



August 29, 2018

VIA EMAIL

BSEE FOIA Officer
Bureau of Safety and Environmental
Enforcement
Mail Stop: VAE-BSEE FOIA
45600 Woodland Road
Sterling, VA 20166
Email: bseefoia@bsee.gov

Re: 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 Department of the Interior's (DOI) implementing regulations, 43 C.F.R. Part 2, American Oversight makes the following request for records from the Bureau of Safety and Environmental Enforcement (BSEE).

In May 2017, Scott Angelle joined DOI as the director of the BSEE. The following month, his former campaign aide, Preston Beard, joined BSEE as an adviser. According to the Western Values Project, Angelle “raised nearly \$500,000 in donations from oil and gas companies” and “made ‘about \$1.5 million’ since 2012 as a board member of oil and gas pipeline company Sunoco Logistics Partners.”¹ Beard has also worked in the oil and gas industry, including for the Louisiana Mid-Continent Oil and Gas Association and for Copestone, from which Angelle has also reported income.²

Angelle and Beard are now charged with ensuring safety and environmental resources in offshore energy development. It is therefore of great public interest to know to what extent they have been in contact with former campaign donors, employers, and other former contacts representing the energy industry while serving the U.S. government.

¹ *Scott Angelle*, WESTERN VALUES PROJECT, <https://departmentofinfluence.org/person/scott-angelle/>; Tyler Bridges, *Scott Angelle’s Close Ties to Oil Helps His Campaign for Governor*, THE ADVOCATE (Oct. 21, 2015, 3:59 p.m.), https://www.theadvocate.com/baton-rouge/news/politics/elections/article_ff8d2e03-0553-59d8-bced-a63917536131.html.

² *Preston Beard*, WESTERN VALUES PROJECT, <https://departmentofinfluence.org/person/preston-beard/>.



Requested Records

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

All communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between or among (1) Scott Angelle and/or Preston Beard and (2) any of the following individuals and entities:

1. Copestone Inc.
2. Sunoco Logistics Partners
3. Energy Transfer
4. Greg Brazaitis
5. Edison Chouest Offshore
6. Gary Chouest
7. Ross Chouest
8. Damon Chouest
9. Casey Chouest
10. Dionne Austin
11. Daryl Owen Associates, Inc
12. C-Dive, LLC
13. Robert Champagne
14. Atmos Energy
15. Jack Lawton Inc.
16. Jack Lawton
17. Holly Lawton
18. Chevron Corp.
19. Cleco Corp.
20. Darren Olagues
21. Haynie & Associates
22. Randy Haynie
23. Love for Louisiana PAC
24. Bill Skelly
25. James Flores
26. Freeport-McMoran Inc.
27. Sable Permian Resources
28. Hilcorp Energy Company
29. Corley Consulting
30. Fieldwood Energy LLC
31. Make Louisiana Great Again
32. Greg Mosing
33. Frank's International
34. Shane Guidry

35. Harvey Gulf International Marine
36. Benjamin Bordelon
37. Bollinger Shipyards
38. William Parkerson Mills
39. Cleco Political Action Committee
40. Ezell Law Firm, LLC
41. Apollo Energy Operating Company
42. Macro Oil
43. Louisiana Mid-Continent Oil and Gas Association

Please provide all responsive records from May 1, 2017, 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 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 are subject to the Federal Records Act and FOIA.³ **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.**⁴

³ 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).

⁴ 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

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 your agency’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.⁵ Furthermore, agencies that have adopted the National Archives and Records Administration (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 your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency 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.”⁶ 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.”⁷ 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.”⁸ 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.’”⁹

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)).

⁵ 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>.

⁶ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

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

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

⁹ *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.¹⁰ 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, you are 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 it undertakes a search or incurs search or duplication costs. By working together at the outset, we 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 43 CFR § 2.45(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 public understanding of those operations in a significant way.¹¹ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹²

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 federal government.¹³ The disclosure of the information sought under this request will reveal the operations of the federal government, including what outside interests may be influencing the official work of Mr. Angelle and Mr. Beard. The disclosure of this information also has the potential to shed light on potential ethical problems that may have arisen as a result of contacts with external individuals and entities. And, as described in more detail

¹⁰ *Mead Data Central*, 566 F.2d at 261.

¹¹ 43 CFR § 2.45(a)(1).

¹² 43 CFR § 2.45(a)(2).

¹³ 43 C.F.R. § 2.48(a)(1)-(4).

below, American Oversight “will disseminate the information to a reasonably broad audience of persons” through its social media accounts and its website.¹⁴

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. 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.¹⁵ 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,¹⁶ 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.¹⁷ 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.¹⁸

Accordingly, American Oversight qualifies for a fee waiver.

¹⁴ 43 C.F.R. § 2.48(a)(2)(iii)-(v).

¹⁵ American Oversight currently has approximately 11,900 page likes on Facebook and 44,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 28, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 28, 2018).

¹⁶ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁷ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁸ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with BSEE 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 Hart Wood at foia@americanoversight.org or (202) 897-3918. 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 line extending to the left of the name.

Austin R. Evers
Executive Director
American Oversight