

March 28, 2022

VIA EMAIL

Rebecca S. Askew
Virginia Department of Education
Policy Office
P.O. Box 2120
Richmond, VA 23218-2120
foia@doe.virginia.gov

Re: Virginia Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Virginia Freedom of Information Act, Va. Code Ann. § 2.2-3700, I, Karl Frisch, a resident of Virginia, make the following request for records.

Requested Records

I request that your office produce the following records within five working days:

1. All records reflecting any review of policies promoting “inherently divisive concepts” conducted by the Department of Education pursuant to Executive Order #1.¹ Such records may include reports, memoranda, or other documents reflecting review of such policies conducted pursuant to the order.
2. Records sufficient to identify any policies that were ended or altered by your department pursuant to Executive Order #1.²
3. All records reflecting any review conducted by your department pursuant to Executive Order #1 of guidelines, websites, best practices, and other materials produced by the Department of Education identified as “promot[ing] or endors[ing] divisive or inherently racist concepts.”³ Such records may include

¹ See *Ending the Use of Inherently Divisive Concepts, Including Critical Race Theory, and Restoring Excellence in K-12 Public Education in the Commonwealth*, Jan. 15, 2022 (“Executive Order #1”), <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/74---eo/74---eo/EO-1---ENDING-THE-USE-OF-INHERENTLY-DIVISIVE-CONCEPTS,-INCLUDING-CRITICAL-RACE-THEORY,-AND-RESTORING-EXCELLEN.pdf> (“The Superintendent of Public Instruction shall review all policies within the Department of Education to identify those that promote inherently divisive concepts. Such policies shall be ended.”).

² See *id.*

³ See *id.* (“The Superintendent of Public Instruction shall immediately review all guidelines, websites, best practices, and other materials produced by the Department of

reports, memoranda, or other documents reflecting review of such materials conducted pursuant to the order.

4. Records sufficient to identify any changes made to guidelines, websites, best practices, and other materials produced by the Department of Education identified as “promot[ing] or endors[ing] divisive or inherently racist concepts,” pursuant to Executive Order #1.⁴
5. All records reflecting any review of the Commonwealth of Virginia’s public education curriculum for “inherently divisive concepts” conducted by the Department of Education pursuant to Executive Order #1.⁵ Such records may include reports, memoranda, or other documents reflecting review of the public education curriculum conducted pursuant to the order.
6. Records sufficient to identify any changes made by your department to the Commonwealth of Virginia’s public education curriculum to remove “inherently divisive concepts” pursuant to Executive Order #1.⁶

For all parts of this request, please provide all responsive records created or in effect from January 15, 2022, through the date the search is conducted.

Please notify me 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, I provide 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

Education to identify those that promote or endorse divisive or inherently racist concepts. Such shall be removed.”).

⁴ *See id.*

⁵ *See id.* (“The Superintendent of Public Instruction shall review all changes made to the Commonwealth of Virginia’s public education curriculum within the last 48 months to identify inherently divisive concepts, including concepts or ideas related to Critical Race Theory, and initiate, through the regular curriculum re-evaluation process, changes that will replace them with concepts and lessons that ensure all Virginia students are taught to respect all individuals regardless of their race, sex, or faith.”).

⁶ *See id.*

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. I 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.
- My 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 this request, this 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.

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 me, please do not hesitate to reach out to my representative at the contact information listed below to discuss this request. We welcome an opportunity to discuss this request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we 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 to the address listed below. 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, please also provide responsive material on a rolling basis.

Conclusion

We share a common mission to promote transparency in government. I look forward to working with your agency on this request. If you do not understand any part of this request, please contact Rachel Baron at records@americanoversight.org or 202.897.2465.

Sincerely,

/s/ Karl Frisch
Karl Frisch