



July 23, 2021

**VIA CERTIFIED U.S. MAIL & FACSIMILE**

Office of the Governor  
500 East Capitol Avenue  
Pierre, SD 57501  
Facsimile: (605) 773-4711

**Re: Formal Public Records Act Request**

Dear Public Records Officer:

Pursuant to the South Dakota Public Records Act, S.C.D.L. Chapter 1-27, American Oversight makes the following formal, written request for records under S.C.D.L. Section 1-27-37. American Oversight submitted an informal request for the same records on April 8, 2021 (*see* Exhibit 1), but the Office of the Governor did not respond to or acknowledge that request, necessitating this formal request.<sup>1</sup>

**Requested Records**

American Oversight requests that the South Dakota Office of the Governor produce the following records within ten business days:

All records reflecting any reimbursements paid by the South Dakota government to Governor Kristi Noem or anyone serving in the capacity of personal assistant to Governor Noem. Responsive records include those reflecting any reimbursements associated with travel, lodging, the cost of government transportation, individual airfare, meals, rental vehicles, car service, or other reimbursable expenses.

Please provide all responsive records from January 5, 2019, through the date the search is conducted.

**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:

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<sup>1</sup> *See* Office of Hearing Examiners, Resolution Process for Public Records Disputes, <https://boa.sd.gov/ohe/default.aspx> (“If an informal request is denied or ignored in whole or in part, a written request may be made by the requestor to the public records officer of the public entity involved.”).



- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- 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. 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](mailto:records@americanoversight.org) or (202) 873-1743.

Sincerely,

/s/ Hart W. Wood  
Hart W. Wood  
on behalf of  
American Oversight

# **EXHIBIT 1**



April 8, 2021

**VIA FACSIMILE**

Office of the Governor  
500 East Capitol Avenue  
Pierre, SD 57501  
Facsimile: (605) 773-4711

**Re: Informal Public Records Act Request**

Dear Public Records Officer:

Pursuant to the South Dakota Public Records Act, S.C.D.L. Chapters 1-27, American Oversight makes the following request for records.

**Requested Records**

American Oversight requests that the South Dakota Office of the Governor produce the following records as soon as practicable:

All records reflecting any reimbursements paid by the South Dakota government to Governor Kristi Noem or anyone serving in the capacity of personal assistant to Governor Noem. Responsive records include those reflecting any reimbursements associated with travel, lodging, the cost of government transportation, individual airfare, meals, rental vehicles, car service, or other reimbursable expenses.

Please provide all responsive records from January 5, 2019, through the date the search is conducted.

**Fee Waiver Request**

In accordance with S.D.C.L. § 1-27-36, 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. Furthermore, 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.”<sup>1</sup> The public has a significant interest in costs associated with Governor Noem’s expenditures as Governor of the state of South Dakota. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including how

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<sup>1</sup> S.D.C.L. § 1-27-36.



much Governor Noem has spent out of state funds during her tenure as governor. 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.

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.<sup>2</sup>

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.<sup>3</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's investigations into misconduct and corruption in state governments;<sup>4</sup> posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;<sup>5</sup> posting records received as part of American

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<sup>2</sup> American Oversight currently has approximately 15,700 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 5, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 5, 2021).

<sup>3</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>4</sup> See generally *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; 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>.

<sup>5</sup> 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,

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;<sup>6</sup> 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.<sup>7</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Guidance Regarding the Search & Processing of Requested Records**

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<https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

<sup>6</sup> 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>.

<sup>7</sup> *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>.

- 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**

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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 Dan McGrath at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 897-4213. 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/ Dan McGrath*  
Dan McGrath  
on behalf of  
American Oversight