



April 6, 2020

VIA U.S. MAIL, RETURN RECEIPT REQUESTED

Custodian of Records
Office of the Governor
700 Capital Avenue, Suite 100
Frankfort, Kentucky 40601

Custodian of Records
Kentucky Department for Libraries and Archives
P.O. Box 537
Frankfort, Kentucky 40602

Re: Open Records Act Request

Dear Custodian of Records:

Pursuant to the Kentucky Open Records Act (KORA), KRS § 61.870 et seq., American Oversight makes the following request for records.

We understand that your office's capacity may be impacted by the COVID-19 outbreak and response efforts. Should that be the case, we would be happy to discuss potential streamlining or narrowing of our request, reasonable delays in processing this request, or other accommodations. Please feel free to contact us at the telephone number listed in the final paragraph of this letter; we look forward to working with you.

Requested Records

American Oversight requests that the Office of the Governor produce copies of the following records:¹

All communications (including emails, email attachments, calendar invitations, text messages, and phone logs) between (a) the former officials or employees of the Commonwealth of Kentucky listed in Column A and (b) the current or former employees of the federal Department of Commerce listed in Column B, including but not limited to the specified email addresses.

¹ Based on information provided on the Governor's website, American Oversight believes the requested records may be housed with the State Archives. Out of an abundance of caution, this request is being submitted to both the Governor's Office and to the State Archives.



Column A: Former Kentucky Officials or Employees	Column B: Federal Department of Commerce Officials or Employees
<ul style="list-style-type: none"> i. Former Governor, Matt Bevin ii. Former Chief of Staff, Blake Brickman iii. Former External Events Manager, Kathryn Snavely iv. Former Communications Director, Jessica Ditto v. Former Communications Director, Elizabeth Kuhn vi. Former General Counsel, Matt Kuhn vii. Former Press Secretary, Nicole Burton viii. Former Executive Assistant, Ellie Paine 	<ul style="list-style-type: none"> 1. Secretary Wilbur Ross 2. Former Chief of Staff, Wendy Teramoto (wteramoto@doc.gov) 3. Chief of Staff, Michael Walsh, Jr. (mwalsh@doc.gov) 4. Deputy Secretary, Karen Dunn Kelley (kkelley@doc.gov) 5. General Counsel, Peter Davidson (pdavidson@doc.gov) 6. Former Assistant Secretary for Legislative and Governmental Affairs, Michael Platt Jr. (mplatt@doc.gov) 7. Former Senior Counselor and Advisor, James Uthmeier (juthmeier@doc.gov) 8. Director of Policy and Strategic Planning, Earl Comstock (ecomstock@doc.gov) 9. Former Deputy Chief of Staff, Israel Hernandez (ihernandez@doc.gov) 10. Former White House Advisor, Eric Branstad (ebanstad@doc.gov) 11. Former Deputy Director of the Office of White House Liaison, Kevin Quinley (kquinley@doc.gov) 12. Former Senior Policy Advisor, Sahra Park-Su (spark-su@doc.gov) 13. Associate Director, Office of the Executive Secretariat, William Clark Barrow

Please provide all responsive records from January 20, 2017, through December 9, 2019.

Pursuant to KRS § 61.880(1), American Oversight requests that you notify us within three workdays as to whether you will comply with this request.

Statement of Noncommercial Purpose

This request is primarily and fundamentally for non-commercial purposes. American Oversight seeks the records requested to inform the public whether and to what extent

Kentucky's policymaking is being influenced by outside political actors. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether narrow industry interests play any role in shaping public policy.² Release of the requested records may help the public to better understand the operations and activities of former Governor Bevin and his staff, including the degree to which they sought to garner favor with the federal administration.

Furthermore, 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 materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.³

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.⁴ 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;⁵ 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;⁶ posting

² Timothy Aepfel, *How a Small Aluminum Maker Won U.S. Trade Protection*, REUTERS (Oct 18, 2019, 6:10 AM), <https://www.reuters.com/article/us-usa-trade-china-aluminum-focus/how-a-small-aluminum-maker-won-u-s-trade-protection-idUSKBN1WX156>.

³ American Oversight currently has approximately 16,100 followers on Facebook and 102,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited March 18, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited March 18, 2020).

⁴ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁵ *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>.

⁶ 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,

records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁷ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁸ 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.⁹

Accordingly, this request is for noncommercial purposes, and pursuant to KRS § 61.874(3), American Oversight asks that any fees charged in connection with processing this request for records not exceed the actual cost of reproduction.

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, and pursuant to the definition of "public record" in KRS 61.870(2), to include "all books, papers, maps, photographs, cards, tapes, discs, diskettes, recordings, software, or other documentation regardless of physical form or characteristics, which are prepared, owned, used, in the possession of or retained by a public agency."
- 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

<https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁷ *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>.

⁸ *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>.

⁹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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 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 the requested records are maintained in electronic format, 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 Khahilia Shaw at foia@americanoversight.org or

(202) 539-6507. 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