



April 27, 2020

**VIA ELECTRONIC MAIL**

Lauren Downey  
Public Information Coordinator  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548  
[publicrecords@texasattorneygeneral.gov](mailto:publicrecords@texasattorneygeneral.gov)

**Re: Public Information Request**

Dear Public Information Officer:

Pursuant to the Texas Public Information Act, as codified at Tex. Code ch. 552, American Oversight makes the following request for public records.

**Requested Records**

American Oversight requests that the Texas Office of the Attorney General promptly produce the following:

All electronic communications (including emails, complete email chains, email attachments, text messages, calendar invitations/entries, or calendar invitation attachments) sent by any of the individuals listed below containing any of the key terms listed below.

**Attorney General's Office Individuals**

- a. Attorney General Ken Paxton, or anyone communicating on his behalf, such as a scheduler or assistant
- b. First Assistant Attorney General Jeffrey C. Mateer
- c. Special Counsel to the First Assistant Attorney General David Hacker
- d. Chief of Staff Katherine Cary
- e. Solicitor General Kyle Hawkins
- f. Senior Legislative Advisor Ben Williams
- g. Senior Counsel to the Attorney General Zina Bash
- h. Deputy Attorney General Ryan Vassar
- i. Assistant Attorney General Tom Albright
- j. Scheduler Elise Karstens

**Key Terms**

- a. Coronavirus
- b. Corona



- c. Virus
- d. Viral
- e. Disease
- f. Pandemic
- g. Epidemic
- h. Outbreak
- i. Containment
- j. "Public health"
- k. "COVID-19"
- l. "COVID 19"
- m. COVID19
- n. China
- o. Wuhan
- p. Hoax
- q. "vote by mail"
- r. "vote-by-mail"
- s. VBM
- t. "mail ballot"
- u. "mail ballots"
- v. Absentee
- w. Sulak
- x. "mail-in"
- y. "mail in"
- z. Disability
- aa. "voter fraud"
- bb. "election fraud"
- cc. 82.002
- dd. 84.0041
- ee. 276.013

Please provide all responsive records from March 15, 2020, through the date the search is conducted.

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 individuals. 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 a listed individual's response to an email containing a listed key term and the initial received message are responsive to this request and should be produced.

American Oversight insists that your office 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; governmental authorities may not have**

**direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Please search all records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of a governmental authority's officer or employee constitutes a record for purposes of the Texas Public Information Act.<sup>1</sup>

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 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. If a request is denied in whole, please state specifically that 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 your office 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.

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 Attorney General 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**

In accordance with Tex. Code § 552.267(a), American Oversight requests a waiver of fees associated with processing this request for records because such a waiver “is in the public interest because providing the copy of the information primarily benefits the general public.” The requested records are directly related to the work of Texas public servants and possess the potential to shed light on the Texas Attorney General’s response to the global coronavirus pandemic. Whether Texans are permitted under state law to vote by mail during the pandemic is a matter of great

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<sup>1</sup> Tex. Code § 552.002(a-2); *see also Adkisson v. Paxton*, 459 S.W.3d 761, 773 (Tex. App. 2015).

public interest, and a question without a clear answer, as the Attorney General has signaled his intent to appeal a court decision allowing absentee voting for Texans who fear contracting the disease at the polls.<sup>2</sup>

Release of the requested records will primarily benefit the public.<sup>3</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the requested records is not in American Oversight's financial interest but is rather in the public interest. American Oversight is committed to transparency and makes the responses governmental authorities provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government's activities through American Oversight's analysis and publication of these records. 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.<sup>4</sup> 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 United States Department of Justice (DOJ) attorney,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> American Oversight similarly intends to engage with media outlets in Texas to ensure that the general public within the state has access to the information American Oversight obtains.

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<sup>2</sup> James Barragán, *Texas Voters Who Fear Catching the Coronavirus Can Vote by Mail, State Judge Rules*, DALLAS MORNING NEWS (Apr. 15, 2020, 4:05 PM, updated 7:13 PM), <https://www.dallasnews.com/news/public-health/2020/04/15/texas-ag-ken-paxton-fear-of-contracting-coronavirus-doesnt-qualify-voters-for-mail-ballots/>.

<sup>3</sup> Tex. Code § 552.267(a).

<sup>4</sup> American Oversight currently has approximately 15,480 followers on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 27, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 27, 2020).

<sup>5</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>6</sup> *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>.

<sup>7</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

Accordingly, American Oversight qualifies for a fee waiver. If the Office of the Attorney General denies a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

### **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with the Office of the Attorney General 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 Emma Lewis at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 919-6303. 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight