



August 31, 2017

VIA ELECTRONIC MAIL

Freedom of Information Officer
International Trade Administration
U.S. Department of Commerce
Room 40003
14th & Constitution Avenue NW
Washington, DC 20230
foia@trade.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations for the Department of Commerce, 15 C.F.R. Part 4, American Oversight makes the following request for records.

On January 31, 2017, Steve Wynn was named the Finance Chair for the Republican National Committee (RNC).¹ One of Wynn's businesses, the Wynn Macau Casino, was a client of a gaming consulting firm known as Global Market Advisors (GMA).² Jonathan Galaviz was a partner at GMA, and has apparently accepted a position within the U.S. State Department. Mr. Galaviz's former consulting firm, Galaviz and Company, also consults for companies with interests in the Philippines, including Bloombery Resorts & Hotels Inc. and Macquarie.³

Mr. Galaviz's position at State has raised several ethical questions. First, it is not at all clear when Mr. Galaviz began his position at State and whether and when he cut ties with his former employer. In particular, as recently as July 18, 2017, GMA's website still listed him as its chief strategist and stated that he was on "unpaid leave" while serving in the Trump administration.⁴

¹ Chase Peterson-Withorn, *Trump's Rival-Turned-Pal, Billionaire Steve Wynn, Named RNC Finance Chair*, FORBES (Feb. 1, 2017, 2:30 PM), <https://www.forbes.com/sites/chasewithorn/2017/02/01/trumps-rival-turned-pal-billionaire-steve-wynn-named-rnc-finance-chair/#2f2d4cbb51b6>.

² See *Clients*, GLOBAL MARKET ADVISORS, <http://globalmarketadvisors.com/clients/> (last visited Aug. 16, 2017).

³ See Betsy Woodruff, *Trump Bets on Casino Hired Gun for State Department*, THE DAILY BEAST (July 19, 2017, 1:00 AM), <http://www.thedailybeast.com/trump-bets-on-casino-hired-gun-for-state-department>.

⁴ *Id.*



Additionally, in the press release announcing Mr. Galaviz's position, the managing partner of GMA, Steve Gallaway, stated that "[GMA] look[s] forward to welcoming back Jonathan to GMA after he completes his service with the Trump administration."⁵ Like all government officials, Mr. Galaviz already has an ethical obligation to recuse from matters involving his former employer for a period of one year.⁶ However, if in fact he has an arrangement to return to GMA after his employment with the government, he would face an additional obligation to recuse from any matters involving that company for the entire time such an arrangement exists.⁷

American Oversight seeks information to shed light on how Mr. Galaviz is comporting himself during his tenure at the State Department, including whether and to what extent he is abiding by his recusal from matters involving his former employer, GMA.

Requested Records

American Oversight requests that the International Trade Administration (ITA) produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

- 1) All communications to or from any of the individuals listed below containing any of the following search terms: (a) "Global Market Advisors" or "GMA"; (b) Wynn; (c) DTTM; or (d) Galaviz.
 - Xiaobing Feng (Advocacy Center staff member responsible for China)
 - All staff in the U.S. Commercial Service for China-Guangzhou

- 2) All communications to or from any of the individuals listed below containing any of the following search terms: (a) "Global Market Advisors" or "GMA"; (b) Bloomberg; (c) Macquarie; or (d) Galaviz.
 - Malcolm Burke (Advocacy Center staff member responsible for Philippines)
 - All staff in the U.S. Commercial Service for the Philippines.

Please provide all responsive records from November 8, 2016, 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.

⁵ See *GMA's Galaviz Shifts to Trump Administration Advisory Role*, GGRASIA, Apr. 3, 2017, <http://www.ggrasia.com/gmas-galaviz-shifts-to-trump-administration-advisory-role/>.

⁶ See 5 C.F.R. § 2635.502(a), (b)(iv).

⁷ See 5 C.F.R. § 2635.606(a).

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.⁸ 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.⁹**

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 your agency’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.¹⁰ 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 your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists

⁸ 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).

⁹ 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)).

¹⁰ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <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), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

that your agency 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.”¹¹ 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.”¹² 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.”¹³ 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.’”¹⁴

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.¹⁵ 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, your agency 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, we can decrease the likelihood of costly and time-consuming litigation in the future.

¹¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹³ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁴ *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)).

¹⁵ *Mead Data Central*, 566 F.2d at 261.

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 a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l), 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 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 is “in the public interest because it is likely to contribute significantly to public understanding” of the operations or activities of the government.¹⁶ The recent revelations that the State Department hired the RNC Finance Chair’s former gaming consultant as a Senior Advisor—along with the ethically dubious circumstances surrounding GMA’s announcement of his departure—raise serious questions about the propriety of Mr. Galaviz’s appointment to the position and whether he is complying with his ethical obligations.¹⁷ The American public deserves to know whether Mr. Galaviz is complying with his recusal obligations, including whether and to what extent he has participated in matters involving his former employer.

This request is primarily and fundamentally for non-commercial purposes.¹⁸ 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.¹⁹ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a

¹⁶ 15 C.F.R. § 4.11(l)(1)(i), (2)(i)-(iv).

¹⁷ See *supra* notes 2-6.

¹⁸ 15 C.F.R. § 4.11(l)(1)(ii), (3)(i)-(ii).

¹⁹ American Oversight currently has over 11,200 page likes on Facebook, and over 33,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 22, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 22, 2017).

senior DOJ attorney,²⁰ American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ’s process for ethics waivers.²¹ As another example, American Oversight has a project called “Audit the Wall,” where the organization is gathering and analyzing information and commenting on public releases of information related to the administration’s proposed construction of a barrier along the U.S.-Mexico border.²²

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 15 C.F.R. § 4.6(f)(1)(iv), American Oversight requests that Commerce expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity. The recent revelations that the State Department hired the RNC Finance Chair’s former gaming consultant as a Senior Advisor—along with the ethically dubious circumstances surrounding GMA’s announcement of his departure—raise serious questions about the propriety of Mr. Galaviz’s appointment to the position and whether he is complying with his recusal obligations.²³ It is imperative that the public get answers to those questions as soon as possible, either so that any outstanding ethical concerns may be addressed, or to reassure the public that Mr. Galaviz is in fact complying with his ethical obligations.

I further certify that 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,²⁴ 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.”²⁵ American Oversight uses the information gathered, 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 public website and promotes their availability on social

²⁰ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

²¹ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

²² *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²³ See *supra* notes 2-6.

²⁴ 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).

²⁵ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

media platforms, such as Facebook and Twitter.²⁶ American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website²⁷ and published an analysis of what the records reflected about DOJ's process for ethics waivers.²⁸ Additionally, American Oversight is conducting a public project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²⁹

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,



Austin R. Evers
Executive Director
American Oversight

²⁶ American Oversight currently has approximately 11,200 page likes on Facebook, and 33,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 22, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 22, 2017).

²⁷ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

²⁸ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

²⁹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.