



April 5, 2017

**VIA ONLINE PORTAL**

U.S. General Services Administration  
FOIA Requester Service Center (H1F)  
1800 F Street NW, Room 7308  
Washington, DC 20405-0001  
Via FOIAonline

**Re: Expedited Freedom of Information Act Request**

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and General Services Administration (GSA) implementing regulations, 41 C.F.R. § 105.60, American Oversight makes the following request for records.

President Donald Trump’s company, Trump Old Post Office LLC, entered into a lease with the U.S. Government for the development of the Trump International Hotel in the Old Post Office Building in downtown Washington, D.C. Article 37.19 of the lease agreement provides:

No member or delegate to Congress, or elected official of the Government of the United States or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom . . . .<sup>1</sup>

President Trump—plainly an “elected official of the Government of the United States”—has a majority ownership interest in the lease.

Notwithstanding that fact, on March 23, 2017, the GSA released a letter in which it concluded that Trump Old Post Office LLC is “in full compliance with Section 37.19 and, accordingly, the Lease is valid and in full force and effect.”<sup>2</sup> American Oversight is seeking records to better understand the relationship between Mr. Trump’s campaign, transition team, and/or administration and the agency that oversaw the validity of Mr. Trump’s lease.

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<sup>1</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as “Landlord”) and Trump Old Post Office, LLC (as “Tenant”) (GS-LS-11-1307)*, Aug. 5, 2013, available at [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477).

<sup>2</sup> Letter from GSA to Trump Old Post Office LLL at 1 (Mar. 23, 2017), available at <https://www.gsa.gov/portal/getMediaData?mediaId=157798>.



## Requested Records

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

1. All records reflecting communications between Timothy O. Horne (current Acting Administrator), Anthony Costa (current Acting Deputy Administrator), and Jack St. John (current Chief of Staff), or any individual acting on their behalf, and Mr. Donald Trump, Trump Old Post Office LLC, or any individual acting on behalf of those entities.

Please provide all responsive records from June 16, 2015, to March 23, 2017.

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.**

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>3</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>4</sup>

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<sup>3</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>4</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

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 GSA’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>5</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 GSA’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that GSA 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.”<sup>6</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>7</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>8</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>9</sup>

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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>5</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>.

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

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

<sup>8</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>9</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)).

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>10</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, GSA 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 GSA 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 rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 41 C.F.R. § 105-60.305-13, 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>11</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>12</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.<sup>13</sup> The President of the United States currently holds a majority ownership in a company that leases federal government property, notwithstanding language in the lease prohibiting him from doing so. Under newly-appointed leadership, the GSA has recently concluded that Mr. Trump’s company is in compliance with the lease, notwithstanding these clear terms. It is undoubtedly in the public interest to shed additional light on the relationship between

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<sup>10</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>11</sup> 41 C.F.R. § 105-60.305-13(a).

<sup>12</sup> 41 C.F.R. § 105-60.305-13(a).

<sup>13</sup> 41 C.F.R. § 105-60.305-13(a)(1)-(3).

Mr. Trump's campaign, transition team, and/or administration and the agency that oversees the validity of Mr. Trump's lease.

This request is primarily and fundamentally for non-commercial purposes.<sup>14</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 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.<sup>15</sup> One example of American Oversight's demonstrated public disclosure of documents and creation of editorial content is in its recently launched "Audit the Wall" effort, 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>16</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 41 C.F.R. § 105-60.402-2(c), American Oversight requests that the GSA 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. As discussed above, the current arrangement regarding the lease for the Old Post Office Building in Washington, DC, raises numerous legal, financial, and ethical concerns. Not surprisingly, then, over six weeks ago, several members of the House Committee on Oversight and Government Reform requested information from the GSA about the validity of the Old Post Office lease as part of that committee's authority to investigate "[g]overnment accounting measures generally," as well as the "[o]verall economy, efficiency, and management of government operations and activities, including Federal procurement."<sup>17</sup> A similar letter was sent by several members of the U.S. House of Representatives in November of last year.<sup>18</sup> To date, the GSA has not yet provided any response

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<sup>14</sup> 41 C.F.R. § 105-60.305-13(a)(4).

<sup>15</sup> American Oversight currently has over 10,400 page likes on Facebook, and over 9,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 3, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 3, 2017).

<sup>16</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org) (last visited Apr. 3, 2017).

<sup>17</sup> House rule X, clause (1)(n); Letter from Committee on Oversight and Government Reform to GSA Acting Associate Administrator, Feb. 8, 2017, *available at* <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2017-02-08.EEC%20et%20al%20to%20Japson-GSA%20re%20Trump%20International%20Hotel.pdf>.

<sup>18</sup> Letter from The Honorable Elijah E. Cummings et al. to GSA (Nov. 30, 2016), *available at* <http://democrats.transportation.house.gov/news/letters/top-oversight-and-transportation-committee-dems-request-briefing-and-documents-gsa>.

to either of those letters. Given that the President's company appears to already be in breach of the lease, and that GSA has nevertheless determined the lease to be valid, there is an urgent need to resolve this issue as quickly as possible. The mandatory disclosure requirements of the Freedom of Information Act may be the only way to compel disclosure of relevant information from the GSA.

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>19</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>20</sup> 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 public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>21</sup> One example of American Oversight's demonstrated public disclosure of documents and creation of editorial content is in its recently launched "Audit the Wall" effort, 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>22</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 your agency 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 Sara Creighton at [foia@americanoversight.org](mailto: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

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<sup>19</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>20</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>21</sup> American Oversight currently has over 10,400 page likes on Facebook, and over 9,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 3, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 3, 2017).

<sup>22</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org) (last visited Apr. 3, 2017).