



October 2, 2020

VIA ELECTRONIC MAIL

Office of the Governor
Public Information Request
General Counsel Division
1100 San Jacinto
Austin, TX 78701
publicrecords@gov.texas.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.

On October 1, 2020, Governor Abbott issued a proclamation limiting mail ballot drop-off locations to one per county.¹ The proclamation prompts the closure of numerous drop-off sites statewide, including 11 drop-off sites in Harris County and three drop-off sites in Travis County.

American Oversight seeks records concerning the process behind and projected impact of limiting the number of mail ballot drop-off locations.

Requested Records

American Oversight requests that your office promptly produce the following:

All email communications (including email messages, complete email chains, and email attachments) sent by the Office of the Texas Governor officials listed below concerning ballot drop-off locations or Governor Abbott's October 1, 2020 proclamation suspending certain statutes concerning the November 3, 2020 elections.

Office of the Texas Governor Officials

- Greg Abbott, Governor, or anyone communicating on his behalf (such as an assistant or scheduler)
- Luis Saenz, Chief of Staff
- Jeff Oldham, General Counsel
- James Sullivan, Deputy General Counsel

¹ Marisa Fernandez, *Texas Gov. Abbott Limits Mail-In Voting Drop-Off Locations*, Axios, Oct. 1, 2020, <https://www.axios.com/texas-gov-abbott-limit-mail-in-drop-off-offices-6b47bedc-bc70-44a5-b6c0-443beb64853b.html>.



For this request, American Oversight believes that records containing the terms below are likely to be responsive records, and requests that your office, at a minimum, employ the following search terms to identify responsive records:

- Proclamation
- Satellite
- “Early voting clerk”
- “Early voting clerks”
- “Publicly designated”
- “Mail ballot”
- “Mail ballots”
- Vote-by mail
- “Vote by mail”
- VBM
- Mail-in
- “Mail in”
- 86.006(a-1)
- Drop-off
- “Drop off”
- Dropoff
- “Drop box”
- Dropbox
- In-person
- “In person”
- “Ballot security”
- Harvesting
- “Illegal voting”
- “poll watchers”
- Travis
- Harris

In an effort to accommodate the Office of the Governor and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the specified officials. 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 Gov. Abbott’s response to an email regarding ballot drop-off locations and the initial received message are responsive to this request and should be produced.

This request includes all prior messages (whether incoming or outgoing) reflected in the responsive correspondence and any attachments thereto.

Please provide all responsive records from September 21, 2020, through the date the search is conducted.

American Oversight seeks all 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, 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.²

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 your office 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

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

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 state and county officials, with the potential to shed light on the county-level impact of statewide election policy. Barriers to voting are of substantial public interest in Texas,³ and news of this last-minute order has garnered widespread attention, both within the state and nationally.⁴ Accordingly, release of records that may help the public understand the operations and activities of both state and county officials is in the public interest.

Release of the requested records will primarily benefit the public.⁵ 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.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 the organization’s State Accountability Project covering voting rights issues in various states;⁸ the posting of records related to an ethics waiver received by a senior

³ Geoff Mulvihill, *In Texas and Other States, Voters Face a Variety of Barriers*, Associated Press, Jan. 19, 2020, <https://apnews.com/article/0319f43edce2165f5341f3f517ae14f6>.

⁴ See, e.g., Chuck Lindell & Nicole Cobler, *Abbott Orders Counties to Close Multiple Ballot Drop-Off Sites*, Austin American-Statesman (Oct. 1, 2020, updated 6:10 PM), <https://www.statesman.com/news/20201001/abbott-orders-counties-to-close-multiple-ballot-drop-off-sites>; Kaelan Deese, *Texas Governor Orders Only One Mail Ballot Drop-Off Location Allowed Per County*, The Hill (Oct. 1, 2020, 2:58 PM)

⁵ Tex. Code § 552.267(a).

⁶ American Oversight currently has approximately 16,400 followers on Facebook and 105,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 1, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 1, 2020).

⁷ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *State Accountability Project*, American Oversight, <https://www.americanoversight.org/state-accountability-project>.

Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁹ 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;¹⁰ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹¹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹² 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.¹³

Accordingly, American Oversight qualifies for a fee waiver. If your office denies our request for a fee waiver, please notify American Oversight of any anticipated fees or costs in excess of \$40 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 your county 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 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,

⁹ *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>.

¹⁰ *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>.

¹¹ *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>.

¹² *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>.

¹³ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

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American Oversight