VIA ELECTRONIC MAIL

FOIA Public Liaison
U.S. Department of Education
Office of Management
Office of the Chief Privacy Officer
400 Maryland Avenue SW, LBJ 2E320
Washington, DC 20202-4536
EDFOIAManager@ed.gov

Re: Freedom of Information Act Request

Dear Freedom of Information 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.

Pastor Paula White, President Trump’s reported “spiritual advisor” and a member of his evangelical advisory board, has been a frequent presence at the Trump White House and has reportedly claimed that she has advised the president on issues ranging from hurricane response to moving the U.S. Embassy in Israel to Jerusalem. Yet White’s role in the administration remains murky, even as she apparently continues to use her connection to the president to solicit funds for her personal ministry. American Oversight seeks records with the potential to shed light on the nature of White’s role in the administration and what influence, if any, she is exerting on federal policy.

Requested Records

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

All email communications (including emails, email attachments, calendar invitations and calendar entries) between (a) Paula White (alternatively styled as Paula White-Cain) or any person communicating on her behalf and (b) any of the individuals listed below:

a) Secretary Betsy DeVos and any scheduler or assistant communicating on her behalf
b) Deputy Secretary Mitchell Zais and any scheduler or assistant communicating on his behalf

Please produce all responsive records from January 20, 2017 through the date of search.

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. **Your agency 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. **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.**

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**

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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 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)).
manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively
on custodian-driven searches. 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.” 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.” 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.” 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.’”

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.” Claims of nonsegregability must be made with the same degree of detail as required

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7 Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28,
memorandum-managing-government-records; Office of Mgmt. & Budget, Exec. Office of the
President, Memorandum for the Heads of Executive Departments & Independent Agencies,
9 *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).
11 *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)).
12 *Mead Data Central*, 566 F.2d at 261.
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.

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 hopes to 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 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 activities of the government. The disclosure of the information sought under this request will reveal the operations of the federal government, including the role played by an informal advisor to the president with no official government position. There is significant interest in Ms. White’s influence on the current administration,11 and the records responsive to this request will contribute significantly to the public’s understanding of the government’s activities.

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

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materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter. 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, 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. 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.

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 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 Katherine Anthony 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,

Austin R. Evers
Executive Director
American Oversight

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