



July 21, 2017

**VIA EMAIL AND FACSIMILE**

Clarice Julka  
Office of the Secretary  
U.S. Department of the Interior  
MS-7328, MIB  
1849 C Street NW  
Washington, DC 20240  
[os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov)

Brian May  
FOIA Officer  
U.S. Geological Survey  
Department of the Interior  
5522 Research Park Drive  
Baltimore, MD 21228  
[foia@usgs.gov](mailto:foia@usgs.gov)

Charis Wilson, Ph.D.  
NPS FOIA Officer  
12795 W. Alameda Parkway  
P.O. Box 25287  
Denver, CO 80225  
[npsfoia@nps.gov](mailto:npsfoia@nps.gov)

Vanessa Lacayo  
Intermountain Region  
National Park Service  
P.O. Box 25287  
Denver, CO 80225  
Via Facsimile: (303) 969-2557

**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the Department of the Interior's (DOI) implementing regulations, 43 C.F.R. Part 2, American Oversight makes the following request for records.

On July 15, 2017, Facebook founder Mark Zuckerberg visited Glacier National Park to observe evidence of climate change in the glacial melt there.<sup>1</sup> Media reports indicate that just days before Mr. Zuckerberg's scheduled tour, the Department of the Interior "abruptly removed two of the park's top climate experts from a delegation scheduled to show him around."<sup>2</sup> Specifically, Glacier

---

<sup>1</sup> Lisa Rein, *Interior Dept. Ordered Glacier Park Chief, Other Expert Pulled from Zuckerberg Tour*, WASH. POST, July 20, 2017,

[https://www.washingtonpost.com/news/powerpost/wp/2017/07/20/climate-experts-pulled-from-glacier-national-park-tour-with-facebook-ceo-mark-zuckerberg/?tid=ss\\_tw&utm\\_term=.d5192de41bbd](https://www.washingtonpost.com/news/powerpost/wp/2017/07/20/climate-experts-pulled-from-glacier-national-park-tour-with-facebook-ceo-mark-zuckerberg/?tid=ss_tw&utm_term=.d5192de41bbd);

Lisa Rein, *Why Wasn't Mark Zuckerberg Allowed to Meet with Glacier's Climate Expert*, WASH. POST, July 18, 2017,

[https://www.washingtonpost.com/news/powerpost/wp/2017/07/18/mark-zuckerberg-went-to-glacier-to-learn-about-climate-change-but-couldnt-meet-with-the-resident-climate-scientist/?utm\\_term=.54b3c7db69d9](https://www.washingtonpost.com/news/powerpost/wp/2017/07/18/mark-zuckerberg-went-to-glacier-to-learn-about-climate-change-but-couldnt-meet-with-the-resident-climate-scientist/?utm_term=.54b3c7db69d9).

<sup>2</sup> Lisa Rein, *Interior Dept. Ordered Glacier Park Chief, Other Expert Pulled from Zuckerberg Tour*, WASH. POST, July 20, 2017,



National Park Superintendent Jeff Mow and U.S. Geological Survey (USGS) research ecologist Daniel Fagre were directed not to participate in the tour.<sup>3</sup> According to media accounts, this determination “capped days of internal discussions—including conference calls and multiple emails—among top Interior Department and Park Service officials about how much the park should roll out the welcome mat for Zuckerberg, who with the broader tech community in Silicon Valley has positioned himself as a vocal critic of President Trump, particularly of his withdrawal from the Paris climate accord.”<sup>4</sup> The Department also apparently instructed National Park Service (NPS) public affairs staff not to post about Mr. Zuckerberg’s visits on social media accounts or to share posts that Mr. Zuckerberg made.<sup>5</sup>

The last-minute decision to disinvite Mr. Mow and Mr. Fagre appeared to deviate from the Department’s typical protocol for visits like Mr. Zuckerberg’s, and media accounts suggest that the Department’s press secretary, Heather Swift, drove the changes in Mr. Zuckerberg’s schedule.<sup>6</sup> Mr. Mow indicated that he routinely meets with a wide range of visitors, “from members of Congress to school groups,” to the extent his schedule allows, and Mr. Fagre stated that he was “puzzled” by his removal from the event and had received no reason for it.<sup>7</sup> Given Mr. Zuckerberg’s criticism of the Trump administration’s approach to climate change, the Department’s eleventh-hour efforts to bar Mr. Zuckerberg from meeting with climate experts and to suppress social media coverage of his visit to Glacier National Park are alarming. American Oversight seeks documents that would shed light on the Department’s abrupt decision to curtail Mr. Zuckerberg’s visit and limit his access to information about climate science.

### **Requested Records**

American Oversight requests that your agency produce the following within twenty business days:

1. Any communications regarding Mr. Zuckerberg’s visit to Glacier National Park between or among any of the following:
  - a. Heather Swift;
  - b. any other public affairs or external relations employees within the Office of the Secretary;
  - c. any other public affairs or external relations employees within the NPS (including the Intermountain Region or Glacier National Park);
  - d. any other public affairs or external relations employees within USGS;

---

[https://www.washingtonpost.com/news/powerpost/wp/2017/07/20/climate-experts-pulled-from-glacier-national-park-tour-with-facebook-ceo-mark-zuckerberg/?tid=ss\\_tw&utm\\_term=.d5192de41bbd](https://www.washingtonpost.com/news/powerpost/wp/2017/07/20/climate-experts-pulled-from-glacier-national-park-tour-with-facebook-ceo-mark-zuckerberg/?tid=ss_tw&utm_term=.d5192de41bbd)

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

- e. any political appointee or SES employee within the Office of the Secretary of the Interior;
- f. any employee within the NPS Office of the Director;
- g. any employee of the NPS Office of the Deputy Director for Congressional and External Relations;
- h. any employee of the NPS Intermountain Region; or
- i. any employee of the USGS Office of the Director.

This request includes emails, memoranda, other written communications, and records reflecting telephone calls.

2. Any communications regarding Mr. Zuckerberg's visit to Glacier National Park between Mr. Zuckerberg, any Facebook employee or representative, or any other person acting on his behalf and:
  - a. Heather Swift;
  - b. any other public affairs or external relations employees within the Office of the Secretary;
  - c. any other public affairs or external relations employees within the NPS (including the Intermountain Region or Glacier National Park);
  - d. any other public affairs or external relations employees within USGS;
  - e. any political appointee or SES employee within the Office of the Secretary of the Interior;
  - f. any employee within the NPS Office of the Director;
  - g. any employee of the NPS Office of the Deputy Director for Congressional and External Relations;
  - h. any employee of the NPS Intermountain Region; or
  - i. any employee of the USGS Office of the Director.

This request includes emails, memoranda, other written communications, and records reflecting telephone calls.

3. Any communications sent or received by Jeff Mow or Daniel Fagre regarding Mr. Zuckerberg's visit to Glacier National Park, including regarding their participation or non-participation in that visit. This request includes records reflecting telephone calls in addition to emails, memoranda, and other written communications.

4. Any directive from (a) Heather Swift, (b) any other public affairs or external relations employees within the Office of the Secretary, the NPS (including the Intermountain Region), Glacier National Park, or the USGS, (c) any political appointee or SES employee within the Office of the Secretary of the Interior, or (d) any employee within the NPS Office of the Director, the NPS Office of the Deputy Director for Congressional and External Relations, or the USGS Office of the Director that any NPS or USGS employee—including, but not limited to, Jeff Mow or Daniel Fagre—not attend Mr. Zuckerberg’s visit to Glacier National Park or communicate with Mr. Zuckerberg.
5. Any guidance or directive provided to DOI, NPS, or USGS personnel regarding use of social media in connection with Mr. Zuckerberg’s visit to Glacier National Park, including any directions not to post or repost information about that visit.

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.<sup>8</sup> **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.**<sup>9</sup>

---

<sup>8</sup> 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).

<sup>9</sup> 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

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.**<sup>10</sup> 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 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.”<sup>11</sup> 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.”<sup>12</sup> 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.”<sup>13</sup> Further, “the withholding agency must supply ‘a relatively detailed

---

[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)).

<sup>10</sup> 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>.

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

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

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

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.”<sup>14</sup>

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.<sup>15</sup> 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, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in 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 15<sup>th</sup> 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 43 CFR § 2.45(a), 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 in a significant way.<sup>16</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>17</sup>

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 federal government.<sup>18</sup> The disclosure of the information sought under

---

<sup>14</sup> *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)).

<sup>15</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>16</sup> 43 CFR § 2.45(a)(1).

<sup>17</sup> 43 CFR § 2.45(a)(2).

<sup>18</sup> 43 C.F.R. § 2.48(a)(1)-(4).

this request will reveal the operations of the federal government, including currently non-public documents showing steps a federal agency has taken to conceal information related to climate change from a private individual well-positioned to raise public awareness of it. It will also shed light on the extent to which political and press concerns, rather than sound policy judgment, motivate agency decisions to limit public access to agency staff and research. As described in more detail below, American Oversight “will disseminate the information to a reasonably broad audience of persons” through its social media accounts and its website.<sup>19</sup>

This request is primarily and fundamentally for non-commercial purposes.<sup>20</sup> 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.<sup>21</sup> 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,<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

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 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 Beth France at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5246. Also, if American

---

<sup>19</sup> 43 C.F.R. § 2.48(a)(2)(iii)-(v).

<sup>20</sup> 43 C.F.R. § 12.45(a)(2); 43 C.F.R. § 2.48(b)(1)-(3).

<sup>21</sup> American Oversight currently has over 11,100 page likes on Facebook, and over 33,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 17, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 17, 2017).

<sup>22</sup> *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

<sup>23</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

<sup>24</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).

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