



January 26, 2021

**VIA EMAIL**

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Office of the Governor  
State House  
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**Re: Maryland's Public Information Act Request**

Dear Public Information Act Representative:

Pursuant to the Maryland Public Information Act ("MPIA"), codified Md. Code Ann., Gen. Prov. §§ 4-101 et seq., American Oversight makes the following request for records.

On January 6, 2021, President Trump incited a mob to attack Congress while it certified the election for President-Elect Joe Biden.<sup>1</sup> The apparent insurrectionists forced their way past reportedly understaffed Capitol Police, causing lawmakers and their staffs to flee and ultimately delaying the Congressional session.<sup>2</sup> During this assault, five people died.<sup>3</sup> While militia members roamed Congressional halls, President Trump allegedly resisted deploying the D.C. National Guard.<sup>4</sup> Press has reported that the Department of Defense (DOD) initially denied a request by D.C. officials to deploy the National Guard, before later reversing the decision.<sup>5</sup> Maryland Governor Larry Hogan has also stated

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<sup>1</sup> Press Release, *Romney Condemns Insurrection at U.S. Capitol*, Office of Sen. Mitt Romney, Jan. 6, 2021, <https://www.romney.senate.gov/romney-condemns-insurrection-us-capitol>.

<sup>2</sup> Rebecca Tan, et al., *Trump Supporters Storm U.S. Capitol, With One Woman Killed and Tear Gas Fired*, Wash. Post (Jan. 7, 2021, 12:30 AM), [https://www.washingtonpost.com/local/trump-supporters-storm-capitol-dc/2021/01/06/58afc0b8-504b-11eb-83e3-322644d82356\\_story.html](https://www.washingtonpost.com/local/trump-supporters-storm-capitol-dc/2021/01/06/58afc0b8-504b-11eb-83e3-322644d82356_story.html).

<sup>3</sup> Eric Levenson, *What We Know About the 5 Deaths in the Pro-Trump Mob that Stormed the Capitol*, CNN (updated Jan. 8, 2021, 5:29 PM), <https://www.cnn.com/2021/01/07/us/capitol-mob-deaths/index.html>.

<sup>4</sup> Maggie Haberman (@maggieNYT), Twitter (Jan. 6, 2021, 8:18 PM), <https://twitter.com/maggieNYT/status/1346989618239926273> ("NEW: Trump initially rebuffed and resisted requests to mobilize the National Guard, according to a person with knowledge of the vents. It required intervention from White House officials to get it done, according to the person with knowledge of the events.").

<sup>5</sup> Aaron C. Davis (@byaarondavis), Twitter (Jan. 6, 2021, 2:55 PM), <https://twitter.com/byaarondavis/status/1346908166030766080> ("BREAKING: A



that he mobilized the Maryland National Guard, but that DOD did not give him permission to send the forces until after 5:00 PM—hours into the attack.<sup>6</sup>

American Oversight seeks records with the potential to shed light on the Maryland state government’s response to the violence incited by the president during his January 6 rally.

**Requested Records**

American Oversight requests that the Maryland Governor’s Office produce the following records immediately or within a reasonable period upon approval, and in no more than thirty days of receipt of this request:<sup>7</sup>

1. All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between (A) the state government officials listed in Column A, and (B) the federal government officials listed in Column B.

<b>Column A: Maryland State Officials</b>	<b>Column B: DOD Officials</b>
<ol style="list-style-type: none"> <li>1. Governor Larry Hogan</li> <li>2. Chief of Staff Amelia Chasse Alcivar</li> <li>3. External Affairs &amp; Interagency Initiatives Director Christopher B. Shank</li> </ol>	<ol style="list-style-type: none"> <li>1. Any representatives of the National Guard, Department of Defense, or Department of the Army (including but not limited to anyone communicating from an email address ending in mail.mil)</li> <li>2. The Adjutant General of Maryland Major General Timothy E. Gowen</li> </ol>

Please provide all responsive records from January 6, 2021, through January 8, 2021.

2. All or any email communications (including emails, complete email chains, calendar invitations, and attachments) sent by any of the officials listed below regarding the potential or actual deployment of Maryland National Guard related to the January 6 riot at the U.S Capitol.

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source tells me The Defense Department has just denied a request by DC officials to deploy the National Guard to the US Capitol.”).

<sup>6</sup> Rebecca Tan, *Maryland Gov. Larry Hogan Blames Trump, GOP Lawmakers For Capitol Riot*, Wash. Post (Jan. 10, 2021, 10:19 AM),

[https://www.washingtonpost.com/local/md-politics/hogan-blames-trump-capitol/2021/01/10/169d3fa0-5354-11eb-a817-e5e7f8a406d6\\_story.html](https://www.washingtonpost.com/local/md-politics/hogan-blames-trump-capitol/2021/01/10/169d3fa0-5354-11eb-a817-e5e7f8a406d6_story.html).

<sup>7</sup> MPIA §§ 4-203(a)(1)-(b)(1).

- a. Governor Larry Hogan
- b. Chief of Staff Amelia Chasse Alcivar
- c. External Affairs & Interagency Initiatives Director Christopher B. Shank

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited Item 2 of its request to communications sent the listed custodians. To be clear, however, American Oversight still requests that complete email chains or text message threads/conversations be produced, displaying both sent and received messages. This means, for example, that with respect to emails, both Governor Larry Hogan's response to an email containing one of the listed key terms and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from January 6, 2021, through January 8, 2021.

3. All January 6, 2021 call logs for Governor Hogan or anyone communicating on his behalf, such as a Chief of Staff, executive assistant, or secretary.

### **Fee Waiver Request**

In accordance with Md. Gen. Provis. § 4-206, 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. Moreover, 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."<sup>8</sup> The public has a significant interest in the actions the Governor took on January 6 and his statement that DOD was slow to respond to his offer of help. Records with the potential to shed light on this question would contribute significantly to public understanding of operations of the government, including helping the public to understand the context of the Governor's claim that DOD did not immediately accept his offer of help.

American Oversight is committed to transparency and makes the responses agencies provide to public 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

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<sup>8</sup> Md. Gen. Provis. § 4-206(e)(ii).

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.<sup>9</sup>

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.<sup>10</sup> 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 investigations into misconduct and corruption in state governments;<sup>11</sup> posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;<sup>12</sup> 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;<sup>13</sup> and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis

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<sup>9</sup> American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 13, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 13, 2021).

<sup>10</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>11</sup> See generally *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; 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>.

<sup>12</sup> 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>.

<sup>13</sup> 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>.

of what those records demonstrated regarding the Department's process for issuing such waivers.<sup>14</sup>

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:

- 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the MPIA.<sup>15</sup>
- 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.

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<sup>14</sup> *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>.

<sup>15</sup> "If email communications from private email accounts and text messages stored on private devices" are "made or received by a custodian in connection with the transaction of public business, they are public records." Md. Pub. Info. Act Manual, Off. of the Att'y Gen. (15d ed. 2020) at 1-5, [https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA\\_manual\\_printable.pdf](https://www.marylandattorneygeneral.gov/OpenGov%20Documents/PIA_manual_printable.pdf).

## 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 Khahilia Shaw at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 539-6507. 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,

/s/ Khahilia Shaw  
on behalf of  
American Oversight