



June 7, 2019

VIA ONLINE PORTAL

Internal Revenue Service
Central Processing Unit
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
www.foia.gov

Re: Freedom of Information Act Request

Dear Disclosure Manager:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Internal Revenue Service (IRS), 26 C.F.R. Part 601, American Oversight makes the following request for records.

American Oversight promotes accountability in government through transparency, informing the public's right to know what the government is up to. Since the president took office in January 2017, the administration has experienced a revolving door of senior personnel.¹ With scores of new individuals joining the government in key, senior positions, it is essential to understand who they are and the backgrounds they bring to their work. Without such transparency, the public cannot have confidence that government decisions are shaped by the interests of the American people, not personal or professional allegiances.

Requested Records

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

1. For each individual identified below:
 - a. The resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or, if that is not available, a recent resume contained within the agency's records.

¹ See, e.g., Politico Staff, *The Revolving Door of Trump's Cabinet*, POLITICO (Nov. 16, 2018, 4:00PM), <https://www.politico.com/interactives/2018/interactive-trump-cabinet-departures/>.



We have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and professional association information is not exempt and we object to any redactions of such information.

- b. Any conflicts or ethics waivers or authorizations for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
- c. Records reflecting any recusal determination made or issued for the individual.
- d. Copies of any SF-50 forms for the individual reflecting any change in position or title, including when the employee enters or leaves a position. We have no objection to the redaction of home addresses, telephone numbers, or social security numbers from the SF-50s.

The individuals with respect to whom the above records are requested and the requested date ranges are:

- i. IRS Commissioner Charles (Chuck) Rettig (September 12, 2018, through the date of the search);
- ii. Former Acting IRS Commissioner David Kautter (November 13, 2017, through September 30, 2018);
- iii. IRS Chief Counsel Michael J. Desmond (February 27, 2019, through the date of the search);
- iv. Former Acting IRS Chief Counsel William M. Paul (January 21, 2017 through March 7, 2019); and
- v. Any other employee who entered into a position at the agency as a “political appointee” since January 21, 2017. For purposes of this request, please consider any employee in a PAS position, a presidentially appointed position, a non-career SES position, a Schedule C position, or any administratively-determined position to be a “political appointee.”

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 26 C.F.R. § 601.702(f)(2), American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the IRS, 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 the operations or activities of the IRS.”² The public has a significant interest in the background and qualifications of appointed employees working for the federal government. Since January 20, 2017, the Trump administration has been appointing individuals to play significant roles in shaping the agenda of every federal agency, with frequent changes along the way. Identifying who these people are, and the background and perspectives that they bring to their jobs as federal employees, is essential to informing the public regarding the operations and decision-making of the federal government.

This is particularly so with respect to IRS, which is currently caught in the midst of a dispute between the President and Congress over the release of the President’s tax returns³ and is responsible for implementing “major tax legislation” that “will affect individuals, businesses, tax exempt and government entities.”⁴ At the same time, members of Congress and the media have raised concerns about potential conflicts-of-interest and positions taken by individuals serving as political appointees at IRS.⁵

² 26 C.F.R. § 601.702(f)(2)(i). See also 5 U.S.C. § 552(a)(4)(A)(iii).

³ See, e.g., Jeff Stein & Josh Dawsey, *Confidential Draft IRS Memo Says Tax Returns Must Be Given to Congress Unless President Invokes Executive Privilege*, WASH. POST, May 21, 2019, https://www.washingtonpost.com/business/economy/confidential-draft-irs-memo-says-tax-returns-must-be-given-to-congress-unless-president-invokes-executive-privilege/2019/05/21/8ed41834-7b1c-11e9-8bb7-0fc796cf2ec0_story.html?noredirect=on&utm_term=.d1e9c86dc159; Kevin Breuninger & Dan Mangan, *House Democrats Subpoena Trump’s Tax Returns From Treasury Secretary Steven Mnuchin, IRS Chief*, CNBC (May 10, 2019 6:54PM), <https://www.cnbc.com/2019/05/10/house-democrats-subpoena-treasury-secretary-mnuchin-irs-chief-over-trump-tax-returns.html>; Donna Borak, *IRS Commissioner Charles Rettig Is the Man Standing Between Congress and Trump’s Tax Returns*, CNN (May 5, 2019, 2:42AM), <https://www.cnn.com/2019/05/05/politics/irs-commissioner-charles-rettig-trump-taxes/index.html>.

⁴ *Tax Reform*, IRS, <https://www.irs.gov/tax-reform>.

⁵ See, e.g., Aaron Blake, *The Increasingly Suspicious Pattern Behind Trump’s Nominees*, WASH. POST, Apr. 5, 2019, https://www.washingtonpost.com/politics/2019/04/05/increasingly-suspicious-pattern-behind-trumps-nominees/?utm_term=.da1c5311f374; Maggie Haberman & Nicholas Fandos, *Trump Asked That Confirmation of I.R.S. Counsel Be a Priority*, N.Y. TIMES, Apr. 4, 2019, <https://www.nytimes.com/2019/04/04/us/politics/trump-michael-desmond-irs.html?smid=nytcore-ios-share>; Richard Rubin, *IRS Nominee Owns Property at Trump-Branded Project in Hawaii*, WALL ST. J. (June 27, 2018, 8:20PM), <https://www.wsj.com/articles/irs-nominee-owns-property-at-trump-branded-project-in-hawaii-1530145219>; Aaron Lorenzo, *Trump Picks Tax Lawyer As Next IRS Commissioner, Sources Say*, POLITICO (Jan. 23, 2018, 11:21PM), <https://www.politico.com/story/2018/01/23/trump-tax-lawyer-nominated-irs-commissioner-364620>; Wyden Probes Conflicts of Interest, Political Interference at IRS, U.S. SENATE COMMITTEE ON FINANCE, <https://www.finance.senate.gov/ranking-members-news/wyden-probes-conflicts-of-interest-political-interference-at-irs>.

Only with clarity regarding the identity and background of IRS appointees can the public make informed assessments regarding whether decisions might have been influenced by conflicts of interest among the decisionmakers and whether those employees have personal or private interests affected by their policy actions. Records with the potential to shed light on these questions would contribute significantly to public understanding of operations of the federal government. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁶ 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰

⁶ See 26 C.F.R. § 601.702(f)(2)(i)(E). See also 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ American Oversight currently has approximately 12,600 followers on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 3, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 3, 2019).

⁸ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁹ DOJ Records Relating 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, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

¹⁰ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall*

posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹¹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹² and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹³

Accordingly, American Oversight qualifies for a fee waiver.

Notwithstanding its fee waiver request, pursuant to 26 C.F.R. § 601.702(f)(4), American Oversight hereby states that it is willing to pay fees in an amount not more than \$25.00.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks "communications," please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- 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

Investigation Report: No Plans, No Funding, No Timeline, No Wall, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹¹ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹² *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹³ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁴ 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, by intent or through negligence, failed to meet their obligations.¹⁵
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁶ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

¹⁴ 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).

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁶ 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>.

- 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 a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. 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 your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF 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.

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, please contact Christine H. Monahan at foia@americanoversight.org or (202) 869-5246. 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