



April 10, 2017

VIA ELECTRONIC MAIL

Latita Payne
FOIA Officer/Public Liaison
Freedom of Information Act and Privacy Act Branch
U.S. Secret Service
245 Murray Drive SW, Building T-5
Washington, DC 20223
foia@uss.s.dhs.gov

Re: Freedom of Information Act Request

Dear Ms. Payne:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

The U.S. Secret Service (USSS), a component of DHS, provides protection to the president, but is also authorized to protect major presidential candidates.¹ For example, President Donald Trump began receiving USSS protection on November 5, 2015—a full year before he was elected to the office.² Since winning office, Mr. Trump has conducted official business at a number of non-governmental, commercial properties including, the Mar-a-Lago Club,³ Trump Tower New York,⁴

¹ 18 U.S.C. § 3056(a)(1), (7).

² Jim Acosta & Jeremy Diamond, *Donald Trump, Ben Carson Getting Secret Service Protection*, CNN.com (Nov. 5, 2015, 1:56 PM), <http://www.cnn.com/2015/11/05/politics/donald-trump-ben-carson-secret-service/>.

³ Jeremy Diamond, *Trump Planning to Host Chinese President at Mar-a-Lago*, CNN.COM (Mar. 14, 2017, 4:59 AM), <http://www.cnn.com/2017/03/13/politics/donald-trump-xi-jinping-summit-mar-a-lago/index.html>; Kristina Webb, *New: Ted Cruz Came to Mar-a-Lago Saturday for Health Care Negotiation*, PALMBEACHPOST.COM (Mar. 19, 2017, 1:39 PM), <http://www.palmbeachpost.com/news/local/new-ted-cruz-came-mar-lago-saturday-for-health-care-negotiation/1ScTFhDnW65IkAfxe4zh7K/>.

⁴ Major Garrett, *Rick Perry Summoned to Trump Tower to Discuss Energy Secretary Position*, CBS NEWS (Dec. 12, 2016, 11:08 AM), <http://www.cbsnews.com/news/rick-perry-summoned-to-trump-tower-to-discuss-energy-secretary-position/>; Zeke J. Miller, *Japan's Prime Minister Showed the Way to President Trump's Heart: Flattery*, TIME, Feb. 10, 2017, <http://time.com/4667744/donald-trump-shinzo-abe-flattery/>.



Trump National Golf Club Bedminster,⁵ and Trump National Golf Club Washington, DC.⁶ After hosting President Xi Jinping of China last week at Mar-a-Lago—a private club purchased by Mr. Trump in 1985⁷—the president has spent twenty-six of his first eighty days in office at a Trump-owned property.⁸

The protection that the USSS provides at the Trump properties requires in some instances a significant and extended presence.⁹ Because the president has not divested himself of his properties, his use of Trump properties for official business raises concerns that American taxpayers are not only paying to protect the president, but also enriching the president personally. American taxpayers deserve to know the terms by which the Secret Service is present at Trump properties.

Requested Records

American Oversight requests that USSS produce within twenty business days:

Any contracts, agreements, or memoranda of understanding (MOUs) between the USSS and any property owned, operated, or controlled by (i) Mr. Trump, his wife, or any of his children; (ii) any corporate form for which Mr. Trump, his wife, or any of his children are an officer or director; (iii) a trust of which Mr. Trump, his wife, or any of his children are a beneficiary; or (iv) any property that bears the “Trump” name in effect from January 20, 2017, to the date the search is conducted. These properties include, but are not limited to, Mar-a-Lago, Trump Tower New York, Trump National Golf Club Bedminster, and Trump National Golf Club Washington, DC.

⁵ Michael S. Schmidt & Julie Hirschfeld Davis, *Trump Meets with Romney as He Starts to Look Outside His Inner Circle*, N.Y. TIMES, Nov. 19, 2016,

<https://www.nytimes.com/2016/11/20/us/politics/donald-trump-mitt-romney-secretary-state.html>.

⁶ Josh Dawsey et al., *Trump Administration Fires Preet Bharara, High-profile U.S. Attorney in New York*, POLITICO (Mar. 11, 2017, 5:13 PM), <http://www.politico.com/story/2017/03/preet-bharara-fired-trump-us-attorneys-235961>; Golf Wire, *President Trump Holds Partial Cabinet Meeting at Trump National Virginia*, GOLF.COM, Mar. 11, 2017, <http://www.golf.com/tour-news/2017/03/11/president-trump-holds-partial-cabinet-meeting-trump-national-virginia>.

⁷ *History*, THE MAR-A-LAGO CLUB,

<http://www.maralagoclub.com/Default.aspx?p=dynamicmodule&pageid=100013&ssid=100035&vnf=1> (last visited Apr. 10, 2017).

⁸ Karen Yourish & Troy Griggs, *Tracking the President’s Visits to Trump Properties*, N.Y. TIMES, Apr. 9, 2017, <https://www.nytimes.com/interactive/2017/04/05/us/politics/tracking-trumps-visits-to-his-branded-properties.html>.

⁹ See Pamela Brown et al., *Secret Service Considering Renting a Floor at Trump Tower to Protect Future First Family*, CNN (Nov. 26, 2016, 4:03 PM), <http://www.cnn.com/2016/11/25/politics/secret-service-trump-tower/>; Drew Harwell et al., *Trump Family’s Elaborate Lifestyle Is a ‘Logistical Nightmare’—at Taxpayer Expense*, WASH. POST, Feb. 16, 2017, https://www.washingtonpost.com/business/economy/trump-familys-elaborate-lifestyle-a-logistical-nightmare--at-taxpayer-expense/2017/02/16/763cce8e-f2ce-11e6-a9b0-ecce7ce475fc_story.html?utm_term=.89ebaa7d14cd.

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.¹⁰ **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.**¹¹

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 DHS’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.**¹² 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 DHS’s

¹⁰ 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).

¹¹ 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)).

¹² 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>.

archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DHS 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.”¹³ 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.”¹⁴ 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.”¹⁵ 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.’”¹⁶

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.¹⁷ 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, USSS 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 USSS can decrease the likelihood of costly and time-consuming litigation in the future.

¹³ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹⁴ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁵ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹⁶ *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)).

¹⁷ *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 rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), 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.¹⁸ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁹

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.²⁰ Since winning office, Mr. Trump has spent a significant amount of time at his commercial properties,²¹ creating a security challenge for the agency tasked with protecting him.²² Politico interviewed former USSS agents who reported that “the setup at Mar-a-Lago and the president’s other regular clubs presents challenges that their agency wasn’t built to deal with.”²³ News reports indicate that both USSS and the Department of Defense may be renting space in Trump properties, at a potential cost of millions of dollars a year.²⁴ The requested documents—agreements between USSS and Trump properties—would meaningfully inform American taxpayers as to the formality of any arrangement between USSS and the Trump Properties, as well as the revenue the Trump Organization is earning from the formal presence of the USSS. For example, there is public interest in whether the president or his properties are reimbursing taxpayers for the costs of having USSS personnel stay at Trump properties.

¹⁸ 6 C.F.R. § 5.11(k)(1)(i).

¹⁹ 6 C.F.R. § 5.11(k)(1)(ii).

²⁰ 6 C.F.R. § 5.11(k)(1)(i); 6 C.F.R. § 5.11(k)(2)(i)-(iv).

²¹ See Dawsey et al., *supra* note 6; Diamond, *supra* note 3; Garrett, *supra* note 4; Golf Wire, *supra* note 6; Miller, *supra* note 4; Schmidt & Davis, *supra* note 5; Webb, *supra* note 3; Yourish & Griggs, *supra* note 8.

²² Brown et al., *supra* note 9; Harwell et al., *supra* note 9.

²³ Darren Samuelsohn, *Trump’s Mar-a-Lago Is Heaven—For Spies*, POLITICO (Mar. 10, 2017, 6:28 PM), <http://www.politico.com/story/2017/03/trump-mar-lago-security-risk-espionage-235950>.

²⁴ Pamela Brown et al., *Secret Service Considering Renting a Floor at Trump Tower to Protect Future First Family*, CNN (Nov. 26, 2016, 4:03 PM), <http://www.cnn.com/2016/11/25/politics/secret-service-trump-tower/>; Harwell et al., *supra* note 9; Jim Zarroli, *Trump Tower’s Newest Tenants Likely to Be the Secret Service*, NPR (Dec. 14, 2016, 5:56 PM), <http://www.npr.org/2016/12/14/505555997/trump-towers-newest-tenants-likely-to-be-the-secret-service>.

This request is primarily and fundamentally for non-commercial purposes.²⁵ 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 our public website and promote the availability on social media platforms, such as Facebook and Twitter.²⁶ One example of American Oversight's demonstrated public disclosure of documents and creation of editorial content is in its recently launched "Audit the Wall" effort, 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.²⁷

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with USSS 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 Cerissa Cafasso 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

²⁵ 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3)(i)-(ii).

²⁶ American Oversight currently has over 10,400 page likes on Facebook, and over 12,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 10, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 10, 2017).

²⁷ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.