



November 9, 2021

VIA EMAIL

Public Records Officer
Nebraska Department of Health and Human Services
Public Records Office
301 Centennial Mall South
Lincoln, NE 68509
DHHS.PublicRecords@nebraska.gov

Re: Public Records Statute Request

Dear Record Custodian:

Pursuant to the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 et seq., American Oversight makes the following request for records.

In August 2021, the state of Nebraska sent households postcards advertising nursing jobs.¹ The postcards prominently featured text noting that COVID-19 vaccinations were not required of prospective applicants.² An online posting for a nursing position at a veteran's facility in Bellevue, Nebraska also advertised that COVID-19 vaccinations were not required for employment.³ In response, State Senator Carol Blood wrote to Gov. Pete Ricketts and Nebraska Department of Veterans' Affairs Director John Hilgert expressing concern about the lack of vaccination requirement given the rapidly spreading Delta variant, and the VA's requirement that all medical personnel be vaccinated against COVID-19.⁴

American Oversight seeks records with the potential to shed light on Nebraska's recruitment of nurses in response to the COVID-19 pandemic.

Requested Records

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

¹ Andrea Salcedo, *Some Nebraskans Outraged at State's Recruiting Ad for Unvaccinated Nurses: 'It Feels Insulting to the Profession,'* Wash. Post (August 25, 2021, 7:50 AM), <https://www.washingtonpost.com/nation/2021/08/25/nebraska-nurses-no-covid-vaccination/>

² *Id.*

³ *Id.*

⁴ Gina Dvorak, *State Senator Calls Out Nebraska's Apparent Recruitment of Unvaccinated Healthcare Workers,* WOWT (August 23, 2021, 7:55 PM), <https://www.wowt.com/2021/08/23/state-senator-calls-out-nebraska-recruitment-unvaccinated-healthcare-workers/>



All email communications (including complete email chains and email attachments) sent by officials in the Nebraska Department of Health and Human Services listed below regarding a postcard recruiting unvaccinated nurses. American Oversight believes that records containing the terms listed below are likely to be responsive records, and requests that your office, at a minimum, employ these search terms to identify responsive records:

Nebraska State Health Officials:

- a. Nebraska Department of Health and Human Services Chief Executive Officer Dannette Smith, or anyone communicating on her behalf, such as a scheduler or assistant
- b. Nebraska Department of Health and Human Services Chief Operating Officer Larry Kahl, or anyone communicating on his behalf, such as a scheduler or assistant
- c. Chief Medical Officer and Director of Public Health Gary J. Anthone, or anyone communicating on his behalf, such as a scheduler or assistant

Key Terms:

- i. Postcard
- ii. Bellevue
- iii. "Talent acquisition"
- iv. "Carol Blood"
- v. "Sen. Blood"
- vi. "health care choice"
- vii. "healthcare choice"

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both DHHS CEO Dannette Smith's response to an email containing the term "postcard" and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from July 23, 2021 to September 1, 2021.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fee. Pursuant to Neb. Rev. Stat. § 84-712(3)(b), we further request that any fees are limited to the actual costs and exclude fees for search time in excess of four hours.

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.⁵ 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.

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

⁵ Neb. Rev. Stat. § 84-712.06.

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.⁶

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 Emma Lewis at records@americanoversight.org or 202.919.6303.

Sincerely,

/s/ Emma Lewis
Emma Lewis
on behalf of
American Oversight

⁶ American Oversight currently has approximately 15,600 page likes on Facebook and 108,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 28, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 28, 2021).