



October 25, 2018

VIA ELECTRONIC MAIL

Valerie H. Yancey
FOIA Officer and Executive Officer
Office of the Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue NW, Room 6627
Washington, DC 20530-0001
OSGFOIA@usdoj.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, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records to inform whether and to what extent DOJ is politicizing its hiring of career attorneys.

Requested Records

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

The cover letter and resume of every attorney hired to a career position in the Office of the Solicitor General (OSG) since January 1, 2017. This request includes: (a) new DOJ employees hired from outside of the agency; (b) current DOJ employees hired into OSG from a different DOJ component; and (c) current OSG employees hired into a new position within OSG.

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.”¹ 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.”² Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing

¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

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



the sought-after information.”³ 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.’”⁴

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.⁵ 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.

Where possible, please provide responsive material in electronic format by email. 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 28 C.F.R. § 16.10(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 procedures by the general public in a significant way.⁶ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁷

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 operations or activities of the government.”⁸ The requested records are directly related to how DOJ is recruiting and selecting career attorneys who will undertake the work of the agency. Agency employees have previously been “accused of illegally politicizing the hiring process,”⁹ and such

³ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

⁴ *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)).

⁵ *Mead Data Central*, 566 F.2d at 261.

⁶ 28 C.F.R. § 16.10(k)(2).

⁷ *Id.*

⁸ 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)–(B).

⁹ See Molly Redden, *Trump Labor Pick Was Singled Out in Inquiry Over Politicized Hiring*, THE GUARDIAN, Feb. 16, 2017, <https://www.theguardian.com/us-news/2017/feb/16/alexander-acosta-trump-labor-secretary-civil-rights-hiring> (citing U.S. DEP’T OF JUSTICE OFFICE OF THE INSPECTOR GEN. & U.S. DEP’T OF JUSTICE OFFICE OF PROF’L RESPONSIBILITY, AN INVESTIGATION OF ALLEGATIONS OF POLITICIZED HIRING AND OTHER IMPROPER PERSONNEL ACTIONS IN THE

efforts are of significant public interest.¹⁰ The requested records will help American Oversight and the general public understand whether and to what extent the agency is again engaging in illegal politicizing of the hiring process. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available. As noted, the subject of this request is a matter of public interest, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.¹¹ 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.¹² 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,¹³ 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.¹⁴ 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.¹⁵

CIVIL RIGHTS DIVISION (July 2, 2008, released publicly Jan. 13, 2009), <https://oig.justice.gov/special/s0901/final.pdf>.

¹⁰ See Alia Malek, *Bush's Long History of Politicizing Justice*, SPIEGEL ONLINE (Mar. 30, 2007, 5:29 PM), <http://www.spiegel.de/international/partisan-civil-rights-bush-s-long-history-of-politicizing-justice-a-474911.html>; Adam Serwer, *The Scandal That May Haunt the New Nominee for Labor Secretary*, THE ATLANTIC, Feb. 16, 2017, <https://www.theatlantic.com/politics/archive/2017/02/trump-labor-nominee-presided-over-politicized-hiring-scandal-at-justice/517002/>.

¹¹ 28 C.F.R. § 16.10(k)(iii)(A)-(B).

¹² American Oversight currently has approximately 11,900 page likes on Facebook, and 45,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Oct. 24, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Oct. 24, 2018).

¹³ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁴ *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>.

¹⁵ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

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 DOJ on this request. If you do not understand any part of this request, Cerissa Cafasso at foia@americanoversight.org or 202.869.5244. 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 stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight