April 23, 2019

VIA ELECTRONIC MAIL

U.S. Government Accountability Office
Chief Quality Officer
Room 5K21
441 G Street NW
Washington, DC 20548
RecordsRequest@gao.gov

Re: Records Request

Dear Chief Quality Officer:

Pursuant to regulations of the U.S. Government Accountability Office (GAO) concerning the public availability of GAO records, 4 C.F.R. Part 81, American Oversight and the American Civil Liberties Union of Massachusetts, Inc. (ACLU) (collectively, the “Requestors”) request the records described below.

The Department of Homeland Security Appropriations Act for 2018, contained in Division F of the Consolidated Appropriations Act of 2018, provides in Section 231 of Title II that “[n]ot later than 180 days after the date of the enactment of this Act, the Secretary [of Homeland Security] shall submit to the Committees on Appropriations of the Senate and the House of Representatives a risk-based plan for improving security along the borders of the United States, including the use of personnel, fencing, other forms of tactical infrastructure, and technology” (the “Border Security Plan”), and further including certain enumerated categories of information.1 The Act requires the Secretary of Homeland Security to submit the Border Security Plan to the Comptroller General—concurrently with her submission to Congress—“who shall evaluate the plan and report to the Committees on Appropriations . . . on the strengths and weaknesses of such plan not later than 120 days after receiving such plan.”2 We understand the Border Security Plan was in fact submitted

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2 Id. § 231(b).
to Congress (and presumably to the Comptroller General, as well) on December 21, 2018, making the Comptroller General’s report to Congress due on or about April 22, 2019.

As explained in more detail below, Requesters seek a copy of this identifiable record to assist the public in better understanding the operations of the federal government in connection with its activities at the southern border.

**Requested Record**

Pursuant to GAO’s public records regulations, we request the following record:

1. The Comptroller General’s report to Congress on the DHS Border Security Plan, as described above.

As noted in GAO’s regulations, “[w]hile GAO is not subject to the Freedom of Information Act (FOIA) (5 U.S.C. 552), GAO’s disclosure policy follows the spirit of the act consistent with its duties and functions and responsibility to the Congress.” Courts instruct agencies subject to FOIA that “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” Thus, the scope of a records request is to be construed “liberally,” and exemptions must be “narrowly construed.”

In the event some portions of the requested record are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested record. If our request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

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.

**Fee Waiver Request**

In accordance with 4 C.F.R. § 81.7(e), we request a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and disclosure is in the public interest, because it will likely contribute to a better understanding of

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4 4 C.F.R. § 81.1(a) (emphasis added).
relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

Requestors seek a waiver of fees because disclosure of the requested information is “in the public interest, [and] is likely to contribute significantly to public understanding of the operations or activities of the government.” The requested record will help Requestors and the general public understand the Trump administration’s plans and operations at the U.S.-Mexico border. Operations at the U.S.-Mexico border, and the issue of border security, have been a centerpiece of President Trump’s public policy agenda, and his plans in this regard are a subject of significant public and press interest. The requested record, offering an objective view by GAO of the “strengths and weaknesses” of DHS’s plans with respect to this specific government activity, would meaningfully inform the public as to the scope and viability of this administration’s planned activities at the U.S.-Mexico border, including GAO’s view regarding whether and how those operations and activities will promote border security. It will also significantly enhance the public’s understanding of the priorities, constraints, costs, and challenges associated with such activities.

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

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 will use the information gathered, and its analysis of it, to educate the public through reports, press

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8 4 C.F.R. § 81.7(e).
9 Id.
10 Id.
releases, or other media. American Oversight will also make materials it gathers available on our public website.  

Similarly, ACLU is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization, ACLU distributes information both within and outside of Massachusetts. Gathering and disseminating current information to the public is a critical and substantial component of ACLU’s mission and work. ACLU publishes newsletters, news briefings, reports and other materials that are disseminated to the public, including through ACLU’s website and regular posts on social media sites such as Facebook and Twitter. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost.

Accordingly, Requestors qualify for a fee waiver.

Conclusion

Thank you for your attention to this request. We look forward to working with you. If you do not understand any part of this request, or have any question, please contact Katherine Anthony at (202) 897-3918 or by email at foia@americanoversight.org.

Sincerely,

/s/ Austin Evers  
Austin R. Evers  
Executive Director  
American Oversight

/s/ Dan McFadden  
Daniel L. McFadden  
Staff Attorney  
ACLU of Massachusetts

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13 American Oversight, www.americanoversight.org (last visited Apr. 23, 2019). American Oversight promotes the materials available on our public website on social media platforms, such as Facebook and Twitter. The organization 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. 23, 2019); American Oversight (@weareoversight), TWITTER, https://twitter.com/weareoversight (last visited Apr. 23, 2019).