



June 26, 2017

VIA ONLINE PORTAL

Laurie Day
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue NW, Suite 11050
Washington, DC 20530-0001
Via FOIAOnline

Re: Freedom of Information Act Request

Dear Ms. Day:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

Requested Records

American Oversight requests that DOJ produce the following as soon as possible, given that it is a simple request for a specific, non-deliberative Attorney General order, or at a minimum within twenty business days:

The most recent order of the Attorney General identifying the order of succession for the Office of the Attorney General pursuant to 28 U.S.C. § 508.

Where possible, please provide responsive material in electronic format by email. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(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.¹ Moreover, the request is primarily and fundamentally for non-commercial purposes.²

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 or activities.³ When the office of attorney general is vacant, succession statutorily passes to the deputy attorney general, followed by the associate attorney general, and then, at the discretion of the attorney general and by his designation and order, to the solicitor general and the various assistant attorneys general in the order directed by the attorney general.⁴ The requested record would shed light on the decision made by Attorney General Sessions in executing his statutory duty, or by prior attorneys general if the succession order has not been updated. President Trump has already referenced the attorney general’s responsibility to identify the order of succession when the president issued executive orders on February 9, 2017, and March 31, 2017, naming additional DOJ attorneys to serve as attorney general if those “designated by the Attorney General pursuant to 28 U.S.C. § 508 to act as Attorney General” were unavailable.⁵ The requested record is particularly relevant since the line of succession has already been implicated by Mr. Sessions’s recusal from the government’s investigation of Russian meddling in the 2016 presidential election.⁶ Moreover, the content of such orders by prior attorneys general has been made public previously.⁷ Public interest and past practice suggest that the requested record should be made promptly available.

This request is primarily and fundamentally for non-commercial purposes.⁸ 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.⁹ American

¹ 28 C.F.R. § 16.10(k)(2).

² *Id.*

³ 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)–(B).

⁴ 28 U.S.C. § 508.

⁵ Exec. Order 13,775 of Feb. 9, 2017, 82 Fed. Reg. 10,697 (Feb. 14, 2017); Exec. Order 13,787 of Mar. 31, 2017, 82 Fed. Reg. 16,723 (Apr. 5, 2017).

⁶ Mark Landler & Eric Lichtblau, *Jeff Sessions Recuses Himself from Russia Inquiry*, N.Y. TIMES, Mar. 2, 2017, <https://www.nytimes.com/2017/03/02/us/politics/jeff-sessions-russia-trump-investigation-democrats.html>.

⁷ See Office of Legal Counsel, *Authority of the President to Name an Acting Attorney General*, Mem. Op. for the Counsel to the President (Sept. 17, 2007), <https://www.justice.gov/file/451576/download>.

⁸ 28 C.F.R. § 16.10(k)(iii)(A)–(B).

⁹ American Oversight currently has approximately 11,000 page likes on Facebook, and over 32,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/>

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 website¹⁰ and published an analysis of what the records reflected about DOJ's process for ethics waivers.¹¹ Additionally, 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.¹²

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 you 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 record, 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

(last visited June 26, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 26, 2017).

¹⁰ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

¹¹ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

¹² *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.