



March 18, 2021

VIA EMAIL

Steven A. Travis
Deputy General Counsel
Office of the West Virginia Attorney General
State Capitol Complex, Bldg. 1, Room E-26
Charleston, WV 25305
Steven.A.Travis@wvago.gov

Re: West Virginia Freedom of Information Act Request

Dear Records Custodian:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1 et seq., American Oversight makes the following request for copies of records.

In the final weeks of President Donald Trump's administration, West Virginia reportedly entered into an agreement with the U.S. Department of Homeland Security requiring that the agency give the state 180 days' notice before implementing any change in deportation policy.¹ American Oversight seeks records with the potential to shed light on the origins of this agreement.

Requested Records

American Oversight requests that the Office of the Attorney General produce the following records within five business days:²

1. All email and text message communications (including complete email chains, complete text chains, and attachments) between (a) any of the Office of the Attorney General officials listed below and (b) former Senior Official Performing the Duties of Deputy Director of the U.S. Department of Homeland Security Kenneth T. Cuccinelli or any representative of the U.S. Department of Homeland Security, including any person communicating from an email address ending in dhs.gov or ice.dhs.gov.

¹ Hamed Aleaziz, *The DHS Has Signed Unusual Agreements with States That Could Hamper Biden's Future Immigration Policies*, BuzzFeed (Jan. 15, 2020, 4:59 PM), <https://www.buzzfeednews.com/article/hamedaleaziz/dhs-states-agreements-biden>; Robert Law, *Communities Less SAFE After DHS Terminates Agreements*, Center for Immigration Studies, Feb. 5, 2021, <https://cis.org/Law/Communities-less-SAFE-after-DHS-Terminates-Agreements>.

² W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records "as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.").



Specified OAG officials:

- a. Attorney General Patrick Morrissey, or anyone communicating on his behalf, such as an assistant or scheduler
 - b. Any person serving as Chief of Staff to the Attorney General
 - c. Solicitor General Lindsay See
2. All draft Sanctuary for Americans First Enactment (SAFE) agreements exchanged between the Office of the Attorney General and the U.S. Department of Homeland Security.

Please provide all responsive records from Nov. 3, 2020, through Jan. 20, 2021.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

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.
- 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.³ 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 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.⁴ Do not exclude records regarding agency business contained

³ See W. Va. Code § 29B-1-2(6) (defining “writing” to include “books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.”).

⁴ See W. Va. Code § 29B-1-2(5) (defining a “public record” to include “any writing containing information prepared or received by a public body” that “relates to the conduct of the public’s business.”).

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.⁵ If a request is denied in whole, please state specifically whether 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.

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 office 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.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission 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

⁵ See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

website and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

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 Mehreen Rasheed at records@americanoversight.org or (202) 848-1320. 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/ Mehreen Rasheed
Mehreen Rasheed
on behalf of
American Oversight

⁶ American Oversight currently has approximately 15,700 page likes on Facebook and 105,500 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 19, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 19, 2021).