



April 3, 2019

VIA ONLINE PORTAL

Ms. Kathy Dixon, CIPP/US/G
DLA Headquarters
ATTN: DGA
8725 John J. Kingman Road, Suite 1644
Fort Belvoir, VA 22060-6221
Via FOIAOnline

Ms. Shirley Brown
Information Governance and Compliance (J67C)
Defense Logistics Agency
Bldg. 2B North Computer Room, 2b4913
Attn: IGC 700 Robbins Avenue
Philadelphia, PA 19111
Via FOIAOnline

Re: Freedom of Information Act Request

Dear Ms. Dixon & Ms. Brown:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the implementing regulations of the Department of Defense (DOD), 32 C.F.R. Part 286, American Oversight makes the following request for records.

In May 2017, the Defense Logistics Agency's energy arm finalized a contract worth approximately \$900,000 with Freedom Aviation, a company owned by Liberty University, whose president, Jerry Falwell Jr., is a prominent political supporter of President Donald Trump.¹ Given Freedom Aviation's apparent lack of experience in government contracting before this deal, as well as the high-profile role of its leadership in supporting the president's administration, it is in the public interest to know whether political relationships are influencing federal procurement processes.

American Oversight seeks records with the potential to shed light on whether and to what extent government contracting decisions are being affected by the political connections of the president's supporters.

¹ Lachlan Markay, *Trump Ally Jerry Falwell's Liberty University Has Pentagon Contracts*, THE DAILY BEAST, (Mar. 28, 2019, 4:20 AM), <https://www.thedailybeast.com/jerry-falwells-liberty-university-landed-pentagon-contract-months-after-trumps-election>.



Requested Records

American Oversight requests that the Defense Logistics Agency (DLA) produce the following within twenty days:

All records reflecting communications (including emails, telephone call logs, calendar entries, or any other records reflecting communications) between (1) DLA officials and employees and (2) any of the following individuals, organizations, or associated email addresses.

- a. Jerry Falwell, Jr., his representatives, or anyone else acting or communicating on his behalf;
- b. Freedom Aviation, including communications with or cc'ing any email address ending in @flyfreedom.com or @flyfreedomaviation.com;
- c. Liberty University, including communications with or cc'ing any email address ending in @liberty.edu.

American Oversight requests that the search include, at a minimum, the files of the following DLA officials and employees:

- i. Director Darrell K. Williams, Vice Director Michael Scott, Chief of Staff Kristin French, and anyone previously serving as DLA Director, Vice Director, or Chief of Staff;
- ii. Director Matthew Beebe, Deputy Director Roxanne Banks, and anyone previously serving as Director or Deputy Director of DLA Acquisitions (J7);
- iii. Commander Brig. Gen. Albert G. Miller, Deputy Commander Guy Beougher, Chief of Staff Col. Steve Davis, Director of Supplier Operations Gabriella Earhardt, Director of Customer Operations Col. John Martin, and anyone previously serving as DLA Energy Commander, Deputy Commander, Chief of Staff, Director of Supplier Operations, and Director of Customer Operations;
- iv. The Directors or Commanders in charge of the following DLA Energy offices:
 - a. Bulk Petroleum Products
 - b. Bulk Petroleum Supply Chain Services
 - c. Customer Relationship Management
 - d. Direct Delivery Fuels
 - e. Plans and Operations
 - f. Procurement Process Support
 - g. Small Business

Please provide all responsive records from January 20, 2017 through the date the search is conducted.

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.”² If it is your position that any portion of the requested records are 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.”³ 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.”⁴ 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.’”⁵

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.⁶ 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, DOD is on notice that litigation is reasonably foreseeable.

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 32 C.F.R. § 286.12(l)(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 public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

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

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

⁴ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

⁵ *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)).

⁶ *Mead Data Central*, 566 F.2d at 261.

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 operations and activities.⁷ DOD, through DLA, signed a large fuel contract with a company wholly owned by Liberty University, an institution led by a high-profile political supporter of the president, Jerry Falwell Jr.⁸ The Trump campaign has separately used Freedom Aviation for air travel, but the company has not previously engaged in federal government contracting, and the Mr. Falwell's close ties to the president raise questions about the contract awarded to Freedom Aviation. The public deserves to know whether DOD is making significant acquisition decisions based on the interests of the president's political supporters. The requested records have the potential to shed light on whether political considerations have affected DLA's engagement with Freedom Aviation. American Oversight is committed to transparency and makes the responses agencies provide in response to FOIA requests publicly available. The subject of this request is a matter of public interest, and American Oversight would make these records publicly available.

This request is primarily and fundamentally for non-commercial purposes.⁹ 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.¹⁰ 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,¹¹ 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.¹² 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

⁷ 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 286.12(l)(2)(i)-(ii).

⁸ Markay, *supra* note 1.

⁹ 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 286.12(l)(2)(iii)(A)-(B).

¹⁰ American Oversight currently has approximately 12,200 page likes on Facebook, and 54,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 29, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 29, 2019).

¹¹ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹² *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>.

information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.¹³

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 DOD 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 Dan McGrath at foia@americanoversight.org or 202.897.4213. 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 and right of the name.

Austin R. Evers
Executive Director
American Oversight

¹³ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.