



June 18, 2020

**VIA EMAIL**

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Washington, DC 20472  
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Chief Privacy Officer/Chief FOIA Officer  
The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
Washington, DC 20528  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

**Re: Expedited Freedom of Information Act Request**

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.<sup>1</sup> Since late 2019, the virus has spread across the globe, sickened millions of people, and resulted in nearly 450,000 deaths.<sup>2</sup> Although the White House has downplayed the dangers of the pandemic<sup>3</sup> and state and local governments have begun to lift social distancing restrictions, it is far from clear that the United States currently has the pandemic under control.<sup>4</sup> And public health officials continue to warn of a potentially large spike of cases in the fall or winter.<sup>5</sup>

American Oversight seeks records with the potential to shed light on the federal government's continued management of this public health emergency.

<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (June 18, 2020, 8:03 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

<sup>3</sup> Betsy Klein, *Pence Tries to Declare Coronavirus Over as Trump Pushes Reopening and Campaigning*, CNN (June 17, 2020, 11:07 AM), <https://www.cnn.com/2020/06/16/politics/mike-pence-coronavirus-reopen-campaign/index.html>.

<sup>4</sup> *See, e.g.* Derek Hawkins, *As Coronavirus Infections Surge Nationwide, 21 States See Increase in Average Daily New Cases*, WASH. POST (June 13, 2020, 10:06 PM), <https://www.washingtonpost.com/nation/2020/06/13/coronavirus-live-updates-us/>; Audrey McNamara, *Fauci Says "We're Still in a First Wave" of Coronavirus Pandemic*, CBS NEWS (June 17, 2020, 2:45 PM), <https://www.cbsnews.com/news/coronavirus-first-wave-fauci/>.

<sup>5</sup> *See, e.g.* *Top Health Experts Paint Bleak Picture of Pandemic*, N.Y. TIMES, May 13, 2020, <https://www.nytimes.com/2020/05/12/us/coronavirus-live-news-updates.html>; Len Strazewski, *Harvard epidemiologist: Beware COVID-19's second wave this fall*, AMERICAN MEDICAL ASSOCIATION, May 8, 2020, <https://www.ama-assn.org/delivering-care/public-health/harvard-epidemiologist-beware-covid-19-s-second-wave-fall>.



## **Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that FEMA produce the following records as soon as practicable, and at least within twenty business days:<sup>6</sup>

1. Records sufficient to show protocols, policies, and processes for receiving and tracking requests from states, territories, and the District of Columbia for supplies needed to respond to the novel coronavirus outbreak, including, but not limited to, ventilators, diagnostic equipment, and personal protective equipment (PPE).

Please provide all responsive records from April 20, 2020, through the date of the search.

2. Records sufficient to show protocols, policies, and processes for distributing or directing the sale of supplies needed to respond to the novel coronavirus outbreak, including, but not limited to ventilators, diagnostic equipment, and personal protective equipment (PPE).

Please provide all responsive records from April 20, 2020, through the date of the search.

American Oversight believes your agency is in the best position to know the location of these records. At a minimum, a reasonable search would include the offices of Administrator Graynor, Rear Admiral John Polowczyk, officials leading FEMA's Supply Chain Task Force,<sup>7</sup> and officials serving on or as a liaison to the White House coronavirus task force.

3. Records sufficient to show distributions of personal protective equipment (PPE) from the Strategic National Stockpile (SNS).

To aid FEMA in identifying responsive records, public reporting indicates that a spreadsheet with this information has, at least at times, been titled "SNS PPE Distribution Report - Eaches."<sup>8</sup> American Oversight requests daily versions of this spreadsheet for each day from April 23, 2020 through the date of the search, if such records exist. To be clear, American Oversight requests versions of the spreadsheet with other titles as well if the naming convention has changed over time.

<sup>6</sup> In this request, American Oversight seeks records maintained by FEMA. Because it is our understanding that the Department of Homeland Security (DHS) is processing all coronavirus-related records on FEMA's behalf, we are submitting this request to DHS in addition to FEMA. However, we are sending to FEMA for awareness and because, in the event that FEMA regains responsibility for processing such requests, American Oversight expects that this request would then be referred to FEMA for any outstanding processing.

<sup>7</sup> *FEMA Supply Chain Task Force Leads Four-Pronged Approach to Securing Needed Supplies and Equipment in COVID-19 Fight*, FEMA, Apr. 7, 2020, <https://www.fema.gov/fema-supply-chain-task-force-leads-four>.

<sup>8</sup> See *SNS PPE Distribution Report - Eaches*, Apr. 6, 2020, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/SNS%20PPE%20REPORT.pdf>.

Additionally, if your agency created or used records other than the above-mentioned spreadsheet, to track distributions of personal protective equipment from the SNS, American Oversight is also requesting those records.

Please provide all responsive records from April 9, 2020, through the date of the search.

4. Records sufficient to show any and all distributions of equipment or supplies from the Strategic National Stockpile (SNS).

Please provide all responsive records from April 9, 2020, through the date of the search.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, 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 operations or activities of the government."<sup>9</sup> The public has a significant interest in the federal government's response to this national public health emergency.<sup>10</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including elucidating how FEMA is tracking and responding to states' requests for supplies needed to respond to the pandemic.<sup>11</sup> 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.

<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>10</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, *supra* note 1; *Downplaying Virus Risk, Trump Gets Back to Business as Usual*, THE ASSOCIATED PRESS, June 12, 2020, <https://www.nytimes.com/aponline/2020/06/12/us/politics/ap-us-virus-outbreak-white-house.html?searchResultPosition=1>.

<sup>11</sup> *See, e.g.*, Toluse Olorunnipa, et al., *Governors Plead for Medical Equipment From Federal Stockpile Plagued by Shortages and Confusion*, WASH. POST (Mar. 31, 2020, 3:39 PM), [https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html); *see also* Anita Kumar & Gavin Bade, *States Still Baffled Over How to Get Coronavirus Supplies from Trump*, POLITICO (Apr. 13, 2020, 7:02 AM), <https://www.politico.com/states/florida/story/2020/04/13/states-still-baffled-over-how-to-get-coronavirus-supplies-from-trump-1275083>; Nicholas Confessore, et al, *How Kushner's Volunteer Force Led a Fumbling Hunt for Medical Supplies*, N.Y. TIMES, May 10, 2020, <https://www.nytimes.com/2020/05/05/us/jared-kushner-fema-coronavirus.html?searchResultPosition=13>.

This request is primarily and fundamentally for non-commercial purposes.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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;<sup>15</sup> 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;<sup>16</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>17</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>18</sup> 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.<sup>19</sup>

<sup>12</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>13</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 103,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 18, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 18, 2020).

<sup>14</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>15</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>; *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>16</sup> 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>.

<sup>17</sup> *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>.

<sup>18</sup> *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>.

<sup>19</sup> *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.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and your agency's regulations, 6 C.F.R. Part 5.5(e), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.<sup>20</sup>

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request: clarifications of how DHS and FEMA have responded and continues to respond to the novel coronavirus pandemic, especially details of how the agencies are managing supply chain matters.<sup>21</sup>

First, American Oversight has requested records with the potential to shed light on the steps the administration has taken to respond to the novel coronavirus outbreak, which has resulted in a major public health emergency. Because the virus has already killed over a hundred thousand people in the United States<sup>22</sup> and is on the rise in over 20 states,<sup>23</sup> there is plainly an urgent need to inform the public about how DHS and FEMA have been and are continuing to respond to the virus. Widely-reported confusion amongst governors, congresspeople, and healthcare leaders about how to obtain needed supplies,<sup>24</sup> has not been clarified and policy and healthcare leaders remain concerned about their ability to obtain needed equipment. The widespread and exceptional media interest on coronavirus demonstrates that the public urgently needs information about the federal government's efforts and policies concerning the subject matter of this request.<sup>25</sup>

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about DHS and FEMA's decisions regarding coronavirus. American Oversight's request seeks information that can shed light on DHS and FEMA's policies for managing the nation's supplies needs. The public, including Congresspeople, state officials and healthcare providers, urgently needs the information to make decisions that

<sup>20</sup> 6 C.F.R. § 5.5(e)(ii).

<sup>21</sup> See Toluse, *supra* note 10; *Outbid and Left Hanging, U.S. States Scramble for Ventilators*, Reuters, Apr. 10, 2020, <https://www.nytimes.com/reuters/2020/04/10/us/10reuters-health-coronavirus-usa-ventilators.html?searchResultPosition=14>.

<sup>22</sup> Coronavirus Map: Tracking the Global Outbreak, N.Y. TIMES (June 18, 2020, 8:05 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>23</sup> See, e.g. *supra* note 3.

<sup>24</sup> See, e.g., Zolan, *supra* note 5; Toluse, *supra* note 10.

<sup>25</sup> Adam Taylor, et al., *Live updates: Trump Signals a Move Past Coronavirus with Rallies, Even as Cases Spike in Many States*, Wash. Post (June 17, 2020, 10:59 PM EST), [https://www.washingtonpost.com/coronavirus/?itid=sn\\_coronavirus\\_1](https://www.washingtonpost.com/coronavirus/?itid=sn_coronavirus_1); Anneken Tappe, et al., *Live Updates: US Stocks Slide as Covid-19 Cases Rise in Some Parts of the Country*, CNN (June 18, 2020, 9:52 AM) <https://www.cnn.com/world/live-news/coronavirus-pandemic-04-02-20-intl/index.html>.

promote public health and mitigate the spread of the disease, including responding to current spikes and potential outbreaks in the fall or winter.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>26</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>27</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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>28</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>29</sup>

Accordingly, American Oversight's request satisfies the criteria for expedition.

### **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.

<sup>26</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>27</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>28</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 14, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 14, 2020).

<sup>29</sup> See *generally News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *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>; *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>; *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>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- 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.<sup>30</sup> 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.<sup>31</sup>
- 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 requirements to manage agency information electronically,<sup>32</sup> 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

<sup>30</sup> 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).

<sup>31</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>32</sup> 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>.

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 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 Megan Field at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.2465. 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 line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight