



January 18, 2019

**VIA ONLINE PORTAL**

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
U.S. Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, DC 20230  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records.

American Oversight promotes accountability in government through transparency, informing the public's right to know what the government is up to. Since the president took office in January 2017, the administration has experienced a revolving door of senior personnel.<sup>1</sup> With scores of new individuals joining the government in key, senior positions, it is essential to understand who they are and the backgrounds they bring to their work. Without such transparency, the public cannot have confidence that government decisions are shaped by the interests of the American people, not personal or professional allegiances.

American Oversight previously submitted a FOIA request to your agency seeking certain information about political appointees, detailees, and transition team members at the agency. American Oversight now seeks to update its earlier FOIA request to encompass information about individuals who assumed their positions after the search for American Oversight's prior FOIA request was conducted or about whom new relevant information exists.

**Requested Records**

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

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<sup>1</sup> See, e.g., Politico Staff, *The Revolving Door of Trump's Cabinet*, POLITICO (Nov. 16, 2018, 4:00PM), [https://www.politico.com/interactives/2018/interactive\\_trump-cabinet-departures/](https://www.politico.com/interactives/2018/interactive_trump-cabinet-departures/).



1. Records sufficient to identify all employees who entered into a position at the agency as “political appointees” since the date the search was conducted for FOIA request number DOC-OS-2018-000355 (the “Relevant Date”) and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since the Relevant Date, identify each title or position). For purposes of this request, please consider any employee in a PAS position, a presidentially-appointed position, a non-career SES position, a Schedule C position, or any administratively-determined position to be a “political appointee.”
2. Records sufficient to identify all career employees who have been detailed into a leadership office or component front office since the Relevant Date (as that term is defined in request 1); the title or position of each employee while on detail; and each employee’s originating agency or component, and prior title (to the extent that such individuals have held multiple titles or positions since the Relevant Date, identify each title or position).
3. For each individual identified in response to requests 1 to 2:
  - a. The resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or, if that is not available, a recent resume contained within the agency’s records. We have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and professional association information is not exempt and we object to any redactions of such information.
  - b. Any conflicts or ethics waivers or authorizations for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
  - c. Records reflecting any recusal determination made or issued for the individual.
  - d. Copies of any SF-50 forms for the individual reflecting any change in position or title, including when the employee enters or leaves a position. We have no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.
4. For all employees who entered into a position at the agency as “political appointees” *prior to the Relevant Date* (as that term is defined in request 1), and all career employees who have been detailed into a leadership office or component front office *prior to the Relevant Date*:
  - a. Any resume provided by the individual to the agency *after the Relevant Date*. As noted above, we have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and

professional association information is not exempt and we object to any redactions of such information.

- b. Any conflicts or ethics waivers or authorizations for the individual created after the Relevant Date, including authorizations pursuant to 5 C.F.R. § 2635.502.
- c. Records reflecting any recusal determination made or issued for the individual after the Relevant Date.
- d. Copies of any SF-50 forms for the individual reflecting any change in position or title, including when the employee enters or leaves a position, created after the Relevant Date. We have no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.

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.

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.”<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup> 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.’”<sup>5</sup>

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

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<sup>2</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

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

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

<sup>5</sup> *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)).

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.<sup>6</sup> 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, your agency 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 your agency 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 15<sup>th</sup> 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 your agency's implementing regulations, 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. Moreover, the request is primarily and fundamentally for non-commercial purposes.

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.”<sup>7</sup> The requested records directly concern identifiable operations or activities of the government—namely, the background and qualifications of appointed and career employees working for the agency. Since January 20, 2017, the Trump administration has been appointing or assigning individuals to play significant roles in shaping the agenda of every federal agency, with frequent changes along the way.<sup>8</sup> Identifying who these people are, and the background and perspectives that they bring to their jobs as federal employees, is essential to informing the public regarding the operations and decisionmaking of the federal government. In particular, only with clarity regarding the identity and background of these appointees can the

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<sup>6</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>7</sup> 5 U.S.C. § 552a(4)(A)(iii).

<sup>8</sup> *See, e.g., Politico Staff, supra* note 1.

public make informed assessments regarding whether decisions might have been influenced by conflicts of interest among the decisionmakers and whether those employees have personal or private interests affected by their policy actions. The requested records would thus “contribute significantly to public understanding of the operations and activities” of officials leading your agency.<sup>9</sup> And, as described in more detail below, American Oversight’s website and social media accounts demonstrate its ability and intention to effectively convey information to the public.

This request is primarily and fundamentally for non-commercial purposes.<sup>10</sup> 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.<sup>11</sup> 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,<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

Accordingly, American Oversight qualifies for a fee waiver.

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<sup>9</sup> 5 U.S.C. § 552a(4)(A)(iii).

<sup>10</sup> *Id.*

<sup>11</sup> American Oversight currently has approximately 12,100 page likes on Facebook and 49,800 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 17, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 17, 2019).

<sup>12</sup> *DOJ Records Relating to Solicitor General Noel Francisco’s Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>13</sup> *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>.

<sup>14</sup> *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 you 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 Katherine Anthony at [foia@americanoversight.org](mailto: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 flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight