



August 7, 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.

On August 1, media outlets reported on a recently initiated litigation alleging that DOJ's Director of Public Affairs, Sarah Isgur Flores, played a role in the publication of a subsequently redacted news story published by the Fox News Channel.<sup>1</sup> American Oversight seeks records related to the allegation of impropriety by senior leadership at DOJ.

**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, all emails forwarding or copying records from any personal email address belonging to Sarah Isgur Flores, or any other records reflecting communications) between Sarah Isgur Flores and Malia Zimmerman.
2. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, all emails forwarding or copying records from any personal email

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<sup>1</sup> David Weigel & Paul Farhi, *Lawsuit Alleges White House Link in Discredited Seth Rich Conspiracy Theory*, WASH. POST (Aug. 1, 2017, 8:48 PM), [https://www.washingtonpost.com/politics/lawsuit-alleges-white-house-link-in-seth-rich-conspiracy-theory/2017/08/01/dc39b214-76f5-11e7-8f39-eeb7d3a2d304\\_story.html?utm\\_term=.0af83527a70d](https://www.washingtonpost.com/politics/lawsuit-alleges-white-house-link-in-seth-rich-conspiracy-theory/2017/08/01/dc39b214-76f5-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.0af83527a70d).



address belonging to Sarah Isgur Flores, or any other records reflecting communications) between Sarah Isgur Flores and Ed Butowsky.

3. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, all emails forwarding or copying records from any personal email address belonging to Sarah Isgur Flores, or any other records reflecting communications) between Sarah Isgur Flores and Rod Wheeler.
4. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, all emails forwarding or copying records from any personal email address belonging to Sarah Isgur Flores, or any other records reflecting communications) between Sarah Isgur Flores and anyone from the Fox News Channel.
5. All records reflecting communications (including emails, telephone call logs, calendar entries, meeting agendas, all emails forwarding or copying records from any personal email address belonging to Sarah Isgur Flores, or any other records reflecting communications) between Sarah Isgur Flores and anyone in the White House Office (including anyone with an email address ending in @who.eop.gov) regarding Seth Rich, Rod Wheeler, Malia Zimmerman, Wikileaks, Ed Butowsky, the hack of emails at the Democratic National Committee, Fox News, or the DOJ's investigation into potential interference by Russia into the 2016 presidential election.

Please provide all responsive records from February 8, 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 Federal Records Act and FOIA.<sup>2</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>3</sup>

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.**<sup>4</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 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”

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<sup>2</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>3</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 [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>4</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>.

or “disclosure is prohibited by law.”<sup>5</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>6</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>7</sup> 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.’”<sup>8</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>9</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, 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 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.

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<sup>5</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>6</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>7</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

<sup>8</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>9</sup> *Mead Data Central*, 566 F.2d at 261.

## 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.<sup>10</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>11</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 government operations and activities.<sup>12</sup> Seth Rich, a Democratic National Committee (DNC) staffer, was killed in July 2016 in what appeared to be a botched robbery.<sup>13</sup> The young man’s murder evolved into a conspiracy theory that Democratic leadership had Mr. Rich killed because he provided DNC emails and files to WikiLeaks—in rebuttal to news reports that Russian operatives were behind the DNC hack.<sup>14</sup> On August 1, 2017, Rod Wheeler, a private detective who investigated the murder, filed a lawsuit alleging that Fox News Channel, the White House, and Ms. Flores worked together to publicly promote the conspiracy.<sup>15</sup> The subject of this FOIA request would reveal the activities of a government employee using her official role to promote a knowingly false conspiracy theory for political gain. As discussed further below, the request is of significant interest to the American public, and disclosure of the requested information will contribute to public understanding. American Oversight has both the ability and the intention to effectively convey the information it receives to the public.

This request is primarily and fundamentally for non-commercial purposes.<sup>16</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 our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>17</sup>

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<sup>10</sup> 28 C.F.R. § 16.10(k)(1).

<sup>11</sup> *Id.*

<sup>12</sup> 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

<sup>13</sup> See Weigel & Farhi, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> 28 C.F.R. § 16.10(k)(1), (2)(iii).

<sup>17</sup> American Oversight currently has approximately 11,200 page likes on Facebook, and 33,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited August 7, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited August 7, 2017).

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 website<sup>18</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>19</sup> 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.<sup>20</sup>

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 DOJ 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 in the subject of our request and that there exist possible questions concerning the government's integrity that affect public confidence.<sup>21</sup> In the hours following the initiation of Mr. Wheeler's suit, media outlets and journalists across the country began reporting on the lawsuit as well as the allegation that Ms. Flores may have played a role in the promotion of the discredited conspiracy theory, including NBC,<sup>22</sup> Huffington Post,<sup>23</sup> *Daily Beast*,<sup>24</sup> the *New York*

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<sup>18</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>19</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>20</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).

<sup>21</sup> 28 C.F.R. § 16.5(e)(1)(iv).

<sup>22</sup> Alex Seitz-Wald & Corky Siemaszko, *Seth Rich Case: Fox News Made Fake News to Protect Trump, Lawsuit Alleges*, NBC NEWS (Aug. 1, 2017, 3:23 PM), <http://www.nbcnews.com/news/us-news/seth-rich-case-fox-news-made-fake-news-protect-trump-n788541>.

<sup>23</sup> Michael Calderone (@mlcalderone), TWITTER (Aug. 1, 2017, 10:01 AM), <https://twitter.com/mlcalderone/status/892384791521370112>; Michael Calderone, *Trump Linked to Fox News' Bogus Seth Rich Story, Lawsuit Alleges*, HUFFPOST (Aug. 1, 2017, 12:37 PM), [http://www.huffingtonpost.com/entry/fox-news-white-house-seth-rich-us\\_59809958e4b0d6e28a10cb6e](http://www.huffingtonpost.com/entry/fox-news-white-house-seth-rich-us_59809958e4b0d6e28a10cb6e).

<sup>24</sup> Ben Collins, *The Alt-Right's DNC Conspiracy Blows Up*, DAILY BEAST (Aug. 1, 2017, 9:55 AM), <http://www.thedailybeast.com/fox-news-suit-turns-seth-rich-conspiracists-on-each-other>; Lachlan Markay (@lachlan), TWITTER (Aug. 1, 2017, 11:21 AM), <https://twitter.com/lachlan/status/892404943927349248>.

*Times*,<sup>25</sup> CNN,<sup>26</sup> NPR,<sup>27</sup> ABC News,<sup>28</sup> BuzzFeed,<sup>29</sup> the *Wall Street Journal*,<sup>30</sup> the *Weekly Standard*,<sup>31</sup> the *Washington Post*,<sup>32</sup> USA Today,<sup>33</sup> Politico,<sup>34</sup> the Guardian,<sup>35</sup> *The Hill*,<sup>36</sup> *New York* magazine,<sup>37</sup>

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<sup>25</sup> Emily Steel, *Lawsuit Asserts White House Role in Fox News Article on Seth Rich*, N.Y. TIMES, Aug. 1, 2017, <https://www.nytimes.com/2017/08/01/business/media/seth-rich-fox-news-white-house-lawsuit.html>.

<sup>26</sup> CNN Newsroom (@CNNnewsroom), TWITTER (Aug. 1, 2017, 11:36 AM), <https://twitter.com/CNNnewsroom/status/892408801948831748>; Jeff Zeleny (@jeffzeleny), TWITTER (Aug. 1, 2017 10:54 AM), <https://twitter.com/jeffzeleny/status/892398035187191809>.

<sup>27</sup> David Folkenflik, *Behind Fox News' Baseless Seth Rich Story: The Untold Tale*, NPR (Aug. 1, 2017, 7:23 AM), <http://www.npr.org/2017/08/01/540783715/lawsuit-alleges-fox-news-and-trump-supporter-created-fake-news-story>.

<sup>28</sup> Julia Jacobo, *White House Reviewed Fox News Story About Seth Rich Before Publication, Lawsuit Alleges*, ABC NEWS (Aug. 1, 2017, 4:50 PM), <http://abcnews.go.com/Politics/white-house-reviewed-fox-news-story-seth-rich/story?id=48966413>.

<sup>29</sup> Jason Leopold (@JasonLeopold), TWITTER (Aug. 1, 2017, 9:36 AM), <https://twitter.com/JasonLeopold/status/892378470675693568>; Cora Lewis & Jim Dalrymple II, *Lawsuit Says Sean Spicer Reviewed a Fox News Report on a Fake Conspiracy Theory Before It Was Published*, BUZZFEED (Aug. 1, 2017, 10:44 PM), [https://www.buzzfeed.com/coralewis/rod-wheeler-sues-fox-news?utm\\_term=.vjD0ZMaMq0#.nsJ5x6B635](https://www.buzzfeed.com/coralewis/rod-wheeler-sues-fox-news?utm_term=.vjD0ZMaMq0#.nsJ5x6B635).

<sup>30</sup> Joe Flint, *Fox News Contributor Sues Over Discredited Article on DNC Staffer*, WALL ST. J. (Aug. 1, 2017, 3:24 PM), <https://www.wsj.com/articles/fox-news-contributor-sues-over-discredited-article-on-dnc-staffer-1501606036>.

<sup>31</sup> Bill Kristol (@BillKristol), TWITTER (Aug. 1, 2017, 9:10 AM), <https://twitter.com/BillKristol/status/892371952500977664>.

<sup>32</sup> Philip Bump, *A Timeline of the Explosive Lawsuit Alleging a White House Link in the Seth Rich Conspiracy*, WASH. POST (Aug. 1, 2017, 5:29 PM), [https://www.washingtonpost.com/news/politics/wp/2017/08/01/a-timeline-of-the-explosive-lawsuit-alleging-a-white-house-link-in-the-seth-rich-conspiracy/?tid=ss\\_tw-bottom&utm\\_term=.5313fba20c4](https://www.washingtonpost.com/news/politics/wp/2017/08/01/a-timeline-of-the-explosive-lawsuit-alleging-a-white-house-link-in-the-seth-rich-conspiracy/?tid=ss_tw-bottom&utm_term=.5313fba20c4); Dave Weigel (@daveweigel), TWITTER (Aug. 1, 2017, 11:30 AM), <https://twitter.com/daveweigel/status/892407312694083591>.

<sup>33</sup> Mike Snider, *Suit: Fox News, White House Collaborated on Fake News Story in Seth Rich Death*, (Aug. 1, 2017, 5:52 PM), <https://www.usatoday.com/story/money/business/2017/08/01/suit-fox-news-white-house-collaborated-fake-news-story-seth-rich-death/528791001/>.

<sup>34</sup> Hadas Gold, *Lawsuit Says Fox Knowingly Faked Seth Rich Story*, POLITICO (Aug. 1, 2017, 2:41 PM), <http://www.politico.com/story/2017/08/01/fox-lawsuit-seth-rich-story-241208>.

<sup>35</sup> Ed Pilkington, *Sean Spicer Had Notice of Discredited Fox News Story on DNC Aide's Death*, THE GUARDIAN (Aug. 1, 2017, 4:06 PM), <https://www.theguardian.com/media/2017/aug/01/sean-spicer-seth-rich-fox-news-story-dnc-aide-death>.

<sup>36</sup> Joe Concha, *Lawsuit Claims Trump Involvement in Retracted Fox Story on Seth Rich*, THE HILL (Aug. 1, 2017, 10:39 AM), <http://thehill.com/homenews/media/344745-lawsuit-claims-trump-involvement-in-retracted-fox-story-on-seth-rich>.

Rolling Stone,<sup>38</sup> Vanity Fair,<sup>39</sup> Mother Jones,<sup>40</sup> and others.<sup>41</sup> The possible question of whether Ms. Flores, in her official capacity, participated in knowingly promoting a false story maligning a dead man for political ends has severe implications for the public's confidence in the government's integrity, as evidenced in the media reports above. The requested records are necessary to resolve these possible questions. Either Ms. Flores did participate in the publication of a false story, in which case the public has a right to know the extent of a government employee's complicity in the lie. Or Ms. Flores did not in fact participate in the publication of the later-retracted story and the harm to Ms. Flores's reputation can be ameliorated and the public's confidence in the government's integrity restored knowing that Mr. Wheeler's allegations, at least as far as they pertain to Ms. Flores, are untrue.

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.<sup>42</sup> The information American Oversight seeks concerns "a matter of a current exigency to the American public."<sup>43</sup> The allegations against Ms. Flores and the White House, including President Trump himself, are the subject of currently unfolding news stories.<sup>44</sup> The records responsive to this request are necessary for the public to be able to participate as informed citizens

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<sup>37</sup> Olivia Nuzzi, *Exactly How Close Was the White House to Fox News' Fake Seth Rich Story?*, NEW YORK (Aug. 2, 2017, 3:30 AM), <http://nymag.com/daily/intelligencer/2017/08/how-close-was-the-white-house-to-foxs-fake-seth-rich-story.html>.

<sup>38</sup> Tessa Stuart, *Seth Rich: What You Need to Know About Discredited Fox News Story*, ROLLING STONE, Aug. 1, 2017, <http://www.rollingstone.com/culture/what-you-need-to-know-about-fox-news-seth-rich-story-w495383>.

<sup>39</sup> Abigail Tracy, *White House Pushed Fox News to Publish Seth Rich Story, Lawsuit Claims*, VANITY FAIR (Aug. 1, 2017, 3:40 PM), <https://www.vanityfair.com/news/2017/08/white-house-fox-news-seth-rich>.

<sup>40</sup> Noah Lanard, *All the Major Players in the Latest Seth Rich Story Are Contradicting Themselves*, MOTHERJONES (Aug. 1, 2017, 3:59 PM), <http://www.motherjones.com/politics/2017/08/all-the-major-players-in-the-latest-seth-rich-story-are-contradicting-themselves/>.

<sup>41</sup> Associated Press, *Fox News Coordinated with White House on Seth Rich Story, Fox Contributor's Lawsuit Claims*, L.A. TIMES (Aug. 1, 2017, 4:55 PM), <http://www.latimes.com/business/hollywood/la-et-ct-fox-news-seth-rich-20170801-story.html>; Ana Navarro (@ananavarro), TWITTER (Aug. 1, 2017, 2:39 PM), <https://twitter.com/ananavarro/status/892454715874656256>; Laura Rozen (@lrozen), TWITTER (Aug. 1, 2017, 9:17 AM), <https://twitter.com/lrozen/status/892373846942261248>; Shane Savitsky, *Lawsuit: Fox News, Trump Supporter Made Up Seth Rich Story*, AXIOS, Aug. 1, 2017, <https://www.axios.com/lawsuit-alleges-fox-news-fabricated-seth-rich-story-to-distract-from-russia-2468009150.html>; Gabriel Sherman (@gabrielsherman), TWITTER (Aug. 1, 2017, 8:40 AM), <https://twitter.com/gabrielsherman/status/892364382885249024>.

<sup>42</sup> 28 C.F.R. § 16.5(e)(1)(ii).

<sup>43</sup> *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001) (quoting H.R. Rep. No. 104-795, at 26 (1996), reprinted in 1996 U.S.C.C.A.N. 3448, 3469).

<sup>44</sup> *Id.*; see also *supra* notes 22-41.

in the debate regarding the propriety of senior officials using their government positions to knowingly, intentionally, and posthumously defame a young man.

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,<sup>45</sup> 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."<sup>46</sup> 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.<sup>47</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, American Oversight promptly posted the records to its website<sup>48</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>49</sup> 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.<sup>50</sup>

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

## **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](mailto:foia@americanoversight.org) or 202.869.5246. Also, if American Oversight's

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<sup>45</sup> 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).

<sup>46</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>47</sup> American Oversight currently has approximately 11,200 page likes on Facebook, and 33,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited August 7, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited August 7, 2017).

<sup>48</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>49</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>50</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).

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". 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