



November 9, 2017

VIA ELECTRONIC MAIL AND 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

Sue Ann Slates
Chief, Freedom of Information Act/Privacy Act (FOIA/PA) Unit
U.S. Department of Justice, Antitrust Division
Liberty Square Building
450 Fifth Street NW, Suite 1000
Washington, DC 20530
Antitrust.foia@usdoj.gov

Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Officers:

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 October 22, 2016, AT&T Inc. and Time Warner Inc. announced a merger agreement.¹ As AT&T's press release and substantial media coverage have noted, the merger requires DOJ review and approval.² Time Warner, Inc. owns CNN, and President Trump's antipathy for CNN is well known.³ In a troubling development, a recent *New York Times* article indicates that "the

¹ Press Release, AT&T Inc., AT&T to Acquire Time Warner (Oct. 22, 2016), http://about.att.com/story/att_to_acquire_time_warner.html.

² *Id.*; see also *AT&T Still Doesn't Know the DOJ's Final Conditions for Its Time Warner Bid*, FORTUNE, June 22, 2017, <http://fortune.com/2017/06/22/att-time-warner-merger-justice-department/>; Cecilia Kang, *Lawmakers Change Their Tone on AT&T and Time Warner Deal*, N.Y. TIMES, Dec. 7, 2016, <https://www.nytimes.com/2016/12/07/technology/att-and-time-warner-deal-hearing.html>.

³ Michael M. Grynbaum, *Trump Tweets a Video of Him Wrestling 'CNN' to the Ground*, N.Y. TIMES, July 2, 2017, <https://www.nytimes.com/2017/07/02/business/media/trump-wrestling-video-cnn-twitter.html>; Donald Trump (@realDonaldTrump), TWITTER (July 2, 2017, 9:21AM),



president's animus toward CNN remains a wild card" in DOJ's review of the proposed merger and that a senior administration official admitted that White House advisers have discussed the "pending merger between CNN's parent company, Time Warner, and AT&T" as "a potential point of leverage over" CNN.⁴

On November 8, 2017, even more alarming accounts emerged that in reviewing the terms of the merger between AT&T and Time Warner, DOJ is exerting pressure on Time Warner to sell off Time Warner-owned CNN.⁵

Using DOJ's regulatory or enforcement authority to penalize or influence a media outlet through pressure on its parent company would constitute a disturbing abuse of power and assault on the freedom of the press. Given President Trump's outward disdain for CNN, American Oversight seeks documents that will shed light on the influence, if any, that the President's personal feelings toward CNN, or those of his associates, have had or are having on DOJ's review of the proposed Time Warner-AT&T merger.

<https://twitter.com/realDonaldTrump/status/881503147168071680> (posting a video edited to show Donald Trump wrestling a man with the CNN logo over his face to the ground); Donald Trump (@realDonaldTrump), TWITTER (July 1, 2017, 6:08 PM),

<https://twitter.com/realDonaldTrump/status/881273362454118400> ("I am thinking about changing the name #FakeNews CNN to #FraudNewsCNN!"); Donald Trump (@realDonaldTrump), TWITTER (Feb, 17, 2017, 4:48 PM),

<https://twitter.com/realDonaldTrump/status/832708293516632065> ("The FAKE NEWS media (failing @nytimes, @NBCNews, @ABC, @CBS, @CNN) is not my enemy, it is the enemy of the American People!"); Donald Trump (@realDonaldTrump), TWITTER (Oct. 10, 2016, 3:14 PM), <https://twitter.com/realDonaldTrump/status/785559022082658305> ("CNN is the worst - fortunately they have bad ratings because everyone knows they are biased.").

⁴ Michael M. Grynbaum, *The Network Against the Leader of the Free World*, N.Y. TIMES, July 5, 2017, <https://www.nytimes.com/2017/07/05/business/media/jeffrey-zucker-cnn-trump.html>.

⁵ Steven Overly, *Sources: AT&T, Time Warner Under Pressure to Dump CNN*, POLITICO (Nov. 8, 2017), <https://www.politico.com/story/2017/11/08/att-time-warner-dump-cnn-244697>; Mallory Shelbourne and Harper Neidig, *DOJ Told AT&T it Has to Sell CNN for Time Warner Merger: Report*, THE HILL (Nov. 8, 2017 2:04 PM), <http://thehill.com/policy/technology/359417-doj-told-att-it-has-to-sell-cnn-for-time-warner-merger-report>; Michael J. de la Merced et. al., *U.S. Said to Seek Sale of CNN or DirecTV in AT&T-Time Warner Deal*, N.Y. TIMES, Nov. 8, 2017, <https://www.nytimes.com/2017/11/08/business/dealbook/att-time-warner.html>; Brian Flood, *Report: DOJ Demands CNN Sale Before AT&T, Time Warner Deal is Approved*, FOX NEWS (Nov. 8, 2017 2:43 PM), <http://www.foxnews.com/entertainment/2017/11/08/report-doj-demands-cnn-sale-before-at-t-time-warner-deal-is-approved.html>; Tae Kim, *DOJ Demands CNN or DirecTV be Sold as Condition for AT&T-Time Warner Deal Approval*, CNBC (Nov. 8, 2017 3:22 PM), <https://www.cnbc.com/2017/11/08/doj-demands-cnn-or-directv-be-sold-as-condition-for-att-time-warner-deal-approval.html>; James Fontanella-Khan et. al., *US Regulators Demand CNN Sale to Approve AT&T-Time Warner Deal*, FINANCIAL TIMES (Nov. 8, 2017 1:48 PM), <https://www.ft.com/content/149b22dc-c494-11e7-a1d2-6786f39ef675>.

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 communications between employees in the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General (OIP), and any employees in the White House relating to the proposed merger between Time Warner and AT&T, that mention the Cable News Network, CNN, or contain the key words “Zucker” or “fake.”

Please provide all responsive records from July 7, 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.**

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.”⁶ 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.”⁷ 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.”⁸ Further, “the withholding agency must supply ‘a relatively detailed

⁶ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁷ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁸ *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.”⁹

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.¹⁰ 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 a 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 significant way.¹¹ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹²

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

⁹ *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)).

¹⁰ *Mead Data Central*, 566 F.2d at 261.

¹¹ 28 C.F.R. § 16.10(k)(2).

¹² *Id.*

government operations and is not “primarily in the commercial interest of the requester.”¹³ The requested records “direct[ly] and clear[ly]” concern “identifiable operations or activities” of the government, namely required review of a proposed merger by DOJ’s Antitrust Division.¹⁴ They will be “meaningfully informative” about DOJ’s exercise of its antitrust authority and add substantially to the public’s understanding of these activities and the White House’s influence on them, including the compliance or noncompliance of government officials with protocols covering communications between DOJ officials and the White House on particular matters and whether any inappropriate considerations may have affected DOJ’s review.¹⁵ Despite recent media reports that President Trump’s feelings about CNN may influence DOJ’s conduct of its review or final decision regarding the proposed merger, the general public currently has little concrete information on what role, if any, the president and his opinions are actually playing in DOJ’s work. Finally, as described more fully below, American Oversight will use its public website and social media accounts to ensure that the requested material will “contribute to the understanding of a reasonably broad audience of persons interested” in the independence of the Department of Justice and the integrity of its operations.¹⁶

This request is primarily and fundamentally for non-commercial purposes.¹⁷ 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.¹⁸ 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,¹⁹ 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.²⁰ 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

¹³ 28 C.F.R. § 16.10(k)(2)(i)-(ii).

¹⁴ 28 C.F.R. § 16.10(k)(2)(i).

¹⁵ 28 C.F.R. § 16.10(k)(2)(ii)(A).

¹⁶ 28 C.F.R. § 16.10(k)(2)(ii)(B).

¹⁷ 28 C.F.R. § 16.10(k)(2)(iii).

¹⁸ American Oversight currently has over 11,500 page likes on Facebook, and over 35,000 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Oct. 31, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 6, 2017).

¹⁹ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

²⁰ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.²¹

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(b), (e)(1)(iv), American Oversight requests that the Department of Justice 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, which affect public confidence.²² There is widespread and exceptional media interest in allegations that Mr. Trump's views of CNN (or those of his associates) may influence DOJ's review of the proposed Time Warner-AT&T merger.²³ News sources recently reported that the companies are under pressure from the DOJ to "offload unspecified parts of their companies to win the government's approval" of the \$85 billion dollar merger.²⁴ The requested documents will shed light on these

²¹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²² 28 C.F.R. § 16.5(e)(1)(iv).

²³ See, e.g., Steven Overly, *Sources: AT&T, Time Warner Under Pressure to Dump CNN*, POLITICO (Nov. 8, 2017), <https://www.politico.com/story/2017/11/08/att-time-warner-dump-cnn-244697>; Michael M. Grynbaum, *The Network Against the Leader of the Free World*, N.Y. TIMES, July 5, 2017, <https://www.nytimes.com/2017/07/05/business/media/jeffrey-zucker-cnn-trump.html>; Bryan Logan, *Trump's Disdain For CNN Reportedly Seen as "Wild Card" Amid Pending \$85 Billion Time Warner-AT&T Merger*, BUSINESS INSIDER, July 6, 2017, <http://www.businessinsider.com/trump-vs-cnn-time-warner-att-merger-2017-7>; Bess Levin, *Did the White House Just Use the Time Warner-AT&T Deal to Threaten CNN?*, VANITY FAIR (July 6, 2017, 10:41 AM), <http://www.vanityfair.com/news/2017/07/donald-trump-cnn-time-warner-merger>; Eric Levitz, *White House Warns CNN that Critical Coverage Could Cost Time Warner Its Merger*, NEW YORK MAGAZINE (July 6, 2017, 11:38 AM), <http://nymag.com/daily/intelligencer/2017/07/white-house-if-cnn-bashes-trump-trump-may-block-merger.html>; Mallory Shelbourne, *Trump's CNN War Could Affect Decision on Approving Time Warner-AT&T Merger: Report*, THE HILL (July 6, 2017, 8:45 AM), <https://origin-ny1.thehill.com/homenews/media/340791-trumps-cnn-war-could-affect-decision-on-approving-time-warner-att-merger>; Kyle Griffin (@kylegriffin1), TWITTER (July 5, 2017, 10:26 PM), https://twitter.com/kylegriffin1/status/882787870062374917_9 ("NYT: W.H. advisers have discussed using Time Warner's pending merger with AT&T as a point of leverage over CNN."); Radley Balko (@radleybalko), TWITTER (July 6, 2017, 8:49 AM), <https://twitter.com/radleybalko/status/882944612675063808> ("In a week, Trump threatened Amazon's tax status over WP coverage, and a WH official threatened Time Warner merger over CNN coverage."); Ben White (@morningmoneyben), TWITTER (July 5, 2017, 10:46 PM), <https://twitter.com/morningmoneyben/status/882792791427952640> ("WH official says they could use pending Time Warner/AT&T merger as 'leverage' over CNN. Chilling.");

²⁴ Steven Overly, *Sources: AT&T, Time Warner Under Pressure to Dump CNN*, POLITICO (Nov. 8, 2017), <https://www.politico.com/story/2017/11/08/att-time-warner-dump-cnn-244697>; Mallory

issues of considerable interest to the public. The proposed Time Warner-AT&T merger involves two “powerhouse companies”: (1) “the nation’s largest pay TV provider, the second-largest wireless provider, and the third-largest home Internet provider” and (2) a major entertainment company that “owns a dizzying array of media properties, including HBO, CNN, Warner Brothers, DC Comics, TBS, TNT, the Cartoon Network and broadcast rights to many live sporting events.”²⁵ Allegations that the White House may be attempting to compromise DOJ’s independence during review of any merger—let alone one with such massive implications for American consumers—raise serious questions about potential improper conduct by Mr. Trump, White House staff, and DOJ officials. These are self-evidently matters “in which there exist possible questions about the government’s integrity that affect public confidence,”²⁶ as initial media response to these allegations confirms.²⁷

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 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 records, please contact Pooja Chaudhuri at foia@americanoversight.org or (202) 869-5246. Also, if American Oversight’s

Shelbourne and Harper Neidig, *DOJ Told AT&T it Has to Sell CNN for Time Warner Merger: Report*, THE HILL (Nov. 8, 2017 2:04 PM), <http://thehill.com/policy/technology/359417-doj-told-att-it-has-to-sell-cnn-for-time-warner-merger-report>; Michael J. de la Merced et. al., U.S. Said to Seek Sale of CNN or DirecTV in AT&T-Time Warner Deal, N.Y. Times, Nov. 8, 2017, <https://www.nytimes.com/2017/11/08/business/dealbook/att-time-warner.html>; Brian Flood, *Report: DOJ Demands CNN Sale Before AT&T, Time Warner Deal is Approved*, FOX NEWS (Nov. 8, 2017 2:43 PM), <http://www.foxnews.com/entertainment/2017/11/08/report-doj-demands-cnn-sale-before-at-t-time-warner-deal-is-approved.html>; Tae Kim, *DOJ Demands CNN or DirecTV be Sold as Condition for AT&T-Time Warner Deal Approval*, CNBC (Nov. 8, 2017 3:22 PM), <https://www.cnbc.com/2017/11/08/doj-demands-cnn-or-directv-be-sold-as-condition-for-att-time-warner-deal-approval.html>; James Fontanella-Khan et. al., *US Regulators Demand CNN Sale to Approve AT&T-Time Warner Deal*, FINANCIAL TIMES (Nov. 8, 2017 1:48 PM), <https://www.ft.com/content/149b22dc-c494-11e7-a1d2-6786f39ef675>.

²⁵ Klint Finley, *AT&T Is Buying Time Warner Because the Future is Google*, WIRED (Oct. 22, 2016, 9:50 PM), <https://www.wired.com/2016/10/att-buying-time-warner-future-google/>.

²⁶ 28 C.F.R. § 16.5(e)(1)(iv).

²⁷ See, e.g., Ben White (@morningmoneyben), TWITTER (July 5, 2017, 10:46 PM), <https://twitter.com/morningmoneyben/status/882792791427952640> (referring to allegation as “chilling”); Eric Levitz, *White House Warns CNN that Critical Coverage Could Cost Time Warner Its Merger*, NEW YORK MAGAZINE (July 6, 2017, 11:38 AM), <http://nymag.com/daily/intelligencer/2017/07/white-house-if-cnn-bashes-trump-trump-may-block-merger.html> (describing the senior administration official’s statement as “an open confession of corruption”).

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