



June 28, 2017

VIA ONLINE PORTAL

U.S. Department of Housing and Urban Development
Freedom of Information Act Office
451 7th Street SW, Room 10139
Washington, DC 20410-3000
Submitted via Online Portal

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Department of Housing and Urban Development (HUD), 24 C.F.R. Part 15, American Oversight makes the following request for records.

As Secretary of HUD, Ben Carson oversees a broad portfolio of housing-related policies and programs. The Department administers tens of billions of dollars in federal funds through a wide array of programs, including ones that invest in community development and help millions of Americans afford housing.¹ American Oversight seeks information to shed light on key decisions Secretary Carson has made regarding HUD's operations and activities, the decision-making process at HUD, Mr. Carson's management style, and the influences shaping how decisions are made at HUD.

Requested Records

American Oversight requests that HUD produce the following within twenty business days:

All decision memoranda, directives, or policy interpretations or guidance signed, approved, or otherwise adopted by Secretary Carson. This request includes any document establishing, modifying, clarifying, or rescinding any HUD policy, legal or policy interpretation, or practice, whether presented as a memorandum, letter, guidance document, or in any other form.

Please provide all responsive records from March 2, 2017, to the date the search is conducted.

¹ See, e.g., Yamiche Alcindor, *Ben Carson Is Confirmed as HUD Secretary*, N.Y. TIMES, Mar. 2, 2017, https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?_r=0.



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.”² 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.”³ 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.”⁴ 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.’”⁵

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.⁶ 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.

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

³ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁴ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

⁵ *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)).

⁶ *Mead Data Central*, 566 F.2d at 261.

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, HUD 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 HUD 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 24 C.F.R. § 15.106(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 operations and activities by the general public in a significant way.⁷ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁸

Disclosure of the requested records is “likely to contribute significantly to public understanding” of government operations and activities.⁹ Housing and community development policies affect millions of Americans across the country.¹⁰ The decision memoranda and other similar records American Oversight seeks are “a direct and clear” reflection of “identifiable operations or activities of the Federal Government,” specifically decisions made by a federal cabinet secretary.¹¹ Because they reflect senior government official decision-making regarding such operations or activities, these records will be “meaningfully informative about” those operations or activities, including the decision-making process for such operations and activities and the factors that influence that decision-making.¹² As described in more detail below, American Oversight will use its public website and social media accounts to ensure the disclosed records “contribute to the understanding of a reasonably broad audience of persons interested in” or affected by the decisions these records memorialize.¹³ In sum, the requested records would provide significant new understanding of the

⁷ 24 C.F.R. § 15.106(k)(1)-(2).

⁸ 24 C.F.R. § 15.106(k)(1), (3).

⁹ 24 C.F.R. § 15.106(k)(1)(i).

¹⁰ See, e.g., Yamiche Alcindor, *Ben Carson Is Confirmed as HUD Secretary*, N.Y. TIMES, Mar. 2, 2017, https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?_r=0; U.S. DEPT. OF HOUSING AND URBAN DEV., PROGRAMS OF HUD: MAJOR MORTGAGE, GRANT, ASSISTANCE, AND REGULATORY PROGRAMS (2016), <https://portal.hud.gov/hudportal/documents/huddoc?id=HUDPrograms2016.pdf>.

¹¹ 24 C.F.R. § 15.106(k)(2)(i).

¹² 24 C.F.R. § 15.106(k)(2)(ii).

¹³ 24 C.F.R. § 15.106(k)(2)(iii).

operations and decision-making at the most senior level of an agency responsible for assisting millions of American households and investing in communities across the country.¹⁴

This request is primarily and fundamentally for non-commercial purposes.¹⁵ 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.¹⁶ 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,¹⁷ 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.¹⁸ As another example, American Oversight's 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.¹⁹

Accordingly, American Oversight qualifies for a fee waiver.

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 Beth France 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,



¹⁴ 24 C.F.R. § 15.106(k)(2)(iv).

¹⁵ 24 C.F.R. § 15.106(k)(1)(ii), (3)(i)-(ii).

¹⁶ American Oversight currently has over 10,900 page likes on Facebook, and over 32,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 27, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 27, 2017).

¹⁷ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

¹⁸ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

¹⁹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

Austin R. Evers
Executive Director
American Oversight