



November 16, 2020

VIA EMAIL

Mayor Ted Wheeler
1221 SW 4th Ave
Room 340
Portland, OR 97204
mayorwheeler@portlandoregon.gov

Re: Public Records Law Request

Dear Public Records Officer:

Pursuant to the Oregon Public Records Law, Or. Rev. Stat. Ann., Tit. 19, Ch. 192, American Oversight makes the following request for records.

In the days following a police officer killing George Floyd, people in Portland, Oregon have protested against police brutality and white supremacy. Law enforcement has sometimes responded to these protests with violence, including charging at protesters, firing smoke canisters, pepper spray, and rubber bullets.¹ In August 2020, the Intercept reported that protesters in multiple states are facing felony charges, including terrorism.²

American Oversight requests documents to detail the relationship between the federal government and the Mayor's Office in response to protests.

Requested Records

American Oversight requests that Office of the Mayor produce the following records within five business days:³

¹ Dan Friedell, *Some Clarity a Day After Reports Of Tear Gas in Lafayette Square, but Questions Remain*, WTOP, June 2, 2020, <https://wtop.com/dc/2020/06/some-clarity-a-day-after-reports-of-tear-gas-in-lafayette-square-but-questions-remain/>.

² Akela Lacy, *Protesters in Multiple States are Facing Felony Charges, Including Terrorism*, the Intercept, August 27, 2020, <https://theintercept.com/2020/08/27/black-lives-matter-protesters-terrorism-felony-charges/>

³ Pursuant to O.R.S. § 192.324(2), if your office is unable to complete its response within five business days, please acknowledge receipt of this request within five business days. Thereafter, pursuant to O.R.S. § 192.329(5), please complete your response to this request no later than ten business days after acknowledgement of receipt. If compliance with these time provisions would be impracticable as defined in O.R.S. § 192.329(6), the response must be completed as soon as practicable and without unreasonable delay.



- 1) Records reflecting agreements between the Mayor's Office and the Department of Justice regarding investigation and/or prosecution of protesters.
- 2) All communications between the Mayor's Office and Department of Justice regarding investigation and prosecution of protesters.

Please provide all responsive records from May 26, 2020, through date of search.

To be clear, American Oversight is not seeking records regarding specific suspects, charges, or prosecutorial decisions, but rather requests records reflecting general, high-level coordination and correspondence between local and federal officials concerning prospective enforcement actions against protesters.

Fee Waiver Request

In accordance with O.R.S. § 192.324(5), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. In addition, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the "public interest because making the record available primarily benefits the general public."⁴ The general public has a significant interest in how the Mayor's office worked with the federal government when responding to protests against police brutality. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of both the D.C. and federal government, including understanding Mayor Wheeler's and his senior staff's awareness of and response to federal law enforcement tactics for protests happening in Portland. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the general 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. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight

⁴ O.R.S. § 192.324(5).

also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁵

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.⁶ 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;⁷ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁸ 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;⁹ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of

⁵ American Oversight currently has approximately 16,370 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited October 28, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited October 28, 2020).

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ 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>.

⁸ 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>.

⁹ 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>.

what those records demonstrated regarding the Department's process for issuing such waivers.¹⁰

Accordingly, 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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their 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 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

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>.

the requested records.¹¹ 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

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 Hart Wood at records@americanoversight.org or (202) 873-1743. 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,



Austin R. Evers
Executive Director
American Oversight

¹¹ O.R.S. § 192.338.