



September 17, 2020

VIA ELECTRONIC MAIL

Agency Open Records Officer
Pennsylvania Department of State
306 North Office Building, 401 North Street
Harrisburg, PA 17120
RA-RTK-DOS@pa.gov

Re: Right-to-Know Law Request

Dear Open Records Officer,

Pursuant to the Right-to-Know Law (RTKL), as codified at 65 P.S. §§ 67.101 et seq., American Oversight makes the following request for records.

On June 2, 2020, Pennsylvania held its presidential primary in the midst of the public health emergency caused by the novel coronavirus pandemic as well as widespread protests in response to police killings of George Floyd, Breonna Taylor, and others.¹ The logistical difficulties of conducting elections during the pandemic prompted county election officials to consolidate polling places significantly—by as much as 90% in the case of Allegheny County²—raising questions about how the Department of State evaluated proposed consolidation and ensured that counties complied with mandates to give voters adequate notice and ensure polling place accessibility.

Requested Records

American Oversight requests that your office produce the following records within five business days:

Records sufficient to demonstrate the Pennsylvania Department of State's policies and procedures for evaluating proposed polling place consolidations under 25 Pa. Stat. § 3582 for the June 2, 2020 presidential primary as well as subsequent modifications relevant to the November 3, 2020 general election, whether formal or informal guidance documents, decision memoranda, directives, policies,

¹ Nick Corasanti, *What Pennsylvania's 'Dry Run' Election Could Reveal About November*, N.Y. Times, updated June 3, 2020,

<https://www.nytimes.com/2020/06/02/us/politics/pennsylvania-primary-election.html>.

² Atiya Irvin-Mitchell, *Allegheny County Is Wiping Out 90 Percent Of Its Polling Locations For COVID-19 Safety Concerns, But Is It Healthy For Democracy?*, Pittsburgh Current, May 26, 2020, <https://www.pittsburghcurrent.com/allegheny-county-polling-locations/>.



procedures, or policy interpretations, and whether or not attached to email or other communications. This should be interpreted to include, but not be limited to, guidance concerning:

- i. Criteria used to evaluate proposed consolidations;
- ii. Criteria used to reject consolidations, such as a maximum threshold of affected voters or disparate impact on low-income communities or communities of color;
- iii. Any auditing or other supervisory processes to ensure that consolidations are compliant with requirements for providing voters sufficient notice and ensuring that locations are accessible;
- iv. Other policies to ensure compliance with legal mandates under 25 Pa. Stat. § 3582.

Please provide all responsive records from March 27, 2020, to the date the search is performed.

Fee Waiver Request

In accordance with 65 P.S. § 67.1307(f) (2), American Oversight requests a waiver of fees associated with processing this request for records, because disclosure of the requested information is “in the public interest.”

The public has a significant interest in the administration of elections, especially given the extraordinary measures taken by state and local elections officials in light of the coronavirus pandemic.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the processes and procedures used by the Pennsylvania Department of State in approving dramatic consolidation of polling locations for the June 3, 2020 primary and any subsequent changes to these policies since enacted.

American Oversight is committed to transparency and makes the responses agencies provide to open records 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. 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.

³ See *supra*, notes 1 and 2.

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.⁴

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.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization's State Accountability Project covering voting rights issues in various states;⁶ 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;⁷ 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;⁸ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁰ 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

⁴ American Oversight currently has approximately 15,600 page likes on Facebook and 104,900 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 17, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 17, 2020).

⁵ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁶ State Accountability Project, AMERICAN OVERSIGHT, <https://www.americanoversight.org/state-accountability-project>.

⁷ 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>.

⁸ 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>.

⁹ *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>.

¹⁰ *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>.

relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹¹

Finally, 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.

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:

- 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 Right-to-Know Law.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 under 65 P.S. § 67.706. 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.

¹¹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹² *See, e.g., Barkeyville Borough v. Stearns*, 35 A.3d 91, 95–97 (Pa. Commw. Ct. 2012).

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 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 Emma Lewis at 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 line extending to the left.

Austin R. Evers
Executive Director
American Oversight