AMERICAN OVERSIGHT

April 2, 2019

VIA ELECTRONIC MAIL

Federal Housing Finance Agency
Stacy J. Easter, FOIA Officer
Constitution Center
400 7th Street SW
Washington, DC 20024
FOIA@fhfa.gov

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.

Longtime associates of the president Tom Barrack, Richard LeFrak, and Steven Roth—individuals involved in real estate investment and development—are reported to have substantial influence over President Trump and his administration. Barrack, for example, headed Trump's inaugural committee, and LeFrak and Roth led a short-lived infrastructure council.[1] Despite their influential roles, none of these individuals holds an official government position, and they have not been subject to the ethical requirements and public scrutiny that would accompany formal government employment. Public records already disclosed to American Oversight suggest that these individuals may indeed be influencing federal housing policy.[2]

American Oversight seeks records with the potential to shed light on whether and to what extent the president's real estate associates are influencing federal housing and financing policy.

Requested Records

American Oversight requests that Federal Housing Finance Agency (FHFA) produce the following within twenty business days:

---

[1] Dan Alexander & Chase Peterson-Withorn, *Trump's Secret Windfall: The Crown Jewels Of His Fortune Are 2 Skyscrapers He Didn't Want—And Doesn't Control*, FORBES (Mar. 7, 2019, 6:00 AM) https://www.forbes.com/sites/danalexander/2019/03/07/trumps-secret-windfall-the-crown-jewels-of-his-fortune-are-2-skyscrapers-he-didnt-wantand-doesnt-control/#44166f3622e5.

[2] *HUD Records Relating to Ben Carson Jr.*, AMERICAN OVERSIGHT, https://www.documentcloud.org/documents/4364033-HUD-Records-Relating-to-Ben-Carson-Jr.html#search/p711/LeFrak (Secretary Carson's son writing to HUD official Lynne Patton that he would "love to be able to talk to the LeFrak family" about HUD debt interest rates).

All records reflecting communications (including emails, telephone call logs, calendar invitations/entries, or any other records reflecting communications) between (1) the FHFA employees and officials specified below and (2) Thomas Barrack Jr., Richard LeFrak, Steven Roth, or anyone representing them or their companies (Colony Capital, LeFrak, and Vornado Realty Trust, respectively), including but not limited to individuals communicating from the following email addresses:

i. tbarrack@colonyinc.com
ii. rlefrak@lefrak.com
iii. sroth@vno.com
iv. Any email address ending in @clny.com
v. Any email address ending in @clns.com
vi. Any email address ending in @colonyinc.com
vii. Any email address ending in @colonyfinancial.com
viii. Any email address ending in @lefrak.com
ix. Any email address ending in @vno.com

Specified FHFA officials and employees:

i. Anyone serving in the capacity of Director or Acting Director, including but not limited to current Acting Director Joseph Otting, and anyone communicating on their behalf such as a scheduler, executive or administrative assistant, or special advisor.
ii. Anyone serving in the capacity of Chief of Staff or Deputy Chief of Staff, including but not limited to current Chief of Staff John Roscoe, and anyone communicating on their behalf such as a scheduler, executive or administrative assistant, or special advisor.

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

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.

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]

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 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 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.**

---

[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 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.

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 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, you are 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, 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.

---

[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).
[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.

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 a better understanding of relevant government procedures by the general public in a significant way. 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 government activities and operations. The request relates to the operations or activities of the government, because it seeks records that have the potential to shed light on the influence that associates of the president have had on federal housing officials and federal housing policy. Although some reporting and some released public records have suggested that the president's associates have influenced federal policy, the public currently has little information about whether and to what extent these individuals have communicated with federal housing officials.[11] The public deserves to know whether federal housing policy has been affected by individuals with personal relationships with the president, and whether federal housing officials have prioritized communicating with those associates of the president.

This request is primarily and fundamentally for non-commercial purposes.[12] 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.[13] 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,[14] American Oversight promptly posted the records to its website and

---

[11] *See* Alexander & Peterson-Withorn, *supra* note 1; *supra* note 2; Scott Horsley, *Longtime Trump Friend Under the Microscope for Mideast Ties, Inauguration Probe*, NPR (Feb. 21, 2019, 5:00 AM), https://www.npr.org/2019/02/21/696444509/longtime-trump-friend-under-the-microscope-for-mideast-ties-inauguration-role.

[12] 5 U.S.C. § 552(a)(4)(A)(iii).

[13] 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. 25, 2019); American Oversight (@weareoversight), TWITTER (last visited Mar. 25, 2019).

[14] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, https://www.americanoversight.org/document/doj-civil-division-response-noel-franciscocompliance.

published an analysis of what the records reflected about DOJ's process for ethics waivers.[15] 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.[16]

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 Dan McGrath at foia@americanoversight.org or (202) 897-4213. Also, if the 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

[15] *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-thedoj-documents.
[16] *Audit the Wall*, AMERICAN OVERSIGHT, https://www.americanoversight.org/investigation/audit-the-wall.