



July 9, 2018

VIA ELECTRONIC MAIL

Stuart Cherry
Deputy Legal Counsel
and Public Information Act Representative
Office of the Governor
State House
100 State Circle
Annapolis, MD 21401
stu.cherry@maryland.gov

Re: Public Information Act Request

Dear Mr. Cherry:

Pursuant to the Maryland Public Information Act (“MPIA”), codified at Title 4 of the General Provisions Article, American Oversight makes the following request for records.

On October 1, 2017, Stephen Paddock opened fire on a concert in Las Vegas killing fifty-eight people and injuring more than five hundred.¹ Since the tragedy there has been significant national debate regarding whether and to what extent gun laws need to be changed as well as what private interests are directing and influencing any policy change.² On November 5, Devin Patrick Kelley killed twenty-six people worshipping at a Baptist church in Sutherland Springs.³ On November 14, a man killed at least four at a California elementary school and other locations around Rancho

¹ The New York Times, *Multiple Weapons Found in Las Vegas Gunman’s Hotel Room*, N.Y. TIMES, Oct. 2, 2017, <https://www.nytimes.com/2017/10/02/us/las-vegas-shooting.html>.

² See Daniella Diaz, *A Month After Las Vegas Shooting, There’s Still No Bump Stock Regulation*, CNN (Nov. 2, 2017, 6:11 AM), <http://www.cnn.com/2017/11/01/politics/bump-stock-gun-debate-congress/index.html>; Sari Horowitz, *After Las Vegas, Gun-Control Group Seizing Moment to Push for Tighter Regulations*, WASH. POST, Oct. 17, 2017, https://www.washingtonpost.com/world/national-security/after-las-vegas-gun-control-group-seizing-moment-to-push-for-tighter-regulations/2017/10/16/ee4a5472-b291-11e7-a908-a3470754bbb9_story.html?utm_term=.7eb75dbb37d2; Anthony Zurcher, *Las Vegas Shooting: Five Reasons U.S. Gun Control Won’t Happen*, BBC, Oct. 4, 2017, <http://www.bbc.com/news/world-us-canada-41489552>; Jen Kirby, *National Die-In Day: Teens Renew Gun Control Push After Santa Fe Shooting*, VOX (May 24, 2018, 12:00 PM), <https://www.vox.com/2018/5/24/17386792/national-die-in-day-parkland-santa-fe-gun-control-pulse-orlando>.

³ David Montgomery et al., *Gunman Kills at Least 26 in Attack on Rural Texas Church*, N.Y. TIMES, Nov. 5, 2017, <https://www.nytimes.com/2017/11/05/us/church-shooting-texas.html>.



Tehama, leaving at least ten additional people injured.⁴ On February 14, 2018, a nineteen-year-old killed seventeen after entering a Parkland, Florida, high school with a semiautomatic rifle.⁵ On May 18, Texas again experienced a mass shooting when a student opened fire on his high school, killing ten people and wounding ten others.⁶ On June 28, a gunman entered the offices of Annapolis's *Capital Gazette* and killed five of the newspaper's staff.⁷ American Oversight submits this request to shed light on whether and to what extent certain interests are trying to influence the steps the Office of the Governor takes to address gun violence in the wake of the recent tragedies.

Requested Records

American Oversight requests that the Office of the Governor produce the following records as soon as reasonably possible upon approval, and in no more than thirty days of receipt of this request⁸:

All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) between the Office of the Governor and any of the following persons or organizations:

- a) Gun Owners of America (@gunowners.org);
- b) Erich Pratt;
- c) Larry Pratt;
- d) Tim Macy;
- e) Michael Hammond;
- f) The National Rifle Association (the "NRA") (@nrahq.org or @nra.org);
- g) Oliver North;
- h) Wayne LaPierre;
- i) John Commerford;
- j) Shannon Alford;

⁴ Stella Chan et al., *4 Dead After California Shootings; Gunman Tried to Enter School*, CNN (Nov. 15, 2017, 12:37 AM), <http://www.cnn.com/2017/11/14/us/california-tehama-county-shootings/index.html>.

⁵ Audra D.S. Burch & Patricia Mazzei, *Death Toll Is at 17 and Could Rise in Shooting*, N.Y. TIMES, Feb. 14, 2018, <https://www.nytimes.com/2018/02/14/us/parkland-school-shooting.html>.

⁶ Manny Fernandez et al., *10 Dead in Santa Fe Texas, School Shooting; Suspect Used Shotgun and Revolver*, N.Y. TIMES, May 18, 2018, <https://www.nytimes.com/2018/05/18/us/school-shooting-santa-fe-texas.html>.

⁷ Sabrina Tavernise et al., *5 People Dead in Shooting at Maryland's Capital Gazette Newsroom*, N.Y. TIMES, July 28, 2018, <https://www.nytimes.com/2018/06/28/us/capital-gazette-annapolis-shooting.html>; Kevin Rector & Nicholas Bogel-Burroughs, *Five Dead in 'Targeted Attack' at Capital Gazette Newspaper in Annapolis, Police Say; Laurel Man Charged with Murder*, THE BALTIMORE SUN, June 29, 2018, <http://www.baltimoresun.com/news/maryland/crime/bs-md-gazette-shooting-20180628-story.html>.

⁸ Md. Gen. Provis. § 4-203(b)(1).

- k) The National Rifle Association Institute for Legislative Action (“NRA-ILA”) (@nraila.org);
- l) Chris Cox;
- m) J. William Pitcher;
- n) Julia Pitcher Worcester;
- o) The Second Amendment Foundation (@saf.org);
- p) Joseph Tartaro;
- q) Alan M. Gottlieb;
- r) Maryland State Rifle and Pistol Association (mrspa.org);
- s) Michael Doherty;
- t) National Shooting Sports Foundation (nssf.org);
- u) John Pica;
- v) Mt. Washington Rod & Gun Club (mtwashingtonrg.org); or
- w) John Josselyn.

Please provide all responsive records from October 1, 2017, through the date the search is conducted.

In addition, American Oversight requests that the Office of the Governor produce a copy of all regulations it has adopted that implement the Public Information Act, including but not limited to those “govern[ing] timely production and inspection of a public record.”⁹

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term “record” in its 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that the Office of the Governor use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Pursuant to the MPIA, American Oversight is entitled to a prompt grant or denial of its request, to be issued no more than thirty days after receipt of the request.¹⁰ Failure to provide a timely response will be considered a denial, and American Oversight will seek appropriate judicial relief

⁹ See Md. Gen. Provis. § 4-201(b).

¹⁰ Md. Gen. Provis. § 4-203(a).

in that event.¹¹ **You should institute a preservation hold on information responsive to this request.** American Oversight intends to pursue all legal avenues to enforce its right of access under the MPIA, including litigation if necessary. Accordingly, the Office of the Governor is on notice that litigation is reasonably foreseeable.

If all or any part of this request is denied, American Oversight requests that you provide, with the denial itself or within ten business days following the denial, a written statement of the grounds for each denial, including citation to the law(s) or regulation(s) supporting your decision, and the available remedies for review of a denial.¹² 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.¹³ If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹⁴ If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.¹⁵

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 the Office of the Governor can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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.

Fee Waiver Request

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest,”¹⁶ given the public benefit in making available information likely to contribute significantly to public understanding of operations or activities of the government.¹⁷ Gun

¹¹ See Md. Gen. Provis. § 4-203(b)(3) (failure to produce the record or provide written notice within ten business days of the amount of time needed to comply with the request and reason for the delay); § 4-362(a)(1) (allowing for filing of complaint with the circuit court upon denial of a Public Records Act request).

¹² Md. Gen. Provis. § 4-203(c)(1).

¹³ See *Blythe v. State*, 161 Md. App. 492, 519, cert. granted, 388 Md. 97 (2005); see also Md. Gen. Provis. § 4-203(c)(1)(ii).

¹⁴ Md. Gen. Provis. § 4-203(c)(1)(ii).

¹⁵ Md. Gen. Provis. § 4-203(c)(1)(i)(2).

¹⁶ See *id.*

¹⁷ See *Mayor of Baltimore v. Burke*, 67 Md. App. 147, 156-57, 506 A.2d 683, 688 (1985), cert. denied, 300 Md. 118, 507 A.2d 631 (1986) (recognizing public benefit of dissemination of

violence is a significant public-health concern in the United States. The June 28 shooting at the *Capital Gazette* is the most recent in an epidemic of high-profile massacres involving firearms.¹⁸ The federal government has been involved in the response to three such massacres in the last two months, and President Trump himself has commented on the massacres and the number of gun deaths in certain American cities.¹⁹ The requested records will help American Oversight and the general public understand whether and to what extent the Office of the Governor is acting to prevent gun deaths and/or to reform or monitor who has access to firearms. The debate around the scope of the Second Amendment and the extent of gun control in America is of significant public interest.²⁰ American Oversight is committed to transparency and makes the responses agencies provide in response to its public-records requests publicly available. As noted, the subject of this request is a matter of public interest, 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 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

information concerning government operations, and noting similarity of federal Freedom of Information Act fee provision, rendering interpretations of that provision "persuasive" in interpretation of Maryland Public Information Act ("MPIA")); 81 Op. Att'y Gen. 154, 157-58 (1996) (citing cases interpreting the federal Freedom of Information Act (FOIA) fee waiver provision in discussion of MPIA fee waiver provision and recognizing a public interest in, *inter alia*, "an agency's performance of its public duties").

¹⁸ See *supra* notes 1-7.

¹⁹ See Peter Baker, *Trump Says Issue Is Mental Health, Not Gun Control*, N.Y. TIMES, Nov. 6, 2016, <https://www.nytimes.com/2017/11/06/us/politics/trump-guns-mental-health.html>; Stella Chan et al., *supra* note 4; David Montgomery et al., *supra* note 3; The New York Times, *supra* note 1; Rick Pearson, *Trump Again Assails Chicago Gun Violence in Speech to Congress*, CHI. TRIBUNE (Mar. 1, 2017, 5:30 AM), <http://www.chicagotribune.com/news/local/politics/ct-donald-trump-congress-speech-chicago-met-20170228-story.html>; Abigail Tracy, *Trump Tweets Condolences for Wrong Mass Shooting*, VANITY FAIR (Nov. 15, 2017, 9:57 AM), <https://www.vanityfair.com/news/2017/11/trump-tweets-condolences-for-wrong-mass-shooting>;

²⁰ See Justin Bank, *Right and Left React to the Las Vegas Shooting and the Gun Control Debate*, N.Y. TIMES, Oct. 3, 2017, <https://www.nytimes.com/2017/10/03/us/politics/right-and-left-las-vegas-shooting-gun-control-debate.html>; Lisa Respers France, *Gun Control Debate Enters Country Music Community: 'Is This the Kind of World We Want to Live In?'*, CNN (Oct. 4, 2017, 6:40 PM), <http://www.cnn.com/2017/10/04/entertainment/country-music-guns/index.html>; Amber Phillips, *After Las Vegas, Democrats Are Jumping Straight into the Gun-Control Debate*, WASH. POST., Oct. 2, 2017, https://www.washingtonpost.com/news/the-fix/wp/2017/10/02/after-las-vegas-democrats-are-jumping-straight-into-the-gun-control-debate/?utm_term=.e1d1d1452a98.

other media.²¹ 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.²² American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,²³ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.²⁴ As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²⁵

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with the Office of the Governor on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Cerissa Cafasso at foia@americanoversight.org or 202.869.5244.

Sincerely,



Austin R. Evers
Executive Director
American Oversight

²¹ *See Mayor of Baltimore*, 67 Md. App. at 156 (noting that the analogous fee waiver provision in the federal Freedom of Information Act (FOIA) "has been liberally construed in favor of the media or other requesters who will provide broad public dissemination of the information sought.").

²² American Oversight currently has approximately 11,900 page likes on Facebook, and 43,900 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 9, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 9, 2018).

²³ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

²⁴ *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>.

²⁵ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.