



October 1, 2020

Via Email: foia@americanoversight.org

Austin Evers

American Oversight

RE: FOIL Request #2731

Dear Austin Evers:

This letter responds to your correspondence dated March 11, 2020, which pursuant to FOIL, requested:

All email communications (including emails, email attachments, and calendar invitations) between

Governor Cuomo, anyone serving as his chief of staff, and anyone in the Governor's office tasked with or responsible for communicating with federal health authorities, and

the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Department of Health and Human Services (HHS), or the Executive Office of the President (EOP) (individuals communicating from these federal entities have email addresses ending in, respectively, cdc.gov, fda.gov, hhs.gov, and eop.gov), that contain any of the following key terms:

- a. Test
- b. Testing
- c. coronavirus
- d. "COVID-19"
- e. "SARS-cov-2"
- f. "2019-nCoV"
- g. "RT PCR"
- h. "rRT-PCR"
- i. EUA
- j. "Emergency Use Authorization"
- k. Kit
- l. LDT
- m. CLIA
- n. Wadsworth
- o. Epidemic
- p. Pandemic

q. Wuhan
r. Hubei

To the extent your request seeks email communications between Governor Cuomo, “anyone serving as his chief of staff,” and the CDC, FDA, HHS, or the EOP, the New York State Executive Chamber has conducted a diligent search of available records and has not located any records responsive to your request.

Your request for email communications involving “anyone in the Governor’s office tasked with or responsible for communicating with federal health authorities” is denied pursuant to Public Officers Law § 89(3) which requires a request for records to be “reasonably described.” Whether a request is reasonably described may be dependent upon the nature of an agency’s filing or record keeping system and agency employees are not required to engage in herculean or unreasonable efforts to locate records (see Konigsberg v. Coughlin, 68 N.Y.2d 245 (N.Y. 1986) and the NYS Committee on Open Government’s FOIL Advisory Opinions 18949 and 18863).

The Executive Chamber employs nearly 200 individuals and does not maintain emails in a manner that allows all records sent and received by all employees on a given day to be readily accessed, segregated, and reviewed. The broad scope of this portion of your request does not sufficiently identify custodians to enable the Executive Chamber to facilitate a search and locate responsive records. This denial is without prejudice to submit a new request that reasonably describes the records sought.

Pursuant to Public Officers Law § 89(4)(a), you have thirty (30) days to take a written appeal of this determination. You may appeal by writing: FOIL Appeals Officer, Executive Chamber, State Capitol, Albany, New York, 12224.

Very truly yours,



Jaclyn Clemmer
FOIL Counsel &
Records Access Officer