



April 27, 2017

VIA ELECTRONIC MAIL

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
hq.foia@epa.gov

Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight makes the following request for records.

Building a “wall” along the entire U.S.–Mexico border was a central promise of President Donald Trump’s 2016 campaign.¹ On February 8, 2017, Mr. Trump told law enforcement officials that design of the wall was already underway.² In prepared remarks for his joint address to Congress on February 28, Mr. Trump indicated that a schedule had been established for starting and completing the wall, and stated, “We will soon begin the construction of a great wall along our

¹ Donald J. Trump (@realdonaldtrump), TWITTER (May 20, 2015, 4:22 PM), <https://twitter.com/realDonaldTrump/status/601120861882621955>; Donald J. Trump (@realdonaldtrump), TWITTER (Apr. 1, 2016, 5:49 PM), <https://twitter.com/realDonaldTrump/status/716019755682045952>; see also Amanda Holpuch, *Trump Re-ups Controversial Muslim Ban and Mexico Wall in First Campaign Ad*, THE GUARDIAN, Jan. 4, 2016, <https://www.theguardian.com/us-news/2016/jan/04/donald-trump-great-again-first-campaign-ad-isis-mexico-wall-muslim-ban>; Seema Mehta & Noah Bierman, *Campaign 2016 Updates: Donald Trump Continues Vow to Build Wall and Have Mexico Pay for It*, L.A. TIMES, Aug. 31, 2016, <http://www.latimes.com/nation/politics/trailguide/la-na-trailguide-updates-08312016-htmlstory.html>; Donald J. Trump (@realdonaldtrump), TWITTER (Oct. 8, 2014, 5:26 PM), <https://twitter.com/realDonaldTrump/status/519962130859429888>; Bob Woodward & Robert Costa, *Trump Reveals How He Would Force Mexico to Pay for Border Wall*, WASH. POST, Apr. 5, 2016, https://www.washingtonpost.com/politics/trump-would-look-to-block-money-transfers-to-force-mexico-to-fund-border-wall/2016/04/05/c0196314-fa7c-11e5-80e4-c381214de1a3_story.html?utm_term=.7d6d9e7aac34.

² Julia Edwards Ainsley, *Exclusive - Trump Border ‘Wall’ to Cost \$21.6 Billion, Take 3.5 Years to Build: Internal Report*, REUTERS.COM (Feb. 9, 2017, 10:05 PM), <http://www.reuters.com/article/us-usa-trump-immigration-wall-exclusive-idUSKBN15O2ZN>.



southern border. It will be started ahead of schedule and, when finished, it will be a very effective weapon against drugs and crime.”³

Records from the Department of Homeland Security (DHS) reportedly suggest that the agency is already “seeking waivers to address environmental laws on building in some areas.”⁴ Many stakeholders have expressed concerns about the environmental impact of the construction project that was a hallmark issue of Mr. Trump’s campaign.⁵ Given the administration’s singular focus on moving forward with the wall and the cost estimates of its fulfillment ranging from \$8 billion⁶ to \$22 billion⁷ to \$70 billion,⁸ Americans have a significant interest in keeping abreast of developments and cost as this project progresses.

Requested Records

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

1. Any assessment or analysis regarding the impact of the construction of a wall, fence, or other physical or virtual barrier that would extend the full length of the U.S.–Mexico border, or any portion thereof.
2. Any correspondence, including emails, regarding any assessment or analysis of the impact of the construction of a wall, fence, or other physical barrier that would extend the full length of the U.S.–Mexico border, or any portion thereof, and whether such a wall, fence, or other physical barrier would need only a single or multiple impact assessments.

Please provide all responsive records from November 8, 2016, through 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

³ *Donald Trump’s Congress Speech*, CNN.COM (Mar. 1, 2017, 12:54 AM), <http://www.cnn.com/2017/02/28/politics/donald-trump-speech-transcript-full-text/>.

⁴ Ainsley, *supra* note 2.

⁵ Jamie Condliffe, *Trump’s Border Wall Will Be Awful for the Environment*, TECHNOLOGY REVIEW, Jan. 27, 2017, <https://www.technologyreview.com/s/603524/trumps-border-wall-will-be-awful-for-the-environment/>; Julia Carrie Wong, *Trump’s Border Wall Hits Snag as Congressman Backs Environmental Suit*, THE GUARDIAN, Apr. 12, 2017, <https://www.theguardian.com/us-news/2017/apr/12/border-wall-lawsuit-environment-trump-raul-grijalva>; *Borderlands*, Sierra Club, <http://www.sierraclub.org/borderlands> (last visited Apr. 26, 2017).

⁶ Jeremy Diamond, *Trump: Border Wall Will Cost \$8 Billion*, CNN (Feb. 9, 2017, 4:27 PM), <http://www.cnn.com/2016/02/09/politics/donald-trump-border-wall-cost-8-billion/>.

⁷ Ainsley, *supra* note 2.

⁸ Ron Nixon, *Border Wall Cost 3 Times Estimates, Senate Democrats’ Report Says*, N.Y. TIMES, Apr. 18, 2017, <https://www.nytimes.com/2017/04/18/us/politics/senate-democrats-border-wall-cost-trump.html>.

locations and custodians searched and any tracking sheets used to track the processing of this request. If EPA 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.⁹ **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.**¹⁰

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 EPA’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.**¹¹ Furthermore, agencies that have adopted the National Archives and

⁹ 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).

¹⁰ 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)).

¹¹ 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,

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 EPA's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that EPA 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.”¹² 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.”¹³ 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.”¹⁴ 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.’”¹⁵

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.¹⁶ 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, EPA 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

“Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

¹² FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹³ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁴ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁵ *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)).

¹⁶ *Mead Data Central*, 566 F.2d at 261.

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 EPA 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 40 C.F.R. § 2.107(l), 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.¹⁷ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁸

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.¹⁹ The requested records will help American Oversight and the general public understand the progress of this mammoth government project.

Media coverage of internal DHS reports indicates that the wall could cost \$21.6 billion and take less than four years to procure and build a barrier extending over 1,250 miles.²⁰ The environmental effect of such a massive project has been the subject of extensive media and stakeholder attention.²¹

¹⁷ 40 C.F.R. § 2.107(l)(1).

¹⁸ *Id.*

¹⁹ *Id.*; 40 C.F.R. § 2.107(l)(2)(i)-(iv).

²⁰ Ainsley, *supra* note 2.

²¹ Deborah Brosnan, *Trump’s Wall Plans Present An Environmental Quagmire*, THE HUFFINGTON POST (Feb. 23, 2017, 10:56 AM), http://www.huffingtonpost.com/entry/trumps-wall-an-environmental-mexican-standoff_us_58aef36de4b01f4ab51c7732; Leah Donnella, *The Environmental Consequences of a Wall on the U.S.-Mexico Border*, NPR (Feb. 17, 2017, 8:01 AM), <http://www.npr.org/sections/codeswitch/2017/02/17/514356130/the-environmental-consequences-of-a-wall-on-the-u-s-mexico-border>; Anna Hirtenstein & Joe Ryan, *Scientists Warn Trump’s Border Wall Will Be Bad for the Planet*, BLOOMBERG (Jan. 27, 2017, 12:01 AM), <https://www.bloomberg.com/news/articles/2017-01-26/scientists-warn-trump-s-border-wall-will-be-bad-for-the-planet>; Jerry Markon, *Trump Says Building a U.S.-Mexico Wall Is ‘Easy.’ But Is It Really?*, WASH. POST, July 17, 2015, https://www.washingtonpost.com/politics/trump-on-the-us-mexico-border-building-a-wall-is-easy/2015/07/16/9a619668-2b0c-11e5-bd33-395c05608059_story.html?utm_term=.301418a6be86; Rene Marsh, *Trump Team Discussing Border Wall with Army Corps, Interior Department*, CNN.COM (Jan. 13, 2017, 6:01 PM), <http://www.cnn.com/2017/01/13/politics/donald-trump-mexico-wall-interior-army-corps/>; Jonathan Sullivan, *What Would Trump’s Wall Mean for Wildlife?*, BBC, Sept. 1, 2016,

Reports that the administration is seeking to forego legally required environmental assessments²² is of significant public interest.²³ The requested records would meaningfully inform how the administration is accounting for the impact of the proposed 1,250 miles of barrier and significantly enhance the public's understanding of how the federal government is adhering to its environmental obligations.

This request is primarily and fundamentally for non-commercial purposes.²⁴ 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 will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website and promote their availability on social media platforms, such as Facebook and Twitter.²⁵ This particular FOIA request is part of a public project conducted by American Oversight 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.²⁶

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 40 C.F.R. § 2.104(e), American Oversight requests that EPA expedite the processing of this request.

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. News

<http://www.bbc.com/news/science-environment-37200583>; Justin Worland, *The Problem With President Trump's Wall that No One Is Talking About*, TIME, Jan. 26, 2017, <http://time.com/4650178/donald-trump-border-wall-environment/>.

²² See Ainsley, *supra* note 2.

²³ See Erika Bolstad, *Trump's Wall Could Cause Serious Environmental Damage*, SCIENTIFIC AMERICAN, Jan. 26, 2017, <https://www.scientificamerican.com/article/trumps-wall-could-cause-serious-environmental-damage/>; Daniella Silva & Suzanne Gamboa, *Trump's Border Wall 'Catastrophic' for Environment, Endangered Species: Activists*, NBC NEWS (Apr. 22, 2017, 11:25 AM), <http://www.nbcnews.com/science/environment/trump-s-border-wall-catastrophic-environment-endangered-species-activists-n748446>.

²⁴ 40 C.F.R. § 2.107(l)(1); 40 C.F.R. § 2.107(l)(3)(i)-(ii).

²⁵ American Oversight currently has over 10,800 page likes on Facebook, and over 29,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 27, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 27, 2017).

²⁶ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

stories about the wall are published regularly.²⁷ Despite not having secured funding, the DHS has already issued multiple requests for proposals related to the wall.²⁸ The administration has been described as moving with “extreme haste” on the procurement process.²⁹ U.S. Customs and Border Protection has said that winning contractors selected to build wall prototypes will be selected by June 1.³⁰ Secretary of Homeland Security John F. Kelly has previously committed to

²⁷ See, e.g., Jim Acosta & Theodore Schleifer, *Mulvaney Says No Shutdown, Even with Border Ask*, CNN (Apr. 21, 2017, 2:26 PM), <http://www.cnn.com/2017/04/21/politics/mick-mulvaney-border-wall/>; Editorial Board, *Up Against the Wall*, N.Y. TIMES, Apr. 8, 2017, <https://www.nytimes.com/2017/04/08/opinion/up-against-the-wall.html>; Fox & Friends, *Bids to Build President Trump’s Border Wall Due Today*, FOXNEWS INSIDER (Apr. 4, 2017, 7:59 AM), <http://insider.foxnews.com/2017/04/04/mexico-border-wall-bids-due-today-president-trump-illegal-immigration-policy>; T. Christian Miller, *Trump’s Wall: How Much Money Does the Government Have for It Now?*, PROPUBLICA (Apr. 13, 2017, 1:34 PM), <https://www.propublica.org/article/trumps-wall-how-much-money-does-the-government-have-for-it-now>; Phillip Molnar & Lyndsay Winkley, *Trump’s Border Wall Will Get Its Start in San Diego County*, L.A. TIMES, Apr. 10, 2017, <http://www.latimes.com/local/lanow/la-me-san-diego-border-wall-20170410-story.html>; Ron Nixon, *Border Wall Cost 3 Times Estimates, Senate Democrats’ Report Says*, N.Y. TIMES, Apr. 18, 2017, <https://www.nytimes.com/2017/04/18/us/politics/senate-democrats-border-wall-cost-trump.html>; Nicki Rossoll, *Despite Trump Campaign Promise, Tillerson Had ‘No Conversation’ with Mexico Paying for Border Wall*, ABC NEWS (Apr. 9, 2017, 9:01 AM), <http://abcnews.go.com/Politics/trump-campaign-promise-tillerson-conversation-mexico-paying-border/story?id=46685291>; Andrew Taylor, *President Trump’s Budget Chief Says Spending Bill Must Have Border Wall Funding*, TIME, Apr. 20, 2017, <http://time.com/4749678/mick-mulvaney-budget-border-wall-funding-government-shutdown/>; Alex Veiga, *Who Would Gain from Trump’s Border Wall?*, DETROIT NEWS, Apr. 1, 2017, <http://www.detroitnews.com/story/news/nation/2017/04/01/border-wall-trump/99907624/>.

²⁸ FED. BUS. OPPORTUNITIES, Solicitation No. 2017-JC-RT-0001, <https://www.fbo.gov/index?id=f61a85538f383ec3ed9cac3c9e21d6f1> (last visited Apr. 21, 2017); FED. BUS. OPPORTUNITIES, Solicitation No. HSBP1017R0022, https://www.fbo.gov/index?s=opportunity&mode=form&id=6d883f07a72d10347a0304089f00f1eb&tab=core&_cview=1 (last visited Apr. 21, 2017); FED. BUS. OPPORTUNITIES, Solicitation No. HSBP1017R0023, https://www.fbo.gov/index?s=opportunity&mode=form&id=5eb4c7553ad9aeb62ad3ecf7f216ef3c&tab=core&_cview=1 (last visited Apr. 21, 2017); see, e.g., Dan Frosch, *Bidding Process for U.S. Border-Wall Construction Begins*, WALL ST. J., Mar. 18, 2017, <https://www.wsj.com/articles/bidding-process-for-u-s-border-wall-construction-begins-1489869241>; Margaret Hartmann, *Trump’s ‘Big, Beautiful’ Border Wall Threatened by Political Reality*, NEW YORK (Mar. 10, 2017, 4:34 AM), <http://nymag.com/daily/intelligencer/2017/03/trumps-border-wall-threatened-by-political-reality.html>.

²⁹ Kriston Capps, *Almost 200 Firms Have Bid to Build Trump’s Border Wall*, GOV’T EXEC., Feb. 28, 2017, <http://www.govexec.com/contracting/2017/02/almost-200-firms-have-bid-build-trumps-border-wall/135754/> (“The extreme haste of the government’s procurement process is matched only by the breakneck speed with which the government plans to build the wall.”).

³⁰ Elliot Spagat, *Border Wall Contractors Brace for Hostile Environment*, ASSOCIATED PRESS, Apr. 4, 2017, <https://apnews.com/0ebfb4522e734425b5e1ff60998da158/Border-wall-contractors-brace-for-hostile-environment>.

completing the wall by 2019.³¹ A multi-billion-dollar construction project directed and financed by the federal government using tax dollars on an accelerated timeline is most certainly an example of a matter for which there exists “an urgency to inform the public.”³²

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,³³ 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.”³⁴ American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight will also make materials it gathers available on its website and promote their availability on social media platforms, such as Facebook and Twitter.³⁵ For example, this FOIA request is part of American Oversight’s “Audit the Wall” effort, a demonstrable campaign dedicated to the public disclosure of documents and creation of editorial content.³⁶

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 EPA 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,



Austin R. Evers
Executive Director
American Oversight

³¹ Madeline Conway, *Kelly: I Hope Border Wall Will Be ‘Done Within the Next Two Years,’* POLITICO (Feb. 2, 2017, 12:16 PM), <http://www.politico.com/story/2017/02/john-kelly-border-wall-fox-interview-234543>; Adam K. Raymond, *DHS Head John Kelly Says He Only Needs Two Years to Build That Wall*, NEW YORK (Feb. 2, 2017, 4:55 PM), <http://nymag.com/daily/intelligencer/2017/02/john-kelly-says-he-only-needs-two-years-to-build-that-wall.html>.

³² 40 C.F.R. § 2.104(e)(1)(ii).

³³ 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).

³⁴ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³⁵ See *supra* note 25.

³⁶ See *supra* note 26.