



August 28, 2017

VIA ELECTRONIC MAIL

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, DC 20220
treasfoia@treasury.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (“Treasury”), 31 C.F.R. Part 1, American Oversight makes the following request for records.

Media coverage of Secretary Steve Mnuchin’s recent trip to Kentucky reported on: the rising tensions between President Trump and congressional leadership;¹ Mr. Mnuchin’s wife accompanying him on this official trip, posting a picture to social media promoting her wealth, and ridiculing a taxpayer who commented on the picture;² and that the entire trip may have been a cover for Mr. Mnuchin and his wife to have an excuse to be near the path of totality for the solar eclipse.³ American Oversight seeks records that will illuminate the details of Mr. Mnuchin’s trip.

Requested Records

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

1. Secretary Mnuchin’s briefing book for August 21, 2017.
2. All calendars or calendar entries for Secretary Mnuchin, including any calendars maintained on his behalf (e.g., by an administrative assistant), for August 21, 2017. For calendar entries created in Outlook or similar programs, the documents should be

¹ Alexander Burns & Jonathan Martin, *McConnell, in Private, Doubts if Trump Can Save Presidency*, N.Y. TIMES, Aug. 22, 2017, <https://www.nytimes.com/2017/08/22/us/politics/mitch-mcconnell-trump.html>.

² Damian Paletta, *Treasury Secretary’s Wife Apologizes for ‘Highly Insensitive’ Instagram Post*, CHI. TRIBUNE (Aug. 22, 2017, 5:13 PM), <http://www.chicagotribune.com/news/nationworld/ct-steven-mnuchin-wife-louise-linton-instagram-20170822-story.html>.

³ Grace Schneider, *GOP Tax Reform Will Spur Wage Increases, Sen. McConnell and Treasury Secretary Say*, COURIER-JOURNAL (Aug. 22, 2017, 6:53 AM), <http://www.courier-journal.com/story/news/2017/08/21/mcconnell-mnuchin-talk-economic-policies/557156001/>.



produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

3. All schedules and/or itineraries for Secretary Mnuchin for August 21, 2017.
4. All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) regarding Secretary Mnuchin’s trip to Kentucky on August 21, 2017, between the Office of the Secretary and Senator Mitch McConnell or anyone working on his behalf, including congressional staff in his personal office and in his leadership office.
5. All records in the Office of the Secretary (including emails, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, or other materials) reflecting the input or approval of the White House regarding Secretary Mnuchin’s trip to Kentucky on August 21, 2017, including his use of a government plane.
6. All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, text messages, or other materials) regarding Secretary Mnuchin’s trip to Kentucky on August 21, 2017, between (a) the Office of the Secretary or the Office of Public Affairs and (b) Louise Linton. This search should include any Treasury employees or contractors who accompanied Secretary Mnuchin and Ms. Linton on the trip and/or who provided official or unofficial photo-documentation of the Kentucky trip. For example, if a Treasury photographer texted Ms. Linton the photo that she subsequently posted to Instagram, the text chain would be responsive
7. All emails in the Office of the Secretary and the Office of Public Affairs containing the word “Instagram” from August 21, 2017, through August 25, 2017.
8. All emails in the Office of the Secretary and the Office of Public Affairs containing the word “eclipse” from August 1, 2017, through August 25, 2017.
9. Records sufficient to identify the cost of Secretary Mnuchin’s travel to Kentucky on August 21, 2017.
10. Records sufficient to identify the cost of Louise Linton accompanying her husband, Secretary Mnuchin, on his trip to Kentucky on August 21, 2017.
11. Records sufficient to identify the cost of Louise Linton accompanying her husband, Secretary Mnuchin, to Norfolk, Virginia, on July 22, 2017.

12. Records sufficient to identify all official trips on which Louise Linton accompanied Secretary Mnuchin.

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 Treasury 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.⁴ **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.**⁵

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

⁴ 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).

⁵ 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.⁶ 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 Treasury's archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that Treasury 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."⁷ 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."⁸ 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."⁹ 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.'"¹⁰

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.¹¹ Claims of nonsegregability must be made with the same degree of detail as required

⁶ 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>.

⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁸ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁹ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁰ *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)).

¹¹ *Mead Data Central*, 566 F.2d at 261.

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, Treasury 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 Treasury 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 31 C.F.R. § 1.7(d)(1), 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.¹² Moreover, the request is primarily and fundamentally for non-commercial purposes.¹³

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 the operations or activities of the government.”¹⁴ The disclosure of the information sought under this request will document and reveal the activities of the federal government, including how the executive branch coordinates official appearances with the legislative branch, the cost of official travel, whether government officials are misusing their positions for personal gain, and how the secretary spends his day.¹⁵ Because the information sought is not currently public and bears on the

¹² 31 C.F.R. § 1.7(d)(1).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Robin Givhan, *Louise Linton Just Spelled Out Her Value System for You Common Folk*, WASH. POST, Aug. 22, 2017, https://www.washingtonpost.com/news/arts-and-entertainment/wp/2017/08/22/louise-linton-just-spelled-out-her-value-system-for-you-common-folk/?utm_term=.4efa00d1bd57; Maggie Haberman & Mikayla Bouchard, *Mnuchin’s Wife Mocks Oregon Woman over Lifestyle and Wealth*, N.Y. TIMES, Aug. 22, 2017,

public's confidence in the efficient and proper functioning of the government,¹⁶ disclosure will contribute significantly to the public's understanding of Treasury operations and activities. And as described in more detail below, American Oversight will contribute to the general public's understanding of Treasury's activities by sharing the records it receives on its website and social media accounts.

This request is primarily and fundamentally not for 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 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.

Notwithstanding its fee waiver request, pursuant to 31 C.F.R. § 1.5(b)(7), American Oversight hereby states that it is willing to pay fees in an amount not more than \$25.00.

<https://www.nytimes.com/2017/08/22/us/politics/mnuchin-louise-linton-treasury-instagram.html>;
Paletta, *supra* note 2; Schneider, *supra* note 3.

¹⁶ See Burns & Martin, *supra* note 1; Schneider, *supra* note 3.

¹⁷ 31 C.F.R. § 1.7(d)(1).

¹⁸ American Oversight currently has approximately 11,300 page likes on Facebook and 33,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Aug. 24, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 24, 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>.

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

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 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,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight