



September 29, 2023

**VIA EMAIL**

West Virginia Office of the Governor  
State Capitol  
1900 Kanawha Blvd. E  
Charleston, WV 25305  
[governor@wv.gov](mailto:governor@wv.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.

**Requested Records**

American Oversight requests that your office produce the following records within five business days:<sup>1</sup>

1. All final assessments, reports, analyses, recommendations, scientific research, or guidance prepared by your office, other state or local offices, or independent experts, regarding gender-affirming care for individuals under the age of 18, including, but not limited to, records related to the enacted restrictions on gender-affirming care procedures for minors in West Virginia.<sup>2</sup>
2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) the officials listed below, or anyone communicating on their behalf, such as an assistant or scheduler, and (b) the external entities listed below (including, but not limited to, anyone communicating from an email address ending in the listed domains).

Officials:

- a. Governor Jim Justice

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<sup>1</sup> 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.”).

<sup>2</sup> For further identifying information, please see Leah Willingham, *West Virginia Governor Signs Ban on Gender-Affirming Care*, Associated Press (Mar. 29, 2023, 9:16 PM), <https://apnews.com/article/west-virginia-governor-gender-affirming-care-de63a9232fcea329081f667fdf0c24ab>.



- b. Chief of Staff Brian Abraham
- c. Deputy Chief of Staff Ann Urling
- d. General Counsel Berkeley Bentley
- e. Director of Intergovernmental Affairs Rebecca Dare Blaine

External Entities:

- i. West Virginia Policy Alliance (familypolicywv.org)
- ii. West Virginia Family Foundation (wvfamily.org)
- iii. Alliance Defending Freedom (adflegal.org)
- iv. Family Policy Alliance (familypolicyalliance.com)
- v. American College of Pediatricians (acpeds.org)
- vi. American Family Association (afa.net)
- vii. Concerned Women for America (concernedwomen.org or cwfa.org)
- viii. Heritage Foundation (heritage.org or heritageaction.com)
- ix. Family Research Council (frc.org or fraction.org)
- x. America First Legal (aflegal.org or athospr.com)
- xi. Independent Women’s Forum (iwf.org)
- xii. Eagle Forum (eagleforum.org)
- xiii. American Principles Project (americanprinciplesproject.org)
- xiv. Liberty Counsel (lc.org)
- xv. Ethics and Public Policy Center (eppc.org)
- xvi. Manhattan Institute (manhattaninstitute.org)
- xvii. Do No Harm (donoharmmedicine.org)

- 3. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent by any of the officials listed above in part 2 of this request, or anyone communicating on their behalf, such as an assistant or scheduler, and containing any of the key terms listed below.

Key Terms:

- i. “gender transition”
- ii. “experimental procedure”
- iii. “experimental procedures”
- iv. “puberty blocker”
- v. “puberty blocking”
- vi. “gender identity”
- vii. “gender dysphoria”
- viii. “gender-affirming”
- ix. “gender affirming”
- x. Hormone
- xi. Hormonal
- xii. Transgender
- xiii. Trans
- xiv. “biological sex”

Please also note that American Oversight does not seek, and that part 2 of this request specifically excludes, the initial mailing of news clips or other mass-

distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if an official received a mass-distribution news clip from an email address ending in adflegal.org, that initial email would not be responsive to this request. However, if an official forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from January 1, 2023, though the date the search is conducted.

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.
- Please search all relevant records or systems containing records regarding agency business.<sup>4</sup> 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.<sup>5</sup> 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.

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<sup>4</sup> 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.”).

<sup>5</sup> 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).

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 website and promotes their availability on social media platforms, such as Facebook and Twitter.com.<sup>6</sup>

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 Rachel Baron at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 897-2465.

Sincerely,

*/s/ Rachel Baron*  
Rachel Baron  
on behalf of  
American Oversight

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<sup>6</sup> American Oversight currently has approximately 16,000 followers on Facebook and 111,700 followers on Twitter.com. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sep. 28, 2023); American Oversight (@weareoversight), Twitter.com, <https://twitter.com/weareoversight> (last visited Sep. 28, 2023).