



April 15, 2021

**VIA EMAIL**

Records Access Office  
New York State Department of Health  
Corning Tower, Room 2364  
Albany, NY 12237-0044  
[foil@health.ny.gov](mailto:foil@health.ny.gov)

**Re: Freedom of Information Law Request**

Dear Records Access Officer:

Pursuant to the Freedom of Information Law (FOIL), N.Y. Pub. Off. Law §§ 84-90, American Oversight makes the following request for records.

Attorney General Letitia James found that the New York State Department of Health published a coronavirus report that undercounted deaths in New York nursing homes by at least 50 percent.<sup>1</sup> *The New York Times* later revealed that Governor Cuomo aides were responsible for changing the report to hide a higher death toll.<sup>2</sup> In another alleged abuse of power, *The New York Times* reported that coronavirus Vaccine Czar Larry Schwartz called county executives to ask about their loyalty to Governor Cuomo as he was faced with multiple sexual harassment allegations.<sup>3</sup>

American Oversight requests records regarding the governor's handling of these alleged incidents.

**Requested Records**

American Oversight requests that your office produce the following records within five business days:

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<sup>1</sup> Press Release, *Attorney General James Releases Report on Nursing Homes' Response to COVID-19*, N. Y. State Office of the Att'y Gen., Jan. 28, 2021, <https://ag.ny.gov/press-release/2021/attorney-general-james-releases-report-nursing-homes-response-covid-19>.

<sup>2</sup> J. David Goodman & Danny Hakim, *Cuomo Aides Rewrote Nursing Home Report to Hide Higher Death Toll*, N.Y. Times, March 4, 2021, <https://www.nytimes.com/2021/03/04/nyregion/cuomo-nursing-home-deaths.html>.

<sup>3</sup> J. David Goodman & Danny Hakim, *As Cuomo Reels, Pleas for Political Support Come From His Vaccine Czar*, N.Y. Times, March 14, 2021, <https://www.nytimes.com/2021/03/14/nyregion/cuomo-sexual-harassment-vaccines.html>.



All electronic communications (including email messages, complete email chains, calendar invitations, text messages, and any attachments) between (A) the officials listed in Column A, below, and (B) the external parties listed in Column B, below, concerning the New York State Department of Health report titled “Factors Associated with Nursing Home Infections and Fatalities in New York State During the COVID-19 Global Health Crisis.”

<b>Column A: Department of Health</b>	<b>Column B: External Parties</b>
<ul style="list-style-type: none"> <li>a) Commissioner Howard Zucker</li> <li>b) Chief of Staff Danielle Greene</li> <li>c) Special Advisor Mark Kissinger</li> <li>d) Special Advisor Eleanor Adams</li> <li>e) Former Medical Director of the Division of Epidemiology Elizabeth Dufort</li> </ul>	<ul style="list-style-type: none"> <li>a) Governor Cuomo</li> <li>b) Secretary to the Governor Melissa DeRosa</li> <li>c) Former Senior Aide to Governor Cuomo Jim Malatras</li> <li>d) Director of Department of Financial Services Linda Lacewell</li> </ul>

Please provide all responsive records from June 1, 2020, to July 6, 2020.

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

**Fee Waiver Request**

American Oversight requests that your agency consider waiving any fees associated with processing this request for records pursuant to 21 NYCRR § 1401.8(g). 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 accountability of government officials. American Oversight uses information gathered through research and public records requests, 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>4</sup> The public has a significant interest in the alleged effort to hide the number of coronavirus deaths in New York nursing homes. These communications would help the public better understand how the Health Department and the Governor’s office communicated prior to the publication of a report that misinformed the public about coronavirus deaths in nursing homes. Records with the potential to shed light on this issue would contribute significantly to

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<sup>4</sup> American Oversight currently has approximately 15,480 page likes on Facebook and 102,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 21, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 21, 2020).

public understanding of operations of the New York state government, including helping to identify what role, if any, state employees had with the alleged effort to hide the number of deaths in nursing homes.

Accordingly, American Oversight respectfully requests a fee waiver.

To the extent your agency anticipates charging any fees in connection with this request for records, American Oversight requests that you inform us in advance of doing so.

### **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.
- 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.

### **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 Daniel McGrath at [records@americanoversight.org](mailto:records@americanoversight.org) or (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,

/s/ Daniel McGrath  
Daniel McGrath  
on behalf of  
American Oversight