



July 10, 2024

VIA EMAIL

Jason Caplan
Public Information Act Coordinator
Maryland Department of Health
201 West Preston Street
Baltimore, MD 21201
MDH.PIA@maryland.gov

Re: Public Information Act Request

Dear Mr. Caplan:

Pursuant to the Maryland Public Information Act (“PIA”) codified at Md. Code, Gen. Prov. §§ 4-101 et seq., American Oversight makes the following request for records.

Requested Records

American Oversight requests that the Maryland Department of Health produce the following records immediately or within a reasonable period upon approval, and in no more than thirty days after receipt of this request:¹

All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by former Director of External Affairs Joel Frushone and containing any of the following key terms listed below.

Key Terms:

- a. Heritage
- b. Dans
- c. Chretien
- d. Hemenway
- e. “Presidential Transition”
- f. “Mandate for Leadership”
- g. Trump
- h. “next admin”
- i. “conservative admin”
- j. “Republican admin”
- k. Gilman
- l. EDA
- m. “Economic Development Administration”
- n. Abolish

¹ Md. Code Ann., Gen. Prov. §§ 4-203(a)(1)–(b)(1).



In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited this request to emails sent by Joel Frushone (including by his authorized representative) and containing any of the above key terms. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means that both the listed official's response to an email and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from February 1, 2021, through December 1, 2022.

Fee Waiver Request

In accordance with Md. Code Ann., Gen. Prov. § 4-206(e), American Oversight requests a waiver of fees associated with processing this request for records. A fee waiver is in the public interest because disclosure of the requested records will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Because American Oversight is a 501(c)(3) nonprofit dedicated to government transparency, and the request is primarily and fundamentally for non-commercial purposes, a fee waiver will serve the public interest by furthering American Oversight's nonprofit mission to inform and educate the public through the release of public records.

A waiver of fees is "in the public interest,"² because disclosure of the requested records will inform the public concerning government activities and operations of interest. The public has a significant interest in the communications of public employees who have contributed to Project 2025.³ 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 Joel Frushone communicated about Project 2025 in his government role. 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.

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

² Md. Code Ann., Gen. Prov. § 4-206(e)(2)(ii).

³ See, e.g., Chantelle Lee, *What is Project 2025?*, TIME (June 9, 2024, 1:46 PM), <https://time.com/6986995/what-is-project-2025/>; and Paul Dans & Steven Groves (Eds.), *Mandate for Leadership*, Project 2025 (2023, xxvii), https://static.project2025.org/2025_MandateForLeadership_FULL.pdf.

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 X (formerly Twitter).⁴

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.⁵ 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;⁶ posting records and analysis of federal and state governments’ responses to the Coronavirus pandemic;⁷ 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 border, and analyses of what those records reveal;⁸ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an

⁴ American Oversight currently has approximately 16,000 followers on Facebook and 111,500 followers on X (formerly Twitter). American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 8, 2024); American Oversight (@weareoversight), X (formerly Twitter), <https://twitter.com/weareoversight> (last visited July 8, 2024).

⁵ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁶ 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>.

⁷ 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>.

⁸ 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>.

analysis of what those records demonstrated regarding the Department's process for issuing such waivers.⁹

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:

- 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. Records of official business conducted using unofficial systems or stored outside of official files are subject to the PIA.¹⁰
- 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.¹¹ 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.

⁹ *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>.

¹⁰ See Md. Public Information Act Manual 1-6 (15th ed., Nov. 2020) ("email communications from private email accounts and text messages stored on private devices [that] are made or received by a custodian in connection with the transaction of public business, they are public records.").

¹¹ Md. Code Ann., Gen. Prov. § 4-203(c)(1)(ii); *Blythe v. State*, 161 Md. App. 492, 519, cert. granted, 388 Md. 97 (2005).

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. 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 Danny Martinez at records@americanoversight.org or (202) 897-2465. 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/ Danny Martinez

Danny Martinez

On behalf of

American Oversight