



December 20, 2021

VIA EMAIL

GRAMA Coordinator
Utah Department of Health
288 North 1460 West
Salt Lake City, UT 84116
chaley@utah.gov

Re: Government Records and Access Management Act Request

Dear Agency GRAMA Responder:

Pursuant to the Utah Government Records Access and Management Act (GRAMA), Utah Code §§ 63G-2-101 et seq., American Oversight makes the following request for records.

On April 10, 2021, the statewide mask mandate in Utah expired.¹ In August, the Utah State Legislature passed a bill severely restricting the ability of school districts to enact mask mandates despite rising COVID-19 cases among school-aged children.²

American Oversight seeks records with the potential to shed light on whether and to what extent guidance from state health officials may have influenced changes in state mask policies.

Requested Records

American Oversight requests that the Utah Department of Health produce the following records within ten business days:

1. All final assessments, reports, analyses, recommendations, or guidance prepared by your office, other state or local offices, or independent experts, regarding any projected or actual impacts of mask mandates on the spread of COVID-19.
2. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent

¹ Utah Gov. Spencer J. Cox, *Utah's Statewide Mask Mandate Ends Today. Here's What You Need to Know*, Utah.gov, Apr. 10, 2021, <https://governor.utah.gov/2021/04/10/utahs-statewide-mask-mandate-ends-today-heres-what-you-need-to-know/>.

² Sophia Eppoltio, *Utah Governor Questions Efficacy of Masks Amid Virus Surge*, AP News, Aug. 31, 2021, <https://apnews.com/article/health-education-coronavirus-pandemic-utah-5e513d8a39a11f4d1382297d125d92a4>.



by any of the officials listed below concerning the impacts of mask mandates on the spread of COVID-19.

Utah Department of Health Officials

- i. Nathan Checketts, Executive Director
- ii. Navina Forsythe, Director of the Center for Health Data and Informatics
- iii. Janae Duncan, Director of the Division of Disease Control and Prevention
- iv. Heather Borski, Deputy Director of the Division of Disease Control and Prevention
- v. Carl Letamendi, Bureau Director of the Office of Health Care Statistics

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited request item 2 to emails sent by the listed officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages.

For both items 1 and 2, please provide all responsive records from April 1, 2021, to the date the search is conducted.

Fee Waiver Request

In accordance with Utah Code § 63G-2-203(4)(a), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested information will primarily benefit the public rather than a person, because the requested records 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 primarily benefits the public rather than a person.³ The public has a significant interest in any analyses conducted by state or local health officials regarding the COVID-19 pandemic, including how such analyses align with decisions by state policymakers to loosen pandemic-related restrictions.⁴ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether and to what extent any COVID-19 analyses and guidance conducted or received by state or local government officials shaped statewide mask policies. American Oversight is committed to transparency and makes the responses agencies provide to public 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.

³ Utah Code § 63G-2-203(4)(a).

⁴ See Cox, *supra* note 1; Eppoltio, *supra* note 2.

Furthermore, this request is not for American Oversight's personal or financial interest. As described above, this request is primarily and fundamentally made for the purpose of educating the public and is not made for any 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.⁵

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.⁶ 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;⁷ posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;⁸ 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

⁵ American Oversight currently has approximately 15,600 page likes on Facebook and 109,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Dec. 14, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Dec. 14, 2021).

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ 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>.

⁸ 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>.

border, and analyses of what those records reveal;⁹ 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.¹⁰

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their 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 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.

⁹ 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>.

¹⁰ *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 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 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,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight