

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

Case No. 17-827

U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

and

OFFICE OF MANAGEMENT AND BUDGET,
725 17th Street NW
Washington, DC 20503

Defendants.

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Health and Human Services and the Office of Management and Budget under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant the Office of Management and Budget has denied American Oversight's request for expedited processing, American Oversight is now entitled to judicial review of that claim under 5 U.S.C. § 552(a)(6)(A)(ii).

5. Because Defendants have failed to comply with other applicable time-limit provisions of the FOIA, American Oversight is deemed to have constructively exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

6. Plaintiff American Oversight is a nonpartisan organization committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia, and its application for section 501(c)(3) status is pending with the Internal Revenue Service.

7. Defendant the U.S. Department of Health and Human Services (HHS) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records that American Oversight seeks.

8. Defendant the Office of Management and Budget (OMB) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. OMB has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

9. On Monday, March 6, 2017, Republicans in the House of Representatives introduced a set of two bills collectively known as the Affordable Health Care Act (AHCA) that constituted a proposal to repeal and replace the Affordable Care Act (ACA).

10. In mid-March 2017, American Oversight submitted two identical FOIA requests to HHS and OMB seeking communications between each agency, respectively, and Congress related to health care reform.

The FOIA Requests

11. The HHS FOIA request was sent on March 15, 2017, and sought access to the following records:

- (1) All communications, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials exchanged between HHS and any members of Congress or congressional staff relating to health care reform.
- (2) All calendar entries for the Secretary, any political or SES appointees in the Secretary's office, and the Acting Assistant Secretary for Legislation, or anyone maintaining calendars on behalf of these individuals, relating to health care reform. For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments.

The request sought records from January 20, 2017, to the date of the search. A copy of the HHS FOIA is attached hereto as Exhibit A and incorporated herein.

12. The OMB FOIA request was sent on March 21, 2017,¹ and sought access to the following records:

- (1) All communications, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials exchanged between OMB and any members of Congress or congressional staff relating to health care reform.
- (2) All calendar entries for the Director, any political or SES appointees in the Director's office, and the Acting Head of Legislative Affairs, or anyone maintaining calendars on behalf of these individuals, relating to health care reform. For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments.

The request sought records from January 20, 2017, to the date of the search. A copy of the OMB FOIA request is attached hereto as Exhibit B and incorporated herein.

Entitlement to Expedited Processing

13. American Oversight sought expedited processing of both the HHS and OMB FOIA requests pursuant to 5 U.S.C. § 552(a)(6)(E)(v)(II), as well as 45 C.F.R. § 5.27(b)(2) and 5 C.F.R. § 1303.10(d)(1)(ii), respectively.

14. American Oversight's HHS and OMB FOIA requests are "made by a person primarily engaged in disseminating information," and there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § (a)(6)(E)(v)(II); *see also* 45 C.F.R. § 5.27(b)(2); 5 C.F.R. § 1303.10(d)(1)(ii).

15. There is an urgent need to inform the public about the federal government activity that is the subject of American Oversight's HHS and OMB FOIA requests.

¹ The OMB FOIA request is dated March 15, 2017, but it was not actually submitted to the agency by facsimile until March 21, 2017.

16. House Republicans are actively working to agree on a health care reform bill, and have made clear that they will hold a vote on a proposal to repeal and replace the ACA as soon as they do. The information sought in American Oversight's FOIA requests could meaningfully further public understanding about the deliberations and negotiations underlying a major piece of legislation.

17. American Oversight is primarily engaged in disseminating information to the public.

18. 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 it gathers, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its website.

19. American Oversight also sought expedited processing of the OMB FOIA request under 5 U.S.C. § 552(a)(6)(E)(i) and 5 C.F.R. § 1303.10(d)(1)(iv).

20. American Oversight's OMB FOIA request relates to "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which [a]ffect public confidence." 5 C.F.R. § 1303.10(d)(1)(iv).

21. American Oversight's OMB FOIA request involves matters of widespread and exceptional media interest.

22. There has been widespread media coverage of efforts by the Trump administration and House Republicans to repeal and replace the ACA, as well as the involvement by OMB Director Mick Mulvaney in those efforts, including, as examples, the seven media articles cited in American Oversight's OMB FOIA request.

23. The subject of American Oversight's OMB FOIA request also raises questions about the government's integrity that affect public confidence.

24. An examination of the internal communications regarding an issue of such pressing national concern as health care reform could well raise questions about the government's integrity that affect public confidence if those internal communications do not match the substance of the public rhetoric about the legislative reform efforts.

HHS Response

25. On April 5, 2017, American Oversight received an acknowledgement letter from HHS assigning the FOIA request tracking number 2017-00516-FOIA-OS and stating that a search for responsive documents had been initiated.

26. The April 5, 2017 acknowledgment letter stated that a decision on expedited processing had not yet been reached.

27. On or about April 6, 2017, an attorney for American Oversight had a phone call with a woman who identified herself as Natasha Taylor at HHS during which Ms. Taylor provided some information about how HHS was interpreting part (1) of the FOIA request. Ms. Taylor stated that HHS had interpreted it as being related to part (2) and had therefore sent it to the Immediate Office of the Secretary and the Assistant Secretary for Legislation. Ms. Taylor agreed that the search would encompass all political appointees and SES staff in those offices. She further agreed that if the initial search demonstrated that individuals from other offices were likely to have responsive records, then the files of those individuals would be searched as well.

28. American Oversight has not received any further communication from HHS about its request.

OMB Response

29. On April 4, 2017, OMB sent American Oversight a letter stating that American Oversight's request for expedited processing had been denied. OMB stated only that the request "[did] not contain enough evidence to support" expedition under 5 C.F.R. § 1303.10(d)(1)(ii), and made no mention of American Oversight's request for expedition under 5 C.F.R. § 1303.10(d)(1)(iv). A copy of OMB's response is attached hereto as Exhibit C and incorporated herein.

30. On April 24, 2017, an attorney for American Oversight had a phone call with an individual at OMB, who stated that OMB had assigned the FOIA request tracking number 17-127.

31. American Oversight has not received any further communication from OMB about its request.

Exhaustion of Administrative Remedies

32. Neither HHS nor OMB has responded to American Oversight's FOIA requests described in paragraphs 11 and 12 above, notwithstanding the obligation of the agencies under FOIA to respond within twenty working days.

33. Through HHS's failure to make a determination as to American Oversight's request for expedition or to respond to American Oversight's FOIA request within the time period required by law, American Oversight has constructively exhausted its administrative remedies as to HHS and seeks immediate judicial review.

34. Through OMB's denial of American Oversight's request for expedition, American Oversight has exhausted its administrative remedies as to that issue and seeks immediate judicial review.

35. Through OMB's failure to respond to American Oversight's FOIA request within the time period required by law, American Oversight has constructively exhausted its administrative remedies as to that issue and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Grant Expedited Processing of HHS FOIA Request

36. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

37. American Oversight properly requested records within the possession, custody, and control of HHS on an expedited basis.

38. HHS is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. § 5.27(b).

39. American Oversight is primarily engaged in disseminating information to the public, and there is an urgent need to inform the public about the federal government activity that is the subject of American Oversight's HHS FOIA request, such that expedited processing is appropriate under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 45 C.F.R. § 5.27(b)(2).

40. HHS failed to determine whether expedited processing was appropriate and notify American Oversight of any such determination within ten days after the date of the HHS FOIA request.

41. HHS's failure to grant expedited processing violates FOIA and HHS regulations.

42. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring HHS to grant expedited processing of American Oversight's HHS FOIA request.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Failure to Grant Expedited Processing of OMB FOIA Request

43. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

44. American Oversight properly requested records within the possession, custody, and control of OMB on an expedited basis.

45. OMB is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d).

46. The records sought by American Oversight's OMB FOIA request relate to a matter of widespread and exceptional media interest in which there exist possible questions concerning the government's integrity that affect public confidence, such that expedited processing is also appropriate under 5 C.F.R. § 1303.10(d)(1)(iv).

47. OMB failed to determine whether expedited processing was appropriate under 5 C.F.R. § 1303.10(d)(1)(iv) and notify American Oversight of any such determination within ten days after the date of the OMB FOIA request.

48. OMB's failure to grant expedited processing under 5 C.F.R. § 1303.10(d)(1)(iv) violates FOIA and OMB regulations.

49. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring OMB to grant expedited processing of American Oversight's OMB FOIA request.

COUNT III

Violation of FOIA, 5 U.S.C. § 552

Wrongful Denial of Expedited Processing of OMB FOIA Request

50. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

51. American Oversight properly requested records within the possession, custody, and control of OMB on an expedited basis.

52. OMB is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d).

53. American Oversight is primarily engaged in disseminating information to the public, and there is an urgent need to inform the public about the federal government activity that is the subject of American Oversight's OMB FOIA request, such that expedited processing is appropriate under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 5 C.F.R. § 1303.10(d)(1)(ii).

54. OMB wrongfully denied expedited processing of American Oversight's request.

55. OMB's failure to grant expedited processing under 5 C.F.R. § 1303.10(d)(1)(ii) violated FOIA and OMB regulations.

56. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring OMB to grant expedited processing of American Oversight's OMB FOIA request.

COUNT IV

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Search for Responsive Records

57. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

58. American Oversight properly requested records within the possession, custody, and control of the Defendants.

59. Defendants are agencies subject to FOIA and must therefore make reasonable efforts to search for requested records.

60. Defendants have failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

61. Defendants' failure to conduct an adequate search for responsive records violates FOIA.

62. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT V
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Records

63. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

64. American Oversight properly requested records within the possession, custody, and control of the Defendants.

65. Defendants are agencies subject to FOIA and must therefore release in response to a FOIA request any disclosable records and provide a lawful reason for withholding any materials.

66. Defendants are wrongfully withholding agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

67. Defendants' failure to provide all responsive records violates FOIA.

68. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendants to expedite the processing of American Oversight's FOIA requests submitted to HHS on March 15, 2017, and to OMB on March 21, 2017;
- (2) Order Defendants to conduct a search reasonably calculated to uncover all records responsive to American Oversight's FOIA requests submitted to HHS on March 15, 2017, and to OMB on March 21, 2017;
- (3) Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (5) Award American Oversight attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: May 4, 2017

Respectfully submitted,

/s/ Sara Kaiser Creighton
Sara Kaiser Creighton

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Exhibit A



March 15, 2017

VIA ELECTRONIC MAIL

Michael Marquis
Freedom of Information Officer
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue SW
Washington, DC 20201
FOIARequest@hhs.gov

Re: Expedited Freedom of Information Act Request

Dear Mr. Marquis:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and Department of Health and Human Services (HHS) implementing regulations, 45 C.F.R. Part 5, American Oversight makes the following request for records.

On Monday, March 6, 2017, Republicans in the House of Representatives introduced the American Health Care Act (AHCA).¹ News media reports later revealed that prior to the release of the two bills that constitute the AHCA, there were numerous meetings between the White House, congressional leadership, and executive branch agencies, including HHS Secretary Tom Price.² Since then, there reportedly have been additional meetings between Secretary Price and congressional staff, as the Trump administration has sought to build support for its proposal.³ The public deserves to know whether the content of those private communications matches the public rhetoric about the bill.

¹ Amy Goldstein et al., *House Republicans Release Long-Awaited Plan to Replace Obamacare*, WASH. POST (Mar. 6, 2017), https://www.washingtonpost.com/powerpost/new-details-emerge-on-gop-plans-to-repeal-and-replace-obamacare/2017/03/06/04751e3e-028f-11e7-ad5b-d22680e18d10_story.html?utm_term=.b934c16fb899.

² See Lauren Fox & Deirdre Walsh, *Republicans Unveil Bill to Repeal and Replace Obamacare*, CNN (Mar. 7, 2017, 9:32 AM), <http://www.cnn.com/2017/03/06/politics/republicans-public-obamacare-plan/index.html?sr=fbCNN030617republicans-public-obamacare-plan1235PMVODtopLink&linkId=35156015>.

³ See Juliet Eilperin & Mike DeBonis, *Doctors, Hospitals, and Insurers Oppose Republican Health Plan*, WASH. POST, Mar. 8, 2017, https://www.washingtonpost.com/powerpost/doctors-hospitals-and-insurers-oppose-republican-health-plan/2017/03/08/d9f0f5c2-0426-11e7-ad5b-d22680e18d10_story.html?hpid=hp_hp-top-table-main_obamacareprint858pm:homepage/story&utm_term=.908e8e15b9dd.

Requested Records

American Oversight requests that HHS produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All communications, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials exchanged between HHS and any members of Congress or congressional staff relating to health care reform.
2. All calendar entries for the Secretary, any political or SES appointees in the Secretary's office, and the Acting Assistant Secretary for Legislation, or anyone maintaining calendars on behalf of these individuals, relating to health care reform. For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁴ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to**

⁴ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HHS’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but HHS’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁷ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁸ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁸ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

the sought-after information.”⁹ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”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. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹¹ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, HHS is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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 rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations.¹² Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).¹³

⁹ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁰ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹¹ *Mead Data Central*, 566 F.2d at 261.

¹² 45 C.F.R. § 5.54(b)(1)-(2).

¹³ 45 C.F.R. § 5.54(b)(3); see, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and “is not primarily in the commercial interest of the requester.”¹⁴ The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

As required by HHS’s regulations at 45 C.F.R. § 5.54(b)(1)-(2), the subject of the requested records clearly and directly “concern[s] identifiable operations or activities of the Federal Government,” and the disclosure of the requested information would meaningfully inform the understanding of a reasonably broad audience of persons regarding these aspects of the operation of the federal government. During his campaign and after taking office, President Trump repeatedly promised to “repeal and replace” the Affordable Care Act.¹⁵ He also made numerous promises about the form that health care reform would take, including who would be covered and the cost of coverage. On Monday, March 6, 2017, Republicans in the House of Representatives introduced a proposal that purported to fulfill those promises.¹⁶ News media reports indicate that there was significant interaction between the White House, congressional leadership, and agency staff regarding the AHCA before its release.¹⁷ Since then, however, there has been significant debate about the substance of the proposal, especially over the extent to which it would achieve its stated purpose.¹⁸ The administration, including officials from HHS, have been active participants in this debate, both publicly and privately.¹⁹ With so much disagreement on this issue, the public has

¹⁴ 5 U.S.C. § 552(a)(4)(A)(iii); 45 C.F.R. § 5.54(a).

¹⁵ See, e.g., Nolan McCaskill, *Trump Wants ‘Special Session’ To Repeal Obamacare*, POLITICO (Nov. 1, 2016, 1:05 PM), <http://www.politico.com/story/2016/11/trump-obamacare-special-session-230588>; MJ Lee, *Trump Gives a Boost to Obamacare Repeal, but Doesn’t Solve GOP Problems*, CNN (Mar. 1, 2017, 6:04 AM), <http://www.cnn.com/2017/03/01/politics/obamacare-donald-trump-address/>.

¹⁶ Amy Goldstein et al., *House Republicans Release Long-Awaited Plan to Replace Obamacare*, WASH. POST (Mar. 6, 2017), https://www.washingtonpost.com/powerpost/new-details-emerge-on-gop-plans-to-repeal-and-replace-obamacare/2017/03/06/04751e3e-028f-11e7-ad5b-d22680e18d10_story.html?utm_term=.b934c16fb899.

¹⁷ See Lauren Fox & Deirdre Walsh, *Republicans Unveil Bill to Repeal and Replace Obamacare*, CNN (Mar. 7, 2017, 9:32 AM), <http://www.cnn.com/2017/03/06/politics/republicans-public-obamacare-plan/index.html?sr=fbCNN030617republicans-public-obamacare-plan1235PMVODtopLink&linkId=35156015>.

¹⁸ See Mike DeBonis et al., *House GOP Proposal to Replace Obamacare Sparks Broad Backlash*, WASH. POST (Mar. 7, 2017), https://www.washingtonpost.com/powerpost/house-leaders-brace-for-the-task-ahead-selling-obamacare-lite/2017/03/07/ab2f721e-02e5-11e7-ad5b-d22680e18d10_story.html?utm_term=.d7f7da524f26; Russell Berman, *The Conservative Uprising Against the Republican Health-Care Bill*, THE ATLANTIC (Mar. 7, 2017, 12:22 PM), <https://www.theatlantic.com/politics/archive/2017/03/conservatives-revolt-against-gop-obamacare-repeal-replacement/518775/>.

¹⁹ See, e.g., Jordain Carney, *Pence, Price Huddle With Senate GOP*, THE HILL BLOG (Mar. 9, 2017, 1:26 PM), <http://thehill.com/blogs/floor-action/senate/323202-pence-price-huddle-with-senate-gop>; Juliet Eilperin & Mike DeBonis, *Doctors, Hospitals, and Insurers Oppose Republican Health Plan*, WASH. POST, Mar. 8, 2017, <https://www.washingtonpost.com/powerpost/doctors->

a right to know what officials are saying in private—what deals are being cut, what industries are being courted, and what promises are being made, particularly in light of the fact that in 2009 and 2010, significant, state-specific deals were cut to win the support of lawmakers.²⁰

As required by HHS's regulations at 45 C.F.R. § 5.54(b)(3)(i)-(ii), this request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. 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 commercial 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 will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on its website.

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 45 C.F.R. § 5.27(b), American Oversight requests that HHS expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. The legislative process for the AHCA is well underway, and Republican leadership in the House and Senate have indicated that it will be brought up for votes as quickly as possible.²¹ This aggressive timeline for consideration of the bill creates an urgency for outside groups to provide the public with the information necessary to evaluate such significant legislation. The information sought in this request will meaningfully further public understanding on this issue of pressing national concern.

hospitals-and-insurers-oppose-republican-health-plan/2017/03/08/d9f0f5c2-0426-11e7-ad5b-d22680e18d10_story.html?hpid=hp_hp-top-table-main_obamacareprint858pm:homepage/story&utm_term=.908e8e15b9dd.

²⁰ See, e.g., Chris Frates, *Payoffs for States Get Reid to 60*, POLITICO (Dec. 19, 2009), <http://www.politico.com/story/2009/12/payoffs-for-states-get-reid-to-60-030815>.

²¹ Mike Lillis, *DNC Chairman: 'Reckless' Repeal Plan Shows GOP Clueless on Health Policy*, THE HILL BLOG (Mar. 8, 2017, 12:25PM), <http://thehill.com/policy/healthcare/322961-dnc-chair-reckless-repeal-plan-shows-gop-clueless-on-health-policy>; Jordain Carney, *Schumer: 'Reckless' to Vote on ObamaCare Repeal without Budget Score*, THE HILL BLOG (Mar. 8, 2017, 10:54PM), <https://origin-ny1.thehill.com/blogs/floor-action/senate/322921-schumer-reckless-to-vote-on-obamacare-repeal-without-budget-score>; Max Greenwood, *Graham: No 'Need for Speed' on ObamaCare Repeal*, THE HILL BLOG (Mar. 7, 2017, 12:05 PM), <http://thehill.com/policy/healthcare/322707-lindsey-graham-i-dont-feel-a-need-for-speed-on-obamacare-repeal>.

Additionally, American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²² American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."²³ American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight will also make materials it gathers available on its website.

Accordingly, American Oversight's request satisfies the criteria for expedition.

Conclusion

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, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or 202-869-5246. 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,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight

²² See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²³ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

Exhibit B



March 15, 2017

VIA FACSIMILE

FOIA Officer
Office of Management and Budget
725 17th Street NW
Washington, DC 20503
(202) 395-3504

Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and Office of Management and Budget (OMB) implementing regulations, 5 C.F.R. § 1303, American Oversight makes the following request for records.

On Monday, March 6, 2017, Republicans in the House of Representatives introduced the American Health Care Act (AHCA).¹ The day before, the *Washington Post* reported that OMB Director Mick Mulvaney had become the administration's "point person" on health care.² News media reports later revealed that prior to the release of the two bills that constitute the AHCA, there were numerous meetings between the White House, congressional leadership, and executive branch agencies, including Director Mulvaney.³ Since then, there reportedly have been additional meetings between OMB staff, including Director Mulvaney, and congressional staff, as the Trump

¹ Amy Goldstein et al., *House Republicans Release Long-Awaited Plan to Replace Obamacare*, WASH. POST (Mar. 6, 2017), https://www.washingtonpost.com/powerpost/new-details-emerge-on-gop-plans-to-repeal-and-replace-obamacare/2017/03/06/04751e3e-028f-11e7-ad5b-d22680e18d10_story.html?utm_term=.b934c16fb899.

² Philip Rucker et al., *Inside Trump's Fury: The President Rages at Leaks, Setbacks and Accusations*, WASH. POST (Mar. 5, 2017), https://www.washingtonpost.com/politics/inside-trumps-fury-the-president-rages-at-leaks-setbacks-and-accusations/2017/03/05/40713af4-01df-11e7-ad5b-d22680e18d10_story.html?mc_cid=6e047529db&mc_eid=4db373fdd5&utm_term=.f6d909dd9826.

³ See Lauren Fox & Deirdre Walsh, *Republicans Unveil Bill to Repeal and Replace Obamacare*, CNN (Mar. 7, 2017, 9:32 AM), <http://www.cnn.com/2017/03/06/politics/republicans-public-obamacare-plan/index.html?sr=fbCNN030617republicans-public-obamacare-plan1235PMVODtopLink&linkId=35156015>.

administration has sought to build support for it proposal.⁴ The public deserves to know whether the content of those private communications matches the public rhetoric about the bill.

Requested Records

American Oversight requests that OMB produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All communications, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials exchanged between OMB and any members of Congress or congressional staff relating to health care reform.
2. All calendar entries for the Director, any political or SES appointees in the Director's office, and the Acting Head of Legislative Affairs, or anyone maintaining calendars on behalf of these individuals, relating to health care reform. For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the

⁴ See Juliet Eilperin & Mike DeBonis, *Doctors, Hospitals, and Insurers Oppose Republican Health Plan*, WASH. POST, Mar. 8, 2017, https://www.washingtonpost.com/powerpost/doctors-hospitals-and-insurers-oppose-republican-health-plan/2017/03/08/d9f0f5c2-0426-11e7-ad5b-d22680e18d10_story.html?hpid=hp_hp-top-table-main_obamacareprint858pm:homepage/story&utm_term=.908e8e15b9dd.

Federal Records Act and FOIA.⁵ **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**⁶

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered OMB’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**⁷ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but OMB’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that OMB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁸ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415

⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁷ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), available at <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), available at <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁹ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”¹⁰ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”¹¹

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 it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹² Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, OMB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 OMB can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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 rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. § 1303.70, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a

⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹² *Mead Data Central*, 566 F.2d at 261.

significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).¹³

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government operations and is not “primarily in the commercial interest of the requester.”¹⁴ The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how public funds are spent and how officials conduct the public’s business.

During his campaign and after taking office, President Trump repeatedly promised to “repeal and replace” the Affordable Care Act.¹⁵ He also made numerous promises about the form that health care reform would take, including who would be covered and the cost of coverage. On Monday, March 6, 2017, Republicans in the House of Representatives introduced a proposal that purported to fulfill those promises.¹⁶ News media reports indicate that there was significant interaction between the White House, congressional leadership, and agency staff regarding the AHCA before its release.¹⁷ Since then, however, there has been significant debate about the substance of the proposal, especially over the extent to which it would achieve its stated purpose.¹⁸ The administration, including officials from OMB, have been active participants in this debate, both publicly and privately.¹⁹ With so much disagreement on this issue, the public has a right to know

¹³ See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

¹⁴ 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

¹⁵ See, e.g., Nolan McCaskill, *Trump Wants ‘Special Session’ To Repeal Obamacare*, POLITICO (Nov. 1, 2016, 1:05 PM), <http://www.politico.com/story/2016/11/trump-obamacare-special-session-230588>; MJ Lee, *Trump Gives a Boost to Obamacare Repeal, but Doesn’t Solve GOP Problems*, CNN (Mar. 1, 2017, 6:04 AM), <http://www.cnn.com/2017/03/01/politics/obamacare-donald-trump-address/>.

¹⁶ Amy Goldstein et al., *House Republicans Release Long-Awaited Plan to Replace Obamacare*, WASH. POST (Mar. 6, 2017), https://www.washingtonpost.com/powerpost/new-details-emerge-on-gop-plans-to-repeal-and-replace-obamacare/2017/03/06/04751e3e-028f-11e7-ad5b-d22680e18d10_story.html?utm_term=.b934c16fb899.

¹⁷ See Lauren Fox & Deirdre Walsh, *Republicans Unveil Bill to Repeal and Replace Obamacare*, CNN (Mar. 7, 2017, 9:32 AM), <http://www.cnn.com/2017/03/06/politics/republicans-public-obamacare-plan/index.html?sr=fbCNN030617republicans-public-obamacare-plan1235PMVODtopLink&linkId=35156015>.

¹⁸ See Mike DeBonis et al., *House GOP Proposal to Replace Obamacare Sparks Broad Backlash*, WASH. POST (Mar. 7, 2017), https://www.washingtonpost.com/powerpost/house-leaders-brace-for-the-task-ahead-selling-obamacare-lite/2017/03/07/ab2f721e-02e5-11e7-ad5b-d22680e18d10_story.html?utm_term=.d7f7da524f26; Russell Berman, *The Conservative Uprising Against the Republican Health-Care Bill*, THE ATLANTIC (Mar. 7, 2017, 12:22 PM), <https://www.theatlantic.com/politics/archive/2017/03/conservatives-revolt-against-gop-obamacare-repeal-replacement/518775/>.

¹⁹ See, e.g., Elise Viebeck et al., *GOP Health-Care Plan: Two House Panels Approve Legislation as Trump Tweets Reassurance*, WASH. POST (Mar. 9, 2017, 2:15 PM),

what officials are saying in private—what deals are being cut, what industries are being courted, and what promises are being made, particularly in light of the fact that in 2009 and 2010, significant, state-specific deals were cut to win the support of lawmakers.²⁰

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 will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on its website.

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 5 C.F.R. § 1303.10(d)(1)(ii), (iv), American Oversight requests that OMB expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. The legislative process for the AHCA is well underway, and Republican leadership in the House and Senate have indicated that it will be brought up for votes as quickly as possible.²¹ This aggressive timeline for consideration of the bill creates an urgency for outside groups to provide the public with the information necessary to evaluate such significant legislation. The information sought in this request will meaningfully further public understanding on this issue of pressing national concern.

https://www.washingtonpost.com/powerpost/obamacare-revision-clears-first-hurdle-in-house-committee-early-thursday/2017/03/09/579586b4-04c2-11e7-b9fa-ed727b644a0b_story.html?utm_term=.912e6ea0aa91; Juliet Eilperin & Mike DeBonis, *Doctors, Hospitals, and Insurers Oppose Republican Health Plan*, WASH. POST, Mar. 8, 2017, https://www.washingtonpost.com/powerpost/doctors-hospitals-and-insurers-oppose-republican-health-plan/2017/03/08/d9f0f5c2-0426-11e7-ad5b-d22680e18d10_story.html?hpid=hp_hp-top-table-main_obamacareprint858pm:homepage/story&utm_term=.908e8e15b9dd.

²⁰ See, e.g., Chris Frates, *Payoffs for States Get Reid to 60*, POLITICO (Dec. 19, 2009), <http://www.politico.com/story/2009/12/payoffs-for-states-get-reid-to-60-030815>.

²¹ Mike Lillis, *DNC Chairman: 'Reckless' Repeal Plan Shows GOP Clueless on Health Policy*, THE HILL BLOG (Mar. 8, 2017, 12:25PM), <http://thehill.com/policy/healthcare/322961-dnc-chair-reckless-repeal-plan-shows-gop-clueless-on-health-policy>; Jordain Carney, *Schumer: 'Reckless' to Vote on ObamaCare Repeal without Budget Score*, THE HILL BLOG (Mar. 8, 2017, 10:54PM), <https://origin-ny1.thehill.com/blogs/floor-action/senate/322921-schumer-reckless-to-vote-on-obamacare-repeal-without-budget-score>; Max Greenwood, *Graham: No 'Need for Speed' on ObamaCare Repeal*, THE HILL BLOG (Mar. 7, 2017, 12:05 PM), <http://thehill.com/policy/healthcare/322707-lindsey-graham-i-dont-feel-a-need-for-speed-on-obamacare-repeal>.

Additionally, American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²² American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."²³ American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight will also make materials it gathers available on its website.

I further certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity which affect public confidence. As discussed above, there has been extensive media coverage of the Republicans' recent proposal to repeal and replace the Affordable Care Act.²⁴ The media has also been closely following the Trump administration's role—including in particular the role of OMB Director Mick Mulvaney—in facilitating the bill's passage through Congress.²⁵ Additionally, an examination of internal communications regarding an issue of such

²² See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²³ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²⁴ See, e.g., Amy Goldstein et al., *House Republicans Release Long-Awaited Plan to Replace Obamacare*, WASH. POST (Mar. 6, 2017), https://www.washingtonpost.com/powerpost/new-details-emerge-on-gop-plans-to-repeal-and-replace-obamacare/2017/03/06/04751e3e-028f-11e7-ad5b-d22680e18d10_story.html?utm_term=.b934c16fb899; Lauren Fox & Deirdre Walsh, *Republicans Unveil Bill to Repeal and Replace Obamacare*, CNN (Mar. 7, 2017, 9:32 AM), <http://www.cnn.com/2017/03/06/politics/republicans-public-obamacare-plan/index.html?sr=fbCNN030617republicans-public-obamacare-plan1235PMVODtopLink&linkId=35156015>; Mike DeBonis et al., *House GOP Proposal to Replace Obamacare Sparks Broad Backlash*, WASH. POST (Mar. 7, 2017), https://www.washingtonpost.com/powerpost/house-leaders-brace-for-the-task-ahead-selling-obamacare-lite/2017/03/07/ab2f721e-02e5-11e7-ad5b-d22680e18d10_story.html?utm_term=.d7f7da524f26; Russell Berman, *The Conservative Uprising Against the Republican Health-Care Bill*, THE ATLANTIC (Mar. 7, 2017, 12:22 PM), <https://www.theatlantic.com/politics/archive/2017/03/conservatives-revolt-against-gop-obamacare-repeal-replacement/518775/>; Jordain Carney, *Pence, Price Huddle With Senate GOP*, THE HILL BLOG (Mar. 9, 2017, 1:26 PM), <http://thehill.com/blogs/floor-action/senate/323202-pence-price-huddle-with-senate-gop>.

²⁵ See, e.g., Elise Viebeck et al., *GOP Health-Care Plan: Two House Panels Approve Legislation as Trump Tweets Reassurance*, WASH. POST (Mar. 9, 2017, 2:15 PM), https://www.washingtonpost.com/powerpost/obamacare-revision-clears-first-hurdle-in-house-committee-early-thursday/2017/03/09/579586b4-04c2-11e7-b9fa-ed727b644a0b_story.html?utm_term=.912e6ea0aa91; Juliet Eilperin & Mike DeBonis, *Doctors, Hospitals, and Insurers Oppose Republican Health Plan*, WASH. POST, Mar. 8, 2017, <https://www.washingtonpost.com/powerpost/doctors-hospitals-and-insurers-oppose-republican->

national concern as health care could well raise “possible questions concerning the government’s integrity which affect public confidence”²⁶ if those internal communications do not match the substance of the public rhetoric about the bill.

Accordingly, American Oversight’s request satisfies the criteria for expedition.

Conclusion

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, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or 202-869-5246. 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,

A handwritten signature in blue ink, reading "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight

health-plan/2017/03/08/d9f0f5c2-0426-11e7-ad5b-d22680e18d10_story.html?hpid=hp_hp-top-table-main_obamacareprint858pm:homepage/story&utm_term=.908e8e15b9dd

²⁶ 5 C.F.R. § 1303.10(d)(1)(iv).

Exhibit C

From: **FN-OMB-FOIA** OMBFOIA@omb.eop.gov
Subject: FW: Status for Expedited Processing OMB FOIA Requests (17-127, 17-128 and 17-129) ATTN: SARA CREIGHTON
Date: April 26, 2017 at 10:39 AM
To: American Oversight FOIA foia@americanoversight.org

Hi: See Below and Attached.
Thanks.

From: FN-OMB-FOIA
Sent: Tuesday, April 4, 2017 1:53 PM
To: 'FOIA FOIA' <foia@americanbridge.org>
Subject: Status for Expedited Processing OMB FOIA Requests (17-127, 17-128 and 17-129)

Good Afternoon: See Attached.
Thanks.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

April 4, 2017

Mr. Austin Evers
Executive Director
American Oversight
SENT VIA Email: foia@americanoversight.org

Dear Mr. Evers:

This letter is in response to your request dated March 21, 2017 requesting information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You have asked for expedited processing of your FOIA request. In accordance with OMB FOIA regulations at 5 C.F.R. § 1303.10(d), OMB will provide expedited processing, and process a request or appeal out of order it was received, if a requester demonstrates a compelling need for the records because:

- (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information;
- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which effect public confidence.

We have determined that your request does not demonstrate an urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information; and does not contain enough evidence to support this criteria. Your request for expedited processing therefore has been denied.

You may appeal this denial of your request for expedited processing, in accordance with OMB regulations, at 5 C.F.R. 1303.

Sincerely,


Dionne Hardy
FOIA Officer