



March 8, 2021

VIA ONLINE PORTAL

Freedom of Information Officer
Centers for Disease Control and Prevention
1600 Clifton Road NE
Building 57, Room MS D-54
Atlanta, GA 30333
Via Online Portal

Re: Freedom of Information Act Request

Dear FOIA Officer:

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 novel coronavirus has infected more than 29 million people and resulted in nearly 525,000 deaths in the United States alone.¹ A state-by-state response to the pandemic has resulted in deeply divergent approaches across the country, with some jurisdictions declining to impose even minimal public health protections.² This lack of a coordinated, uniform response also appears to have slowed early efforts to deliver vaccines,³ and now as distribution ramps up, state governments are requesting greater insight into the federal government's vaccine distribution process.⁴

American Oversight seeks records with the potential to shed light on how the CDC has coordinated with state governments and public health agencies to address the evolving public health emergency caused by the coronavirus.

¹ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Mar. 8, 2021, 7:52 AM) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

² Glenn Kessler, *South Dakota's Covid-19 Numbers May Have Been Terrible, But the Governor Says That's the Wrong Metric*, Wash. Post (Feb. 5, 2021, 3:00 AM), <https://www.washingtonpost.com/politics/2021/02/05/south-dakotas-covid-19-numbers-have-been-terrible-governor-says-thats-wrong-metric/>.

³ Thomas Kaplan & Rebecca Robbins, *Biden Criticizes Trump on Vaccine Distribution and Pledges to Pick Up Pace*, N.Y. Times, Jan. 15, 2021, <https://www.nytimes.com/2020/12/29/us/politics/biden-coronavirus-vaccines.html>.

⁴ Maureen Groppe, *Governors Tell President Joe Biden They Want More COVID Vaccine Coordination and Reporting Clarity*, USA Today (Feb. 15, 2021, 6:35 PM), <https://www.usatoday.com/story/news/politics/2021/02/15/covid-vaccine-govs-tell-biden-they-want-distribution-coordination/6756283002/>.



Requested Records

American Oversight requests that your agency produce the following records within twenty business days:

All messages, including complete comment threads and reactions, contained within the “COVID-19 Discussion Forum” SharePoint site.⁵

In an effort to limit the volume of responsive records, to the extent your agency maintains this data in aggregated form, such as in a spreadsheet or within a database or other format that can be readily exported to a spreadsheet, American Oversight requests responsive data in such format.

Please provide all responsive records from November 15, 2020, through February 28, 2021.

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.”⁶ The public has a significant interest in the coordination between the federal and state governments in addressing the coronavirus pandemic, including with regards to testing, data sharing, and vaccine distribution.⁷ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the role that CDC played in facilitating conversations with and between state health authorities. 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.

⁵ “COVID-19 Discussion Forum,”

<https://cdcpartners.sharepoint.com/sites/NCEZID/DHQP/ELC/ProjectELCHOME/HAICOVID19>.

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ See, e.g., *supra* note 4; Sheryl Gay Stolberg, *Trump Administration Strips C.D.C. of Control of Coronavirus Data*, N.Y. Times, Sept. 9, 2020,

<https://www.nytimes.com/2020/07/14/us/politics/trump-cdc-coronavirus.html>.

This request is primarily and fundamentally for non-commercial purposes.⁸ 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.⁹

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.¹⁰ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;¹¹ posting records and editorial content about the federal government's response to the Coronavirus pandemic;¹² 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;¹³ 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

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ American Oversight currently has approximately 15,680 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 8, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 8, 2021).

¹⁰ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

¹¹ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹² See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

¹³ 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>.

waivers;¹⁴ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹⁵

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.
- 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.¹⁶ 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.¹⁷
- 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,¹⁸ and many

¹⁴ *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>.

¹⁵ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

¹⁶ 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).

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁸ 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

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 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 Christine H. Monahan at

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>.

records@americanoversight.org or (202) 868-5244. 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,

/s/ Christine H. Monahan
Christine H. Monahan
on behalf of
American Oversight