



October 5, 2020

VIA EMAIL

CORA Custodian
Colorado Department of State
1700 Broadway
Suite 200
Denver, CO 80290
CORA@sos.state.co.us

Re: Open Records Act Request

Dear CORA Custodian:

Pursuant to the Colorado Open Records Act, ("CORA") (Colo. Rev. Stat. §§ 24-72-200.1 et seq.), American Oversight makes the following request for records.

On September 12, 2020, Colorado Secretary of State Jena Griswold filed a federal lawsuit against top United States Postal Service (USPS) officials regarding a mailer issued to residents of all 50 states and the District of Columbia.¹ Secretary Griswold's complaint states that this mailer "will confuse Colorado voters, likely causing otherwise-eligible voters to wrongly believe that they may not participate in the upcoming election,"² as Colorado already is among those states which already conduct all elections by mail.

American Oversight seeks records with the potential to shed light on Colorado's preparedness for the November 2020 election, including communications with USPS in light of its potentially misleading guidance to Colorado voters.

Requested Records

American Oversight requests that your office produce the following records within three working days as required by Colo. Rev. Stat. § 24-72-203(3)(b):

¹ Luke Broadwater & Kenneth P. Vogel, *Colorado Official Sues Postal Service Over Election Mailer She Says Misleads Voters*, N.Y. Times, Sept. 12, 2020, <https://www.nytimes.com/2020/09/12/us/politics/colorado-postal-service-lawsuit-election-mailer.html>.

² See *State of Colorado v Louis DeJoy et al.*, No.1:20-cv-2768, 2 (D.CO, 2020), <https://int.nyt.com/data/documenttools/colorado-lawsuit-filed-against-postal-service-leadership/dafa90180e7063aa/full.pdf>.



All email communications (including emails, complete email chains, email attachments, calendar invitations, and attachments thereto) sent by (a) Secretary of State Jena Griswold, or anyone communicating on her behalf, such as a scheduler or assistant, or Director of the Division of Elections Judd Choate, or anyone communicating on his behalf, such as a scheduler or assistant, to (b) anyone with an email address ending in @usps.com or @usps.gov.

Please provide all responsive records from June 1, 2020, to the date the search is conducted.

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 from one of the email domains listed above, the email chain containing the initially received message and the response is responsive to this request.

Fee Waiver Request

In accordance with Colo. Rev. Stat. § 24-72-205(4), American Oversight requests a waiver of fees associated with processing this request for records because the requested information is “a result of computer output . . . to be used for a public purpose, including . . . nonprofit activities, journalism, and academic research.”³ The public has a significant interest in understanding how officials in the Colorado Secretary of State’s office are communicating with USPS in advance of the November election, in which a record number of voters are expected to cast ballots by mail.⁴ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether guidance from a federal agency is obstructing or otherwise interfering with the ability of the Secretary of State to administer elections.⁵ American Oversight is committed to transparency and makes the responses agencies provide to open records requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes. 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.

³ Colo. Rev. Stat. § 24-72-205(4).

⁴ Erin Cox et al., *Postal Service Warns 46 States Their Voters Could Be Disenfranchised by Delayed Mail-In Ballots*, Wash. Post (Aug. 14, 2020, 4:44 PM), https://www.washingtonpost.com/local/md-politics/usps-states-delayed-mail-in-ballots/2020/08/14/64bf3c3c-dcc7-11ea-8051-d5f887d73381_story.html.

⁵ See *supra*, notes 1 & 2

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.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's State Accountability Project covering voting rights issues in various states;⁸ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the Trump administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ and the posting of records related to an ethics

⁶ American Oversight currently has approximately 15,600 page likes on Facebook and 104,600 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 14, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 14, 2020).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ See generally *State Accountability Project*, American Oversight, https://www.americanoversight.org/areas_of_investigation/state-local-investigations; see, e.g. *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

⁹ See e.g. *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *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>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

¹⁰ 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>.

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.¹¹

Because the requested records would be used for a qualifying "public purpose"—the promotion of government transparency and accountability by a 501(c)(3) nonprofit organization—American Oversight qualifies for a fee waiver.

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:

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request 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 take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

¹¹ *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>.

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, please contact Dan McGrath at records@americanoversight.org (202) 897-4213. 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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight