



July 25, 2018

VIA ELECTRONIC MAIL & ONLINE PORTAL

Sam Kaplan
Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

Sabrina Burroughs
FOIA Officer
U. S. Customs & Border Protection
1300 Pennsylvania Avenue NW, Room 3.3D
Washington, DC 20229
Online Request at FOIAonline

Re: Freedom of Information Act Request

Dear Mr. Kaplan and Ms. Burroughs:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, 6 C.F.R. Part 5 and 19 C.F.R. § 103.2, American Oversight makes the following request for records.

A 2015 report from the Center for New Community concluded that “the anti-immigrant movement is actively engaged in (1) developing sources within [border control] agencies and unions who are willing to leak data directly to them and in (2) cultivating spokespersons from within these unions who are willing to echo their messaging and to advocate for their policy goals.”¹ The relationship between these two groups has come to light, for example, in the appointment of anti-immigration activist Julie Kirchner as the DHS Citizenship and Immigration Services Ombudsman,² and in the National Border Patrol Council Local 1613 providing a border tour to the anti-immigrant Center for Immigration Studies.³ American Oversight submits this FOIA request to better understand the relationship between government officials and private anti-immigrant activists.

¹ CTR. FOR NEW CMTY., *BLURRING BORDERS: COLLUSION BETWEEN ANTI-IMMIGRANT GROUPS AND IMMIGRATION ENFORCEMENT AGENTS* (June 2015), <http://imagine2050.newcomm.org/wp-content/uploads/2015/06/Blurring-Borders.pdf>.

² Marcelo Rochabrun and Jessica Huseman, *Former Director of Anti-Immigration Group Set to Be Named Ombudsman at U.S. Immigration Agency*, PROPUBLICA (Apr. 28, 2017), <https://www.propublica.org/article/ex-director-anti-immigration-group-to-be-ombudsman-at-immigration-agency>.

³ NBPC 1613 San Diego (@nbpc1613), TWITTER (Mar. 3, 2015, 12:35 AM), <https://twitter.com/nbpc1613/status/572676576900329472>



Requested Records

American Oversight requests that the Department of Homeland Security (DHS) and its component Customs and Border Protection (CBP) produce the following within twenty business days:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar entries/invitations, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between or among (including those copied or blind copied) anyone listed in Column A below and anyone listed in Column B below:

Column A: DHS Officials	Column B: Outside Entities
<ul style="list-style-type: none"> • Sidney Aki, Port Director of U.S Customs and Border Protection at San Ysidro Port of Entry; • Sally Carrillo, Assistant Port Director at San Ysidro Port of Entry; • Robert Hood, Assistant Port Director at San Ysidro Port of Entry; • Pete Flores, Director of Field Operations for San Diego and Imperial Counties; • Toby Don Sosbee, Border Community Liaison at San Diego Field Office; • Johnny Armijo, Assistant Director of Border Security San Diego Field Office; • Andrea Granados, Border Security Coordinator at San Diego Field Office; • Claudia Taitague, Border Security Coordinator at San Diego Field Office; • Terence L. Shigg, Border Patrol Agent; • Robert Lopez, Border Patrol Agent; • Thomas Ward Jr., Border Patrol Agent; • Joshua Wilson, Border Patrol Agent; • Manny Bayon, Border Patrol Agent; and 	<ul style="list-style-type: none"> • Jeff Schwilk; • Robin Hvidston; • Joe Gomez; • Maria Espinoza; • Brandon Darby; • Bob Price; • Anyone at or affiliated with Federation for American Immigration Reform, including, but not limited to, anyone whose email address ends in @fairus.org; • Anyone at or affiliated with Center for Immigration Studies, including but not limited to, anyone whose email address ends in @cis.org; • Anyone at or affiliated with NumbersUSA, including but not limited to, anyone whose email address ends in @numbersusa.com; • Anyone at or affiliated with Californians for Population Stabilization, including but not limited to, anyone whose email address ends in @capsweb.org; • Anyone at or affiliated with We The People Rising, including but not limited to, anyone whose email address ends in @wethepeoplerising.com; • Anyone at or affiliated with The Remembrance Project, including but not limited to, anyone whose email address ends in @theremembranceproject.org; or

<ul style="list-style-type: none"> • Chris Bauder, Border Patrol Agent. 	<ul style="list-style-type: none"> • Anyone at or affiliated with Breitbart News Network, including but not limited to, anyone whose email address ends in @breitbart.com.
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Please provide all responsive records from January 20, 2017, through the date of the search.

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

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).

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)).

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.**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 DHS’s 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.”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 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

⁶ 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>.

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).

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)).

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, DHS 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 DHS 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 a 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.¹² Moreover, the request is primarily and fundamentally for non-commercial purposes.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 the operations or activities of the government.”¹⁴ Coordination and/or communication between government officials and anti-immigrant interest groups regarding border control is directly related to identifiable government activities. The requested records will help American Oversight and the general public understand the influence that such groups have over the actions or policies of the government, as well as any potential support provided to such groups by the government. Disclosure of the requested information will contribute to public understanding; as discussed below, American Oversight has the ability and intention to effectively convey the information it receives to the public.

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

¹² 6 C.F.R. § 5.11(k)(1)(i).

¹³ 6 C.F.R. § 5.11(k)(1)(ii).

¹⁴ 6 C.F.R. § 5.11(k)(1)(i), (2)(i)-(iv).

This request is primarily and fundamentally for non-commercial purposes.¹⁵ 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 our public website and promote their availability on social media platforms, such as Facebook and Twitter.¹⁶ 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 website¹⁷ and published an analysis of what the records reflected about DOJ's process for ethics waivers.¹⁸ Additionally, this particular FOIA request is part of a public project conducted by American Oversight 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.¹⁹

Accordingly, American Oversight qualifies for a fee waiver.

¹⁵ 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)-(ii).

¹⁶ American Oversight currently has approximately 11,800 page likes on Facebook and 44,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 25, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 25, 2018).

¹⁷ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁸ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with DHS 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 Hart Wood at foia@americanoversight.org or (202) 897-3918. 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