

American Oversight has limited its request to sent messages to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a government official sent a response to an incoming message containing one of the key terms above, the email chain containing the initially received message and the response is responsive to this request.

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 emails, 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 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 for purposes of the Texas Public Information Act.⁴

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

⁴ Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

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 and 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.

Fee Waiver Request

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of state officials, with the potential to shed light on the response to the novel coronavirus, including whether and how guidance from the federal government has affected the response in Texas. This matter is a subject of substantial public interest in Texas.⁵ Accordingly, release of records that may help the public understand the operations and activities of public officials is in the public interest.

Release of the requested records will primarily benefit the public.⁶ As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight’s financial interest, but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government’s activities through American Oversight’s analysis and publication of these records. American

⁵ See, e.g., Klein, *supra* note 3.

⁶ Tex. Code § 552.267(a).

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.⁷

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.⁸ 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;⁹ the posting of 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;¹⁰ 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;¹¹ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ 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

⁷ American Oversight currently has approximately 15,600 followers on Facebook and 104,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Aug. 5, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Aug. 5, 2020).

⁸ News, American Oversight, <https://www.americanoversight.org/blog>.

⁹ State Accountability Project, American Oversight, <https://www.americanoversight.org/state-accountability-project>.

¹⁰ 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>.

¹¹ 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>.

¹² 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>.

¹³ 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>.

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.¹⁴

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 prior to incurring such costs or fees.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your county 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

¹⁴ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.