



January 8, 2021

VIA EMAIL

Leslie Bakken Oliver
General Counsel
Office of the Governor
600 East Boulevard Avenue
Bismarck, ND 58505-0001
lboliver@nd.gov

Re: Open Records Law Request

Dear Records Custodian:

Pursuant to the North Dakota Open Records Law, N.D.C.C. §§ 44-04-18 et seq., and Section 6 of Article XI of the North Dakota Constitution, American Oversight makes the following request for records.

The novel coronavirus has infected more than 21 million people and resulted in more than 365,000 deaths in the United States alone.¹ In recent months, the speed and volume of infections have reached record highs across much of the country, surpassing 200,000 average new daily cases.² Despite the months-long increase in infections, several state governments are still declining to impose or have only recently imposed public health measures such as mask mandates to mitigate the virus's spread, including in states where the rate of infections is highest.³

American Oversight seeks records with the potential to shed light on North Dakota's response to the coronavirus pandemic.

Requested Records

American Oversight requests that your office promptly produce the following records:

¹ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (Jan. 8, 2021, 7:54 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html?action=click&module=RelatedLinks&pgtype=Article>.

² *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Jan. 8, 2021, 7:54 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#:~:text=At%20least%20%2C923%20new%20coronavirus,the%20average%20two%20weeks%20earlier>.

³ Lea Asmelash et al., *Most States Now Require Face Masks to Reduce the Spread of Covid-19. These Are the Ones That Don't*, CNN (updated Dec. 8, 2020, 2:17 PM), <https://www.cnn.com/2020/11/09/us/biden-mask-mandate-nationwide-trnd/index.html>.



1. Any final assessments, reports, analyses, recommendations, or guidance prepared by your office, other federal, state, or local offices (including the North Dakota Department of Health and the U.S. Centers for Disease Control and Prevention), or independent experts, regarding any projected or actual effects or impacts of a statewide mask mandate on the spread of COVID-19.
2. Any final assessments, reports, analyses, recommendations, or guidance prepared by your office, other federal, state, or local offices (including the North Dakota Department of Health and the U.S. Centers for Disease Control and Prevention), or independent experts, regarding any projected or actual effects of North Dakota's current public health measures on the spread of COVID-19.
3. Any reports, slide decks, memoranda, email communications, or other documents memorializing or analyzing the results of any polling conducted by or on behalf of your office or otherwise shared with your office regarding public opinion(s) on public health measures to mitigate the spread of coronavirus, including but not limited to lockdowns, business closures, capacity or venue restrictions, curfews, mask mandates, travel restrictions, or other similar measures.

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

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee.

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:

- In conducting your search, please understand the terms “record,” and “document” 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Open Records Law.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.⁵ If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release. Furthermore, if a request is denied in whole or in part, please describe the legal authority for the denial or, if applicable, provide a statement that the records do not exist.⁶
- 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.

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.

Conclusion

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

⁴ See N.D.A.G. 2014-O-20 (records contained on public employee's personal device); N.D.A.G. 2014-O-10 (private email account used to generate or receive emails containing "public business"; N.D.A.G. 2008-O-15 (emails on home computers).

⁵ N.D.C.C. § 44-04-18.10 (1), (2).

⁶ N.D.C.C. § 44-04-18(7).

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

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 Christine H. Monahan at records@americanoversight.org or (202) 868-5244.

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

⁷ American Oversight currently has approximately 15,600 page likes on Facebook and 106,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 4, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 4, 2021).