



December 7, 2020

VIA EMAIL

Lt. Tina Jones
Portland Police Bureau
1111 S.W. 2nd Avenue
Portland, OR 97204
ppbio@portlandoregon.gov

Re: Public Records Law Request

Dear Ms. Jones:

Pursuant to the Oregon Public Records Law, Or. Rev. Stat. Ann., Tit. 19, Ch. 192, American Oversight makes the following request for records.

In conjunction with Oregon Governor Kate Brown's declaration of emergency in anticipation of a September 26, 2020 rally in north Portland planned by the far-right hate group the Proud Boys, the U.S. Marshal Service deputized 56 members of the Portland Police Bureau's Rapid Response Team.¹ The duration of the deputation, extending to the end of 2020, far exceeded the timespan of the rally, however, and raised concerns that any engagement between the deputized officers and demonstrators protesting police violence would invite the involvement of federal prosecutors.² On October 26, 2020, the U.S. Attorney for the District of Oregon announced charges against a protester who resisted arrest by one of the deputized officers.³

American Oversight seeks records with the potential to shed light on the deputation of members of the Portland Police Bureau, including whether political considerations influenced the extended duration of the deputation order.

¹ Jonathan Levinson & Ryan Haas, *US Attorney Says Portland Police Will Remain Federal Deputies, Against Mayor's Wishes*, OPB (updated Oct. 1, 2020, 11:30 AM), <https://www.opb.org/article/2020/09/30/federal-government-refuses-to-rescind-local-law-enforcement-deputations/#:~:text=The%20decision%20was%20made%20jointly,request%20to%20revoke%20that%20status>.

² Jonathan Levinson & Rebecca Ellis, *Portland Pulls Officers from Federal Deputations, But Legal Questions Swirl*, OPB (Oct. 5, 2020, 3:44 PM), <https://www.opb.org/article/2020/10/05/portland-pulls-officers-from-federal-deputations-but-legal-questions-swirl/>.

³ Jonathan Levinson, *First Federal Charges Brought Involving Deputized Portland Police Officers*, OPB (Oct. 26, 2020, 6:48 PM), <https://www.opb.org/article/2020/10/26/first-federal-charges-brought-involving-deputized-portland-police-officers/>.



Requested Records

American Oversight requests that the Portland Police Bureau produce the following records within five business days:⁴

1. All documents submitted to or received from the U.S. Department of Justice, including the U.S. Marshals Service, regarding the deputation of officers of the Portland Police Bureau from September 26, 2020, through December 31, 2020, including but not limited to: any application for deputation and any supplementary documents, such as those detailing the specific reasons for requesting deputation, or any notice of approval of deputation.
2. Any formal or informal directives, orders, decision memoranda, or other guidance received from the U.S. Department of Justice regarding the deputation of officers of the Portland Police Bureau from September 26, 2020, through December 31, 2020, including but not limited to:
 - a. Directives regarding the extent of and/or any limitation on the authority of the deputized officers
 - b. Directives regarding the revocation of consent for deputation by Portland Mayor Ted Wheeler
 - c. Directives regarding the resolution issued by Portland City Commissioner JoAnn Hardesty and the Portland City Council restricting the operations of the deputized officers⁵

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

To be clear, American Oversight is not seeking records related to specific, ongoing enforcement actions against individuals, but rather seeks records related to the general policy decision (and implementation thereof) to deputize officers of the Portland Police Bureau. To the extent the search for responsive records yields any records containing information related to a specific, ongoing investigation or prosecution, American Oversight does not object to redaction of such information.

However, because the deputation that is the subject of American Oversight's request related to an event that has since passed, by definition, responsive

⁴ Pursuant to O.R.S. § 192.324(2), if your office is unable to complete its response within five business days, please acknowledge receipt of this request within five business days. Thereafter, pursuant to O.R.S. § 192.329(5), please complete your response to this request no later than ten business days after acknowledgement of receipt. If compliance with these time provisions would be impracticable as defined in O.R.S. § 192.329(6), the response must be completed as soon as practicable and without unreasonable delay.

⁵ See Resolution 1603481267450, City of Portland, Oct. 19, 2020, https://www.opb.org/pdf/Federal%20Deputation%20PPB%20Resolution_1603481267450.pdf.

records cannot involve “operational plans for an *anticipated* threat to individual or public safety,” and so American Oversight would object if any responsive records were withheld pursuant to O.R.S. § 192.345(18).

Fee Waiver Request

In accordance with O.R.S. § 192.324(5), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. In addition, 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 making the record available primarily benefits the general public.”⁶ The general public has a significant interest in the actions of the Portland Police Bureau at a time of unprecedented protests against police violence.⁷ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including regarding the rationale for an unusually long period of deputation of select Portland Police Bureau officers by the U.S. Marshals Service. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the general public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

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. 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.⁸

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁹ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and

⁶ O.R.S. § 192.324(5).

⁷ See, e.g., Levinson & Haas, *supra* note 1.

⁸ American Oversight currently has approximately 15,600 page likes on Facebook and 106,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 30, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 30, 2020).

⁹ See *generally News*, American Oversight, <https://www.americanoversight.org/blog>.

analysis related to the organization’s State Accountability Project covering voting rights issues in various states;¹⁰ posting records and analysis of federal and state governments’ responses to the Coronavirus pandemic;¹¹ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the Trump administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹² and 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.¹³

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:

¹⁰ See generally *State Accountability Project*, American Oversight, https://www.americanoversight.org/areas_of_investigation/state-local-investigations; see, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia’s Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

¹¹ See, e.g., *The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

¹² 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>.

¹³ *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>.

- 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.
- 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.¹⁴ 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 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 Hart Wood at records@americanoversight.org or 202.873.1743. Also, if American Oversight's request

¹⁴ O.R.S. § 192.338.

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 stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight