



April 11, 2019

VIA ONLINE PORTAL

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
U.S. Department of Justice
1425 New York Avenue NW
Suite 11050
Washington, DC 20530-0001
Via FOIAOnline

Re: Expedited Freedom of Information Act Request

Dear Mr. Hibbard:

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.

Requested Records

American Oversight requests that DOJ produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All communications (including emails, email attachments, letters, messages sent by courier, and other communications) attaching or otherwise including any draft, or any portion of a draft, of Attorney General William Barr's March 24, 2019 letter to the Judiciary Committees of the U.S. Senate and the U.S. House of Representatives concerning Special Counsel Robert Mueller's "Report on the Investigation into Russian Interference in the 2016 Presidential Election."¹
2. All records reflecting communications (including emails, email attachments, telephone call logs, talking points, electronic or handwritten notes, or drafts used as reference documents during oral communications) between DOJ and any employee or official at the White House regarding Attorney General William Barr's March 24, 2019 letter to the Judiciary Committees of the U.S. Senate and the U.S. House of Representatives concerning Special Counsel Robert Mueller's "Report on the Investigation into Russian

¹ A copy of Attorney General Barr's letter can be viewed here: Quinta Jurecic, *Document: Attorney General Barr Letter on Mueller Report*, LAWFARE (Mar. 24, 2019, 3:44 PM), <https://www.lawfareblog.com/document-attorney-general-barr-letter-mueller-report>.



Interference in the 2016 Presidential Election,” or any draft or portion of a draft of that letter.

Attorney General Barr testified that his letter “may have been read to” White House staffers before its release.² Any records reflecting such a communication with the White House are responsive to this request, and an adequate search reasonably calculated to uncover all relevant documents must include a search for records reflecting this communication with White House staff.

American Oversight requests that DOJ search—at a minimum—the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Office of Legislative Affairs, and the Special Counsel’s Office for records responsive to this request.

Please provide all responsive records from March 1, 2019, through March 25, 2019.

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

² Attorney General Barr testified that “I checked with my staff and was told that just before the letters were out—after they were finalized and just before they went out—we did advise the White House Counsel’s Office that the letters were being sent. They were not allowed or asked to make any changes to the letters, but we gave them, we notified them before we issued them....I think [the letter] may have been read to them.” *Testimony of Attorney General William Barr*, YOUTUBE, Apr. 9, 2019, <https://www.youtube.com/watch?v=khDIYrT01Y> (last visited Apr. 9, 2019).

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

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 DOJ’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 DOJ’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ 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

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)).

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) (emphases in original).

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

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, DOJ 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 DOJ 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 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.¹¹ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹²

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)).

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

¹¹ 28 C.F.R. § 16.10(k)(1).

¹² *Id.*

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.¹³ There is extensive public interest in understanding the work and findings of Special Counsel Robert Mueller’s investigation of the Russian government’s efforts to interfere in the 2016 U.S. presidential election and any matters arising directly from that investigation.¹⁴ The public deserves to know the findings of the Special Counsel investigation, including whether and to what extent members of the president’s campaign aided in foreign efforts to interfere in U.S. elections or attempts to obstruct justice. Further demonstrating the great public interest in disclosure of the requested records, the president and many members of Congress have expressed the belief that the public should be allowed to view the Mueller report and the findings of the Special Counsel’s investigation.¹⁵ This request seeks records that have the potential to reveal aspects of the Special Counsel’s findings and to show whether and to what extent political considerations influenced Attorney General Barr’s initial letter regarding the Mueller report’s findings. As discussed below, American Oversight has the capacity and intention to inform a broad audience about government activities that are the subject of these records.

This request is primarily and fundamentally for non-commercial purposes.¹⁶ 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.¹⁷ 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

¹³ 28 C.F.R. § 16.10(k)(1), (2)(i)–(ii).

¹⁴ See, e.g., Katie Benner, *Mueller Report Expected to Go to Justice Department Within Weeks*, N.Y. TIMES, Feb. 21, 2019, <https://www.nytimes.com/2019/02/21/us/politics/mueller-report-ending.html>; Philip Ewing, *Here’s What May Happen When the Mueller Investigation Is Completed*, NPR (Feb. 22, 2019, 5:00 AM), <https://www.npr.org/2019/02/22/696428301/heres-what-may-happen-when-the-mueller-investigation-is-completed>.

¹⁵ Nicholas Fandos, *House Votes, 420-to-0, to Demand Public Release of Mueller Report*, N.Y. TIMES, Mar. 14, 2019, <https://www.nytimes.com/2019/03/14/us/politics/mueller-report-public.html>; Jill Colvin, *Trump Says Public Should See ‘Ridiculous’ Mueller Report*, AP NEWS, Mar. 21, 2019, <https://www.apnews.com/093727be24b649f7adad971e0b48878d>.

¹⁶ 28 C.F.R. § 16.10(k)(1), (2)(iii).

¹⁷ American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 11, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 11, 2019).

senior DOJ attorney,¹⁸ 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.¹⁹ 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.²⁰

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(e)(1)(ii), (iv), American Oversight requests that DOJ expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity.²¹ For the past two years, Special Counsel Robert Mueller has conducted an investigation that concerns the integrity of U.S. elections and the potential involvement of members of the president's campaign in aiding in foreign interference in a presidential election.²² There is enormous public concern that recently-confirmed Attorney General William Barr will not sufficiently disclose the findings of the Mueller investigation or take necessary action on the basis of those findings.²³ The public interest in disclosure of the requested information is particularly important given now-Attorney General Barr's June 8, 2018 memorandum to DOJ—which was also

¹⁸ *DOJ Records Related to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁹ *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>.

²⁰ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

²¹ 28 C.F.R. § 16.5(e)(1)(ii).

²² Order No. 3915-2017, APPOINTMENT OF A SPECIAL COUNSEL TO INVESTIGATE RUSSIAN INTERFERENCE WITH THE 2016 PRESIDENTIAL ELECTION AND RELATED MATTERS, May 17, 2017, <https://www.justice.gov/opa/press-release/file/967231/download>.

²³ Todd Ruger, *Senate Confirms Barr Amid Questions About Mueller Report*, ROLL CALL (Feb. 14, 2019, 1:37 PM), <https://www.rollcall.com/news/congress/senate-confirms-barr-amid-questions-about-mueller-report>; Mariam Khan & Luke Barr, *William Barr Sworn in as Attorney General, Will Oversee Mueller Investigation*, ABC NEWS (Feb. 14, 2019, 5:19 PM), <https://abcnews.go.com/Politics/william-barr-confirmed-senate-set-attorney-general/story?id=61047415>; Eric Tucker, *New Attorney General in Hot Seat as Mueller Report Nears*, AP NEWS (Feb. 22, 2019, 2:50 PM), <https://www.apnews.com/a63a668819624127a9f92e25c7c5b7bf>.

sent to President Trump’s attorneys—arguing against taking action on certain potential areas of the Special Counsel’s investigation.²⁴ Without prompt public disclosure of the Special Counsel’s findings, public confidence in the Attorney General’s subsequent actions could be deeply shaken. And only further serving to illustrate the urgent public need for disclosure of the Special Counsel’s report, the chairs of six committees of the U.S. House of Representatives have urged the Attorney General to make the report public.²⁵ The president and many other members of Congress have also shown that they believe the report and the Special Counsel’s findings should be made public.²⁶ And, as discussed above, this request seeks records with the potential to reveal aspects of the Special Counsel’s findings and to show whether and to what extent political considerations influenced Attorney General Barr’s initial letter regarding the Mueller report’s findings. The American public has a substantial and urgent interest in understanding the findings of the Special Counsel’s investigation.

I further certify that American Oversight is primarily engaged in disseminating information to the public.²⁷ 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²⁸ American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”²⁹ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.³⁰ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.³¹

²⁴ Andrew Prokop, *Trump’s Attorney General Nominee Wrote a Memo Expressing Deep Suspicion of the Mueller Probe*, VOX (Dec. 20, 2018, 12:30 PM), <https://www.vox.com/policy-and-politics/2018/12/20/18150165/mueller-barr-memo-rosenstein-obstruction-trump>.

²⁵ Olivia Beavers, *Dem Press Barr to Make Mueller Report Public*, THE HILL (Feb. 22, 2019, 3:45 PM), <https://thehill.com/policy/national-security/431191-top-democrats-press-barr-about-providing-public-mueller-probe-report>.

²⁶ Fandos, *supra* note 14; Colvin, *supra* note 14.

²⁷ 28 C.F.R. § 16.5(e)(1)(iv).

²⁸ See *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²⁹ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³⁰ American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Apr. 4, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 4, 2019).

³¹ See *DOJ Records Related to Solicitor General Noel Francisco’s Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*,

I further certify to be true and correct to the best of my knowledge and belief, that this request concerns “a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv). The investigation of Special Counsel Robert Mueller into foreign interference in the 2016 U.S. presidential election, any cooperation by the president’s campaign with the Russian government regarding those efforts, and other matters has received extraordinarily “widespread and exceptional” media coverage,³² and the release of the Special Counsel’s report and its contents specifically have received extensive coverage.³³ And Special Counsel Mueller’s report directly concerns important questions about the government’s integrity that affect public confidence, as the Special Counsel’s investigation has involved a probe of the integrity of the 2016 presidential election and the potential involvement of the president or members of his campaign in aiding foreign efforts to interfere in that election or attempting to obstruct an investigation into that interference.³⁴ Public confidence in DOJ could be undermined if the public is not able to assess the findings of the Special Counsel report.

AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

³² See, e.g., Katelyn Polantz, *Mueller Could Tell All in Last Major Court Filing in Paul Manafort’s Case*, CNN (Feb. 22, 2019, 7:22 AM), <https://www.cnn.com/2019/02/22/politics/manafort-sentencing-memo-preview/index.html>; Andrew Prokop, *The Mueller Investigation Has Gotten Closer to Donald Trump*, VOX (Dec. 6, 2018, 8:00 AM), <https://www.vox.com/2018/12/6/18120077/mueller-news-trump-russia-report>; Philip Ewing, *What You Need to Know About the Latest Big News In The Mueller Investigation*, NPR (Nov. 29, 2018, 5:18 PM), <https://www.npr.org/2018/11/29/671939382/what-you-need-to-know-about-the-latest-big-news-in-the-mueller-russia-investigat>; Eli Watkins, *Mueller Investigating Trump for Obstruction of Justice*, *Washington Post Reports*, CNN (June 15, 2017, 7:13 AM), <https://www.cnn.com/2017/06/14/politics/robert-mueller-donald-trump/index.html>; Devlin Barrett et al., *Special Counsel Is Investigating Trump for Possible Obstruction of Justice, Officials Say*, WASH. POST, June 14, 2017, https://www.washingtonpost.com/world/national-security/special-counsel-is-investigating-trump-for-possible-obstruction-of-justice/2017/06/14/9ce02506-5131-11e7-b064-828ba60fbb98_story.html?utm_term=.70c32aeb7b6c.

³³ Katie Benner, *Mueller Report Expected to Go to Justice Department Within Weeks*, N.Y. TIMES, Feb. 21, 2019, <https://www.nytimes.com/2019/02/21/us/politics/mueller-report-ending.html>; Devlin Barrett et al., *Justice Department Preparing for Mueller Report in Coming Days*, WASH. POST, Feb. 20, 2019, https://www.washingtonpost.com/world/national-security/justice-department-preparing-for-mueller-report-in-coming-days/2019/02/20/c472691c-354b-11e9-af5b-b51b7ff322e9_story.html?utm_term=.6737a54ea838; Devin Barrett, *Mueller Report Is ‘Close to Being Completed,’ Acting Attorney General Says*, WASH. POST, Jan. 28, 2019, https://www.washingtonpost.com/world/national-security/mueller-investigation-is-close-to-being-completed-acting-attorney-general-says/2019/01/28/6bcf09b4-2349-11e9-81fd-b7b05d5bed90_story.html?utm_term=.4e7876dafbb1.

³⁴ See *id.*; see also Order No. 3915-2017, *supra* note 19.

Accordingly, American Oversight's request satisfies the criteria for expedition.

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 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.

Austin R. Evers
Executive Director
American Oversight

Cc: Kerri Kupec