



May 31, 2017

VIA FACSIMILE

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208
FAX: (202) 261-8579

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 the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

President Donald Trump nominated Rex Tillerson, former CEO of ExxonMobil, to be Secretary of State in December 2016. On January 3, 2017, Mr. Tillerson wrote a letter to the State Department's Office of the Legal Adviser in which he stated that: "For a period of one year after my resignation from ExxonMobil, I will not participate personally and substantially in any particular matter involving specific parties in which I know that ExxonMobil is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."¹

Between May 19 and May 25, 2017, Secretary Tillerson accompanied President Trump on his trip to several Middle Eastern countries, including Saudi Arabia. During that trip, ExxonMobil and the Saudi state-owned Saudi Basic Industries Corporation (SABIC) signed a deal relating to a proposed co-owned natural gas refinery in the Gulf of Mexico, known as Gulf Coast Growth Ventures.² The agreement was signed at a ceremony at the Al-Yamamah Palace with ExxonMobil

¹ See Letter from Rex W. Tillerson to Katherine D. McManus, Designated Agency Ethics Official, Department of State (Jan. 3, 2017),

<https://assets.documentcloud.org/documents/3254118/Tillerson-Ethics-Undertakings-and-Financial.pdf>.

² See Steve Horn, *Tillerson Present as Exxon Signed Major Deal with Saudi Arabia During Trump Visit*, DESMOG (May 30, 2017, 4:58PM), <https://www.desmogblog.com/2017/05/30/rex-tillerson-exxon-saudi-arabia-trump-visit-deal>; News Release, *ExxonMobil and SABIC Sign Agreement for Next Phase of Proposed U.S. Petrochemical Project*, EXXONMOBIL (May 20, 2017, 8:00AM), <http://news.exxonmobil.com/press-release/exxonmobil-and-sabic-sign-agreement-next-phase-proposed-us-petrochemical-project>.



CEO Darren Woods and SABIC CEO Yousef Al-Benyani in attendance.³ Recent reports have revealed that Mr. Tillerson also attended that ceremony.⁴

American Oversight seeks information to shed light on how Mr. Tillerson is comporting himself during his tenure as Secretary of State, including whether and to what extent he is abiding by his recusal into matters involving his former employer, ExxonMobil.

Requested Records

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

1. Any records containing advice, analysis, or evaluation regarding Rex Tillerson's attendance at or participation in (a) the signing of the agreement between affiliates of ExxonMobil and Saudi Basic Industries Corporation (SABIC) on May 20, 2017, regarding the proposed Gulf Coast Growth Ventures project, or (b) any other State Department activity or event involving ExxonMobil or any of its affiliates. This includes, but is not limited to, any records regarding Mr. Tillerson's ethics or recusal obligations relating to those events.
2. Any pages from the briefing book or other briefing materials prepared for Secretary Tillerson for the May 19-25, 2017 trip to the Middle East and Europe with President Donald Trump that contain any reference to ExxonMobil or any of its affiliates. This includes, but is not limited to, any background materials relating to ExxonMobil, any descriptions of events involving ExxonMobil, including attendees at those events, and any other discussion of ExxonMobil.
3. Any photographs showing the signing of the agreement between affiliates of ExxonMobil and Saudi Basic Industries Corporation (SABIC) on May 20, 2017, regarding the proposed Gulf Coast Growth Ventures project. This includes photographs taken by any official photographer or any State Department personnel, whether on their official or personal devices.
4. Any photographs showing Rex Tillerson with Darren Woods, current ExxonMobil CEO. This includes photographs taken by any official photographer or any State Department personnel, whether on their official or personal devices.
5. Any photographs showing Rex Tillerson with Philippe Ducom, ExxonMobil Saudi Arabia CEO. This includes photographs taken by any official photographer or any State Department personnel, whether on their official or personal devices.

The search for responsive records should include individuals and locations where records are likely to exist, including but not limited to the Office of the Secretary, the Office of the Legal Adviser, and the offices of any relevant official State Department photographers.

³ See Horn, *supra* note 2.

⁴ See Horn, *supra* note 2.

Please provide all responsive records from February 1, 2017 (the date Mr. Tillerson was sworn in as Secretary of State), 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 State 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.⁵ **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.**⁶

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 State’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage**

⁵ 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).

⁶ 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)).

information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁷ 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 State's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that State 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."⁸ 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."⁹ 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."¹⁰ 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.'"¹¹

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.¹² 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.

⁷ 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>.

⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁰ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹¹ *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)).

¹² *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, State 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 State 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 22 C.F.R. § 171.16(a), 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.¹³ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁴

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 activities.¹⁵ The recent revelations that ExxonMobil signed a new deal with a Saudi-owned company during Mr. Tillerson’s visit to that country and that Mr. Tillerson attended a signing ceremony potentially related to that deal,¹⁶ raise questions about Mr. Tillerson’s conduct. The American public deserves to know whether and to what extent Mr. Tillerson has complied with his recusal obligations.

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 it gathers, 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

¹³ 22 C.F.R. § 171.16(a)(1).

¹⁴ 22 C.F.R. § 171.16(a)(2).

¹⁵ 22 C.F.R. § 171.16(a)(1)(i)-(iv).

¹⁶ See Horn, *supra* note 2.

¹⁷ 22 C.F.R. § 171.16(a)(2)(i)-(iii).

and promotes the availability on social media platforms, such as Facebook and Twitter.¹⁸ 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.¹⁹

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 22 C.F.R. § 171.11(f)(2), American Oversight requests that State expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity. The recent revelations that ExxonMobil signed a new deal with a Saudi-owned company during Mr. Tillerson's visit to that country and that Mr. Tillerson attended a signing ceremony potentially related to that deal,²⁰ raise questions about whether and to what extent the nation's top diplomat is complying with his ethical obligations. It is imperative that the public get answers to those questions as soon as possible, either so that any outstanding ethical concerns may be addressed, or to reassure the public that Mr. Tillerson has taken the steps necessary to ensure that he has comported with his ethical obligations on this issue.

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,²¹ 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."²² 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 our public website and promotes their availability on social media platforms, such as Facebook and Twitter.²³ One example of American Oversight's

¹⁸ American Oversight currently has over 10,900 page likes on Facebook, and over 32,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 31, 2017); American Oversight (@weareoversight), TWITTER (last visited May 31, 2017).

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

²⁰ See Horn, *supra* note 2.

²¹ 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).

²² *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²³ American Oversight currently has over 10,900 page likes on Facebook, and over 32,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/>

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.²⁴

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 State 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 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,



Sara Kaiser Creighton
Counsel
American Oversight

(last visited May 31, 2017); American Oversight (@weareoversight), TWITTER (last visited May 31, 2017).

²⁴ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.