



August 9, 2019

VIA EMAIL

Michael Marquis
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue SW
Washington, DC 20201
FOIARequest@hhs.gov

Re: Freedom of Information Act Request

Dear Mr. Marquis:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Health and Human Services (HHS), 45 C.F.R. Part 5, American Oversight makes the following request for records.

The Surgeon General, Jerome Adams, serves as the “Nation’s doctor.”¹ In this role, Surgeon General Adams is responsible for “providing Americans with the best scientific information available on how to improve their health and reduce the risk of illness and injury.”² He is also charged with overseeing the U.S. Public Health Service Commissioned Corps, the mission of which is “to protect, promote, and advance the health of our nation.”³

American Oversight seeks records with the potential to shed light on whether and to what extent external forces are influencing this work.

Requested Records

American Oversight requests that HHS produce the following records within twenty business days:

1. All email communications (including email messages, complete email chains, email attachments, and calendar invitations) sent by Surgeon General Adams, or anyone communicating on behalf of the Surgeon General, such as an executive or special assistant, or scheduler, to any of the following:

¹ *Office of the Surgeon General (OSG)*, U.S. DEP’T OF HEALTH & HUMAN SERVS., <https://www.hhs.gov/surgeongeneral/index.html>.

² *Id.*

³ *Id.*



- i. Employees or representatives of the American College of Pediatricians and its affiliates, including Dr. Michelle Cretella, Dr. Quentin L. Van Meter, Mark Chuff, and anyone with an email address ending in @acpeds.org;
- ii. Employees or representatives of the Association of American Physicians and Surgeons and its affiliates, including Dr. Albert L. Fisher, Dr. Jane Orient, and anyone with an email address ending in @aapsonline.org;
- iii. Employees or representatives of the Catholic Medical Association and its affiliates, including Dr. John A. Schirger, Dr. R. Steven White, and anyone with an email address ending in @cathmed.org;
- iv. Employees or representatives of the Alliance for Therapeutic Choice and Scientific Integrity and its affiliates, including Dr. Keith Vennum, Dr. Shirley Cox, David Clarke Pruden, and anyone with an email address ending in @therapeuticchoice.com;
- v. Employees or representatives of Focus on the Family and its affiliates, including Jim Daly and anyone with an email address ending in @focusonthefamily.com;
- vi. Employees or representatives of the Family Policy Alliance and its affiliates, including Paul Weber, Tim Goeglein, and anyone with an email address ending in @familypolicyalliance.com;
- vii. Employees or representatives of the Family Research Council and its affiliates, including Tony Perkins, Lt. Gen. (Ret.) William G. (Jerry) Boykin, Travis Weber, and anyone with an email address ending in @frc.org or @frcaction.org;
- viii. Employees or representatives of the American Family Association and its affiliates, including Tim Wildmon, Wesley Wildmon, and anyone with an email address ending in @afa.net;
- ix. Employees or representatives of Liberty University and its affiliates, including Jerry Falwell Jr. and anyone with an email address ending in @liberty.edu;
- x. Employees or representatives of the Becket Fund for Religious Liberty and its affiliates, including William P. Mumma, Montse Alvarado, Mark Rienzi, Amy Vitale, Megan Donley, and anyone with an email address ending in @becketlaw.org;

- xi. Employees or representatives of Concerned Women for America and its affiliates, including Penny Young Nance, Kenda Bartlett, Doreen Denny, Jaime Ballew, and anyone with an email address ending in @CFWA.org;
- xii. Employees or representatives of Alliance Defending Freedom and its affiliates, including Michael P. Farris, Alan Sears, and anyone communicating with an email address ending in @adflegal.org;
- xiii. Employees or representatives of Susan B. Anthony List and its affiliates, including Marjorie Dannenfelser, Emily Buchanan, Marilyn Musgrave, and anyone communicating with an email address ending in @sba-list.org;
- xiv. Employees or representatives of the Charlotte Lozier Institute and its affiliates, including Charles (Chuck) Donovan, David Prentice, Genevieve Plaster, and anyone communicating with an email address ending in @lozierinstitute.org;
- xv. Employees or representatives of March for Life and its affiliates, including Jeanne Mancini, Tom McClusky, and anyone communicating with an email address ending in @marchforlife.org;
- xvi. Employees or representatives of U.S. Conference of Catholic Bishops and its affiliates, including Cardinal Daniel N. DiNardo, Archbishop José H. Gomez, and anyone communicating with an email address ending in @usccb.org;
- xvii. Employees or representatives of National Right to Life and its affiliates, including Carol Tobias and anyone communicating with an email address ending in @nrlc.org;
- xviii. Employees or representatives of the Heritage Foundation and its affiliates, including Kay Coles James, David Azerrad, Tommy Binion, Marie Fishpaw, Emilie Kao, Tim Chapman, Jessica Anderson, Garrett Bess, Wesley Coopersmith, and anyone communicating with an email address ending in @heritage.org or @heritageaction.com;
- xix. Employees or representatives of Americans United for Life and its affiliates, including Catherine Glenn Foster, Katie Glenn, and anyone communicating with an email address ending in @aul.org;
- xx. Employees or representatives of James Dobson Family Institute and its affiliates, including James Dobson and anyone communicating with an email address ending in @dobsonfamilyinstitute.com;

- xxi. Employees or representatives of First Liberty Institute and its affiliates, including anyone communicating with an email address ending in @firstliberty.org; or
- xxii. Employees or representatives of Patrick Henry College and its affiliates, including anyone communicating with an email address ending in @phc.edu.

In an effort to accommodate HHS and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by Surgeon General Adams. To be clear, American Oversight still requests that complete email chains be produced, displaying both the responsive sent messages and the prior received messages in each email chain. This means, for example, that both Surgeon General Adams' response to an email from one of the individuals above and the initial received message are responsive to this request.

Please provide all responsive records from August 4, 2017, through the date of the search.

2. All records reflecting the attendees to and content of meetings (e.g., meeting agendas, attendee lists, notes from meetings, and handwritten or electronic summaries) held or attended by (a) Surgeon General Adams and (b) any of the following:

- i. Employees or representatives of the American College of Pediatricians and its affiliates, including Dr. Michelle Cretella, Dr. Quentin L. Van Meter, and Mark Chuff;
- ii. Employees or representatives of the Association of American Physicians and Surgeons and its affiliates, including Dr. Albert L. Fisher and Dr. Jane Orient;
- iii. Employees or representatives of the Catholic Medical Association and its affiliates, including Dr. John A. Schirger and Dr. R. Steven White;
- iv. Employees or representatives of the Alliance for Therapeutic Choice and Scientific Integrity and its affiliates, including Dr. Keith Vennum, Dr. Shirley Cox, and David Clarke Pruden;
- v. Employees or representatives of Focus on the Family and its affiliates, including Jim Daly;
- vi. Employees or representatives of the Family Policy Alliance and its affiliates, including Paul Weber and Tim Goeglein;

- vii. Employees or representatives of the Family Research Council and its affiliates, including Tony Perkins, Lt. Gen. (Ret.) William G. Boykin, and Travis Weber;
- viii. Employees or representatives of the American Family Association and its affiliates, including Tim Wildmon and Wesley Wildmon;
- ix. Employees or representatives of Liberty University and its affiliates, including Jerry Falwell Jr.;
- x. Employees or representatives of the Becket Fund for Religious Liberty and its affiliates, including William P. Mumma, Montse Alvarado, Mark Rienzi, Amy Vitale, and Megan Donley;
- xi. Employees or representatives of Concerned Women for America and its affiliates, including Penny Young Nance, Kenda Bartlett, Doreen Denny, and Jaime Ballew;
- xii. Employees or representatives of Alliance Defending Freedom and its affiliates, including Michael P. Farris and Alan Sears;
- xiii. Employees or representatives of Susan B. Anthony List and its affiliates, including Marjorie Dannenfelser, Emily Buchanan, and Marilyn Musgrave;
- xiv. Employees or representatives of the Charlotte Lozier Institute and its affiliates, including Charles (Chuck) Donovan, David Prentice, and Genevieve Plaster;
- xv. Employees or representatives of March for Life and its affiliates, including Jeanne Mancini and Tom McClusky;
- xvi. Employees or representatives of U.S. Conference of Catholic Bishops and its affiliates, including Cardinal Daniel N. DiNardo and Archbishop José H. Gomez;
- xvii. Employees or representatives of National Right to Life and its affiliates, including Carol Tobias;
- xviii. Employees or representatives of the Heritage Foundation and its affiliates, including Kay Coles James, David Azerrad, Tommy Binion, Marie Fishpaw, Emilie Kao, Tim Chapman, Jessica Anderson, Garrett Bess, and Wesley Coopersmith;
- xix. Employees or representatives of Americans United for Life and its affiliates, including Catherine Glenn Foster and Katie Glenn;

- xx. Employees or representatives of James Dobson Family Institute and its affiliates, including James Dobson;
- xxi. Employees or representatives of First Liberty Institute and its affiliates; or
- xxii. Employees or representatives of Patrick Henry College and its affiliates.

Please provide all responsive records from August 4, 2017, through the date of the search.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.”⁴ The public has a significant interest in whether and the extent to which outside organizations are attempting to influence the Surgeon General. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the activities and decision-making of the “Nation’s doctor.” American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, 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.⁵ 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 other media. American Oversight also makes

⁴ 45 C.F.R. § 5.54(a); *see id.* at § 5.54(b)(1), (2)(i)–(ii).

⁵ *Id.* at § 5.54(a); *see id.* at § 5.54(b)(3)(i)–(ii).

materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁸ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁹ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁰ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹¹ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹²

⁶ American Oversight currently has approximately 12,250 page likes on Facebook and 54,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 5, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 5, 2019).

⁷ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁸ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *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>.

⁹ *See generally Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁰ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹¹ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹² *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

Accordingly, American Oversight qualifies for a fee waiver.

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.
- 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 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 Federal Records Act and FOIA.¹³ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁴
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

¹⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

requirements to manage agency information electronically,¹⁵ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- 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

¹⁵ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

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 Christine H. Monahan at foia@americanoversight.org or (202) 788-0606. 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,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight