



July 28, 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
Online Request via FOIAonline

Re: Expedited 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.

President Trump has repeatedly expressed his personal frustration at Attorney General Jeff Sessions's decision to recuse himself from any "existing or future investigations" of the 2016 presidential campaigns.¹ Mr. Trump has taken to ridiculing Mr. Sessions in public on a near-daily basis for what the president views as the attorney general's investigative failures,² perhaps to shame

¹ See Peter Baker et al., *Citing Recusal, Trump Says He Wouldn't Have Hired Sessions*, N.Y. TIMES, July 19, 2017, <https://www.nytimes.com/2017/07/19/us/politics/trump-interview-sessions-russia.html>; see also Peter Baker et al., *In Trump's World, 'Very Weak' Sessions Twists in Wind*, N.Y. TIMES, July 25, 2017, <https://www.nytimes.com/2017/07/25/us/politics/trump-attacks-own-attorney-general-jeff-sessions.html>; Fox News, *Trump Reportedly unhappy about Sessions' Recusal from Russia Investigations*, FOX NEWS POLITICS, Mar. 5, 2017, <http://www.foxnews.com/politics/2017/03/05/trump-reportedly-unhappy-about-sessions-recusal-from-russia-investigations.html>.

² See Donald J. Trump (@realDonaldTrump), TWITTER (July 26, 2017, 9:48 AM), <https://twitter.com/realDonaldTrump/status/890207082926022656> (questioning why "A.G. Sessions" hasn't replaced the acting head of the FBI); Donald J. Trump (@realDonaldTrump), TWITTER (July 25, 2017, 6:12 AM), <https://twitter.com/realDonaldTrump/status/889790429398528000> ("Attorney General Jeff Sessions has taken a VERY weak position on Hillary Clinton crimes (where are E-mails & DNC server) & Intel leakers!"); Donald J. Trump (@realDonaldTrump), TWITTER (July 24, 2017, 8:49 AM), <https://twitter.com/realDonaldTrump/status/889467610332528641> ("So why aren't the



Mr. Sessions for the recusals or simply because the president can.³ Given how the president has called into question the independence of the DOJ's investigations, American Oversight submits this expedited request to illuminate what pressures the White House is putting on the Department outside of Twitter and media assaults.

Requested Records

American Oversight requests that DOJ produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, or any other records reflecting communications) between the Office of the Attorney General and anyone in the White House Office (including anyone with an email address ending in @who.eop.gov) regarding Attorney General Sessions's decision to recuse himself "from any existing or future investigations of any matters related in any way to the campaigns for President of the United States."

Please provide all responsive records from March 2, 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 DOJ 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

Committees and investigators, and of course our beleaguered A.G., looking into Crooked Hillarys crimes & Russia relations?").

³ See Maggie Haberman (@maggieNYT), TWITTER (July 25, 2017, 8:33 AM), <https://twitter.com/maggieNYT/status/889825890447785984>.

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

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

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)).

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).

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 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, DOJ 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 DOJ 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 rolling basis.

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

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)).

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

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 government operations and activities.¹⁴ The president has publicly and repeatedly shamed Mr. Sessions;¹⁵ the requested records would inform the public as to whether and to what extent the White House is attempting to influence the investigative efforts of DOJ generally or the specific work of Robert Mueller III, the special counsel appointed by Deputy Attorney General Rod Rosenstein to investigate ties between Mr. Trump’s presidential campaign and Russian officials.¹⁶ Mr. Trump has already fired the director of the FBI,¹⁷ and there is significant public interest in Mr. Trump’s seeming efforts to direct Mr. Mueller’s investigation.¹⁸ The requested records will help American Oversight and the general public understand what steps DOJ is taking to ensure the agency’s independence and integrity.

This request is primarily and fundamentally for non-commercial purposes.¹⁹ 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

¹² 28 C.F.R. § 16.10(k)(1).

¹³ *Id.*

¹⁴ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

¹⁵ *See supra* notes 1-3.

¹⁶ Rebecca R. Ruiz & Mark Landler, *Robert Mueller, Former F.B.I. Director, Is Named Special Counsel for Russia Investigation*, N.Y. TIMES, May 17, 2017, <https://www.nytimes.com/2017/05/17/us/politics/robert-mueller-special-counsel-russia-investigation.html>.

¹⁷ *See* Davlin Barrett et al., *President Trump Fires FBI Director*, WASH. POST, May 10, 2017, https://www.washingtonpost.com/world/national-security/comey-misstated-key-clinton-email-evidence-at-hearing-say-people-close-to-investigation/2017/05/09/074c1c7e-34bd-11e7-b373-418f6849a004_story.html?utm_term=.3a6f62a0cda7.

¹⁸ *See* Annie Karni, *Trump Threatens to Break the Glass on DOJ Succession Plan*, POLITICO (June 16, 2017, 6:34 PM), <http://www.politico.com/story/2017/06/16/donald-trump-justice-department-succession-plan-239652>; Matthew A. Miller, *Will Trump Take Revenge on the Justice Department?*, POLITICO MAGAZINE, July 11, 2017, <http://www.politico.com/magazine/story/2017/07/11/donald-trump-jr-federal-investigation-justice-department-215363>; Jake Tapper & Eli Watkins, *GOP Senators Dismayed at Trump’s Criticism of DOJ Officials*, CNNPOLITICS (July 21, 2017), <http://www.cnn.com/2017/07/20/politics/gop-senators-donald-trump-doj/index.html>.

¹⁹ 28 C.F.R. § 16.10(k)(1), (2)(iii).

and promote their availability on social media platforms, such as Facebook and Twitter.²⁰ 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 website²¹ and published an analysis of what the records reflected about DOJ's process for ethics waivers.²² 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.²³

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(1)(ii), (iv), American Oversight requests that the FBI expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief, that there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity that affect public confidence. As discussed above, the question of the president's public bullying of Mr. Sessions and DOJ already has been the subject of widespread media interest and attention raising questions about the integrity of DOJ independence and investigations.²⁴ The records

²⁰ American Oversight currently has approximately 11,200 page likes on Facebook, and 33,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 28, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 28, 2017).

²¹ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

²² *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

²³ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²⁴ See Karni, *supra* note 18; Carol D. Leonnig et al., *Trump Team Seeks to Control, Block Mueller's Russia Investigation*, WASH. POST, July 21, 2017, https://www.washingtonpost.com/politics/trumps-lawyers-seek-to-undercut-muellers-russia-investigation/2017/07/20/232ebf2c-6d71-11e7-b9e2-2056e768a7e5_story.html?utm_term=.e5e213fcd16e; Morning Edition, *Former DOJ Lawyer on Prosecuting Corporate Crime Under Trump*, NPR (July 6, 2017, 5:01 AM), <http://www.npr.org/2017/07/06/535732116/former-doj-lawyer-on-prosecuting-corporate-crime-under-trump>; Miller, *supra* note 18; *Will Trump's Criticism Have a Chilling Effect at the Justice Department?*, PBS NEWSHOUR (July 20, 2017, 6:40 PM), <http://www.pbs.org/newshour/bb/will-trumps-criticism-chilling-effect-justice-department/>; Tapper & Watkins, *supra* note 18; Chuck Todd et al., *Yes, Trump's Attacks on His Justice Department Are a Huge Problem*, NBC NEWS (July 20, 2017, 8:41 AM), <http://www.nbcnews.com/politics/first-read/yes-trump-s-attacks-his-justice-department-are-huge-problem-n784741>; Kenneth T. Walsh, *Trump Turns on Justice*, U.S.

responsive to this request would contribute to the public debate that is already underway, speaking to questions of what efforts the White House is taking apart from the president's tweets to influence the work of DOJ, and what steps DOJ is taking to protect the independence of federal law enforcement efforts. Previous White House ethics attorneys from both political parties have commented on the significant concerns regarding White House interference in DOJ investigations generally and Mr. Mueller's work specifically.²⁵ This White House interference in the work of DOJ is a quintessential example of "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence."²⁶

Moreover, I certify to be true and correct to the best of my knowledge and belief, that there is an urgent need to inform the public about the federal government activity that is the subject of this request. The president has already taken the unprecedented position of firing multiple high-level DOJ officials who were participating in investigations of him and his associates.²⁷ As Mr. Trump's criticisms of Mr. Sessions increase and escalate,²⁸ there is a possibility that Mr. Sessions will be yet another fired DOJ official and there is an urgency to understand what communications the White House is having with DOJ in light of Mr. Trump's efforts to undermine the head of the agency. There is widespread and urgent public interest in the interactions between Mr. Trump and Mr. Sessions regarding his recusal, the investigation of Russian interference in the 2016 presidential election, Mr. Mueller's investigation, and DOJ's efforts, if any, to protect the

NEWS & WORLD REPORT (June 6, 2017, 7:29 AM), <https://www.usnews.com/news/ken-walshs-washington/articles/2017-06-06/donald-trump-turns-twitter-ire-on-justice-department> .

²⁵ See Richard Painter & Norman Eisen, *Robert Mueller Terrifies President Trump. Of Course He Wants Him Gone.*, USA Today (June 20, 2017, 2:01 PM), <https://www.usatoday.com/story/opinion/2017/06/20/robert-mueller-needs-to-stay-sort-out-russia-mess-richard-painter-norman-eisen-column/103011308/>; see also John Bowden, *Bush Ethics Lawyer: Congress Must Tell Trump Not to Fire Mueller*, The Hill (July 20, 2017, 8:11 PM), <http://thehill.com/homenews/administration/343053-bush-ethics-lawyer-congress-must-tell-trump-not-to-fire-mueller>; Nina Burleigh, *Donald Trump Is 'Cornered' and Could Curtail the Russia Investigation*, Newsweek (July 20, 2017, 4:02 PM), <http://www.newsweek.com/trump-sessions-mueller-impeachment-congress-russia-investigation-republicans-639832>.

²⁶ 28 C.F.R. § 16.5(e)(1)(iv).

²⁷ Euan McKirdy, *Preet Bharara, Sally Yates and James Comey: Fired While Investigating Donald Trump*, CNNPOLITICS (May 10, 2017, 5:46 AM), <http://www.cnn.com/2017/05/10/politics/comey-yates-bharara-fired-after-investigations/>.

²⁸ See *supra* notes 1-3; see also Laura Jarrett, *Sessions Cracks Down on Leaks Amid Trump Fury*, CNNPOLITICS (July 26, 2017, 10:29 AM), <http://www.cnn.com/2017/07/26/politics/jeff-sessions-leaks/index.html>; Allan Smith, *Trump Continues Week of Attacks on Jeff Sessions as He Asks on Twitter Why the AG Didn't Fire the Acting FBI Director*, BUS. INSIDER, July 26, 2017, <http://www.businessinsider.com/trump-tweets-jeff-sessions-andrew-mccabe-2017-7>; Matt Zapposky & Devlin Barrett, *Trump Launches New Attacks on Sessions*, WASH. POST (July 26, 2017, 10:44 AM), https://www.washingtonpost.com/world/national-security/trump-launches-new-attacks-on-sessions/2017/07/26/e2e10a8e-720b-11e7-8839-ec48ec4cae25_story.html?utm_term=.af3a576e16b1.

independence of federal law enforcement from White House interference and political pressure.²⁹ The information sought in this request will meaningfully further public discourse on this issue of national concern.

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,³⁰ 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."³¹ 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 promote their availability on social media platforms, such as Facebook and Twitter.³² 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 website³³ and published an analysis of what the records reflected about DOJ's process for ethics waivers.³⁴ 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.³⁵

Accordingly, American Oversight's request satisfies the criteria for expedition.

²⁹ See Baker et al., July 19, 2017, *supra* note 1; Baker et al., July 25, 2017, *supra* note 1; Bowden, *supra* note 25; Burleigh, *supra* note 25; FOX NEWS POLITICS, *supra* note 1; Jarret, *supra* note 28; Karni, *supra* note 18; Leonnig et al., *supra* note 24; Morning Edition, *supra* note 24; Miller, *supra* note 18; Painter & Eisen, *supra* note 25; PBS NEWSHOUR, *supra* note 24; Ruiz & Landler, *supra* note 16; Smith, *supra* note 28; Tapper & Watkins, *supra* note 18; Todd et al., *supra* note 24; Walsh, *supra* note 24; Zapotosky & Barrett, *supra* note 28.

³⁰ 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).

³¹ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³² American Oversight currently has approximately 11,200 page likes on Facebook, and 33,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 28, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 28, 2017).

³³ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

³⁴ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

³⁵ *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 DOJ 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,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight

cc: Sarah Isgur Flores, Director, Office of Public Affairs