



April 22, 2019

VIA ONLINE PORTAL

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460
Via FOIAOnline

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 the implementing regulations of the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight makes the following request for records.

In late 2018, the Trump administration installed a new set of energy advisers who will likely be driving the White House's messaging on climate change and energy policy in the coming year.¹ These advisers have a track record of fossil fuel promotion and climate change denial, including appearances at conferences of anti-climate science organizations.²

American Oversight seeks records to shed light on whether and to what extent the administration's climate and energy policies are being shaped by climate deniers and industry proponents at the expense of public health and national security.

Requested Records

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

All email communications (including emails, email attachments, and calendar invitations) with the following individuals:

- i. Wells Griffith, Special Assistant to the President and Senior Director for International Energy and Environment at the National Security Council/National Economic Council;

¹ Hannah Northey & Scott Waldman, *Meet 4 Insiders Grappling with Climate, Energy Issues*, E&E NEWS, Dec. 26, 2018,

https://www.eenews.net/special_reports/People_to_Watch_2019/stories/1060110491.

² *Id.*



- ii. Francis Brooke, Senior Energy Advisor to the President in the White House Office; and/or
- iii. Brooke Rollins, Assistant to the President in the White House Office of American Innovation.

American Oversight requests that the search include the records of the following individuals:

- i. Any person serving in the position of Administrator or Acting Administrator;
- ii. Any person serving in the position of Deputy Administrator or Acting Deputy Administrator;
- iii. Any person serving in the position of Chief of Staff;
- iv. Any person serving in the position of White House Liaison;
- v. Any person serving in the position of Director of the Office of Research and Development;
- vi. Any person serving in the position of Director of the Office of Environmental Information; and
- vii. Any person serving in the position of Director of the Office of Chemical Safety and Pollution Prevention.

Please provide all responsive records from April 1, 2018, through the date the search is conducted for communications with Wells Griffith and Francis Brooke. Please provide all responsive records from February 1, 2018, through the date the search is conducted for communications with Brooke Rollins.

In addition to the records requested above, we also request 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 EPA 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.

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**

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).

require officials to move such information to official systems within a certain period of time; we have 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

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 EPA’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 EPA’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insist that EPA 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. We are 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, we request 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

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)).

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).

information.”⁸ 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.’”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, EPA 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, we welcome 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, we 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, 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 40 C.F.R. § 2.107(l), 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

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 The government has a duty to care for the general welfare

⁸ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphases in original).

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 40 C.F.R. § 2.107(l)(1).

¹² *Id.*

¹³ *Id.*; see also 40 C.F.R. § 2.107(l)(2)(i)-(iv).

of its citizens, and its action on climate change is a critical government activity, as confirmed by the federal government's own scientific assessments as well as the most recent report issued by the United Nations Intergovernmental Panel on Climate Change. There are few—if any—matters of greater public concern than anthropogenic climate change, as reflected both by the scientific consensus¹⁴ and media reporting¹⁵ as to the necessity of urgent action. The public deserves to know whether and to what extent the federal government's response to an imminent crisis is being undermined for political purposes. And, as described in more detail below, American Oversight will disseminate any information released in response to this request to a reasonably broad audience of persons through its social media accounts and its website.

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 senior DOJ attorney,¹⁸ American Oversight promptly posted the records to its website and

¹⁴ See, e.g., *Scientific Consensus: Earth's Climate is Warming*, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, <https://climate.nasa.gov/scientific-consensus/>; J. Cook et al., *Consensus on Consensus: A Synthesis of Consensus Estimates on Human-Caused Global Warming*, Environmental Research Letters, Vol. 11 No. 4 (Apr. 13, 2016), available at <http://iopscience.iop.org/article/10.1088/1748-9326/11/4/048002>; *Human-Induced Climate Change Requires Urgent Action*, AMERICAN GEOPHYSICAL UNION (adopted 2003; revised and reaffirmed Aug. 2013), available at <https://sciencepolicy.agu.org/files/2013/07/AGU-Climate-Change-Position-Statement-August-2013.pdf>; *Climate Change*, THE GEOLOGICAL SOC'Y OF AM. (adopted Oct. 2006, revised Apr. 2015), available at <https://www.geosociety.org/gsa/positions/position10.aspx>.

¹⁵ See, e.g., Sophie Aziakou, *Climate Change: Urgent Action Needed to Avert a Crisis for Children*, FORBES (Oct. 10, 2018, 4:07 PM), <https://www.forbes.com/sites/unicefusa/2018/10/10/climate-change-urgent-action-needed-to-avert-a-crisis-for-children>; Stephen Leahy, *Climate Change Impacts Worse Than Expected, Global Report Warns*, NAT'L GEOGRAPHIC, Oct. 7, 2018, <https://www.nationalgeographic.com/environment/2018/10/ipcc-report-climate-change-impacts-forests-emissions/>.

¹⁶ 40 C.F.R. § 2.107(l)(1); 40 C.F.R. § 2.107(l)(3)(i)-(ii).

¹⁷ American Oversight currently has approximately 12,200 page likes on Facebook and 54,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 19, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 19, 2019).

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

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, this request qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. We look forward to working with EPA 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 Hart Wood at foia@americanoversight.org or 202.873.1743. Also, if our 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

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>.