



July 8, 2019

VIA FOIA ONLINE

National FOIA Office  
Office of the General Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2822T)  
Washington, DC 20460  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear FOIA Officer(s):

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.

The administration's Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule proposes a rollback of public health regulations related to vehicle emissions. Reporting suggests Administrator Wheeler has made several public statements, including statements made to Congress, that conflict with information that EPA career staff provided to him and other EPA political appointees.<sup>1</sup> Furthermore, Administrator Wheeler has publicly stated that the changes proposed in the SAFE Vehicles Rule "ha[ve] nothing to do with the oil industry,"<sup>2</sup> when it has been reported that the oil industry covertly campaigned for the proposed changes,<sup>3</sup> and that the changes would increase domestic oil consumption by up to 283,000 barrels a day by 2025, and 644,000 barrels per day by 2030.<sup>4</sup>

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<sup>1</sup> Ltr. from Sen. Tom Carper & Rep. Frank Pallone to Andrew Wheeler, Adm'r, Env'tl. Prot. Agency, May 23, 2019, [https://www.epw.senate.gov/public/\\_cache/files/b/c/bcd82315-e25f-4cf5-94d4-227ca461c0ed/B37773917967149BEC4F274A5C1B0E9A.carper-pallone-cars-05-23-19.pdf](https://www.epw.senate.gov/public/_cache/files/b/c/bcd82315-e25f-4cf5-94d4-227ca461c0ed/B37773917967149BEC4F274A5C1B0E9A.carper-pallone-cars-05-23-19.pdf) (Carper & Pallone Ltr.).

<sup>2</sup> David Shepardson, *U.S. EPA to Revise Proposed Freeze of Vehicle Fuel Economy Rules*, REUTERS (Apr. 11, 2019; 6:58PM), <https://www.reuters.com/article/us-autos-emissions-epa/u-s-epa-to-revise-proposed-freeze-of-vehicle-fuel-economy-rules-idUSKCN1RN321>.

<sup>3</sup> Hiroko Tabuchi, *The Oil Industry's Covert Campaign to Rewrite American Car Emissions Rules*, N.Y. TIMES, Dec. 13, 2018, <https://www.nytimes.com/2018/12/13/climate/cape-emissions-rollback-oil-industry.html>.

<sup>4</sup> David Roberts, *Trump Is Freezing Obama's Fuel Economy Standards. Here's What That Could Do.*, VOX (Aug. 2, 2018; 11:20AM), <https://www.vox.com/energy-and-environment/2018/5/3/17314000/trump-epa-cars-trucks-fuel-economy-cape-standards>.



American Oversight seeks records to determine whether and to what extent Administrator Wheeler’s public statements deviated from the information career staff provided, and whether and to what extent outside influences are affecting EPA policymaking.

**Requested Records**

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

1. All records, including briefing slides, background papers, talking points, analyses, memoranda, or any other materials, prepared for or used in a briefing on or about July 20, 2018, for then-Acting Administrator Wheeler regarding a technical analysis of the proposed SAFE Vehicles Rule by the National Highway Traffic Safety Administration (NHTSA).
  
2. All records, including briefing slides, background papers, talking points, analyses, memoranda, or any other materials, prepared by EPA career staff and presented to former Assistant Administrator William (Bill) Wehrum, between February 1, 2019 and April 30, 2019, related to the SAFE Vehicle Rule.
  
3. All records reflecting the attendees to and content of meetings (e.g., meeting agendas, attendee lists, notes from meetings, and handwritten or electronic summaries) between any of the EPA officials listed in Column A and any employees or representatives of the organizations listed in Column B below:

<b>Column A (EPA Officials)</b>	<b>Column B (External Organizations)</b>
<ul style="list-style-type: none"> <li>▪ Former Administrator Pruitt</li> <li>▪ Acting Administrator Wheeler</li> <li>▪ Office of Policy Associate Administrator Brittany Bolen</li> <li>▪ Former Office of Air and Radiation (OAR) Assistant Administrator William Wehrum</li> <li>▪ OAR Deputy Assistant Administrator Clint Woods</li> <li>▪ Former OAR Senior Policy Advisor Mandy Gunasekara</li> <li>▪ OAR Senior Counsel David Harlow</li> <li>▪ Office of Transportation and Air Quality Director Christopher Grundler</li> <li>▪ Former Deputy Chief of Staff for Policy Byron R. Brown</li> </ul>	<ul style="list-style-type: none"> <li>▪ American Fuel &amp; Petrochemical Manufacturers (AFPM) (including but not limited to any person using an email address ending in @afpm.org)</li> <li>▪ American Legislative Exchange Council (ALEC) (including but not limited to any person using an email address ending in @alec.org)</li> <li>▪ Americans for Prosperity (including but not limited to any person using an email address ending in @afhq.org, @americansforprosperity.org, or @americansforprosperityfoundation.org)</li> <li>▪ Flint Hills Resources (including but not limited to any person using an email address ending in @fhr.com)</li> <li>▪ Guardian Industries (including but not limited to any person using an email address ending in @guardian.com)</li> </ul>

<ul style="list-style-type: none"> <li>▪ Former Associate Administrator for Policy Samantha Dravis</li> </ul>	<ul style="list-style-type: none"> <li>▪ Koch Ag and Energy Solutions (including but not limited to any person using an email address ending in @kochenergy.com)</li> <li>▪ Koch Energy Services (including but not limited to @kochenergyservices.com)</li> <li>▪ Koch Industries (including but not limited to any person using an email address ending in @kochind.com)</li> <li>▪ Marathon Petroleum (including but not limited to any person using an email address ending in @MarathonPetroleum.com)</li> <li>▪ Molex (including but not limited to anyone using an email address ending in @molex.com)</li> </ul>
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4. All communications (including email messages, email attachments, text messages, calendar invitations, letters, and memoranda) between any of the EPA officials listed in Column A and any employees or representatives of the organizations listed in Column B below:

<b>Column A (EPA Officials)</b>	<b>Column B (External Organizations)</b>
<ul style="list-style-type: none"> <li>▪ Former Administrator Pruitt</li> <li>▪ Acting Administrator Wheeler</li> <li>▪ Office of Policy Associate Administrator Brittany Bolen</li> <li>▪ Former Office of Air and Radiation (OAR) Assistant Administrator William Wehrum</li> <li>▪ OAR Deputy Assistant Administrator Clint Woods</li> <li>▪ Former OAR Senior Policy Advisor Mandy Gunasekara</li> <li>▪ OAR Senior Counsel David Harlow</li> <li>▪ Office of Transportation and Air Quality Director Christopher Grundler</li> <li>▪ Former Deputy Chief of Staff for Policy Byron R. Brown</li> <li>▪ Former Associate Administrator for Policy Samantha Dravis</li> </ul>	<ul style="list-style-type: none"> <li>▪ American Fuel &amp; Petrochemical Manufacturers (AFPM) (including but not limited to any person using an email address ending in @afpm.org)</li> <li>▪ American Legislative Exchange Council (ALEC) (including but not limited to any person using an email address ending in @alec.org)</li> <li>▪ Americans for Prosperity (including but not limited to any person using an email address ending in @afphq.org, @americansforprosperity.org, or @americansforprosperityfoundation.org)</li> <li>▪ Flint Hills Resources (including but not limited to any person using an email address ending in @fhr.com)</li> <li>▪ Guardian Industries (including but not limited to any person using an email address ending in @guardian.com)</li> <li>▪ Koch Ag and Energy Solutions (including but not limited to any person</li> </ul>

	<p>using an email address ending in @kochenergy.com)</p> <ul style="list-style-type: none"> <li>▪ Koch Energy Services (including but not limited to @kochenergyservices.com)</li> <li>▪ Koch Industries (including but not limited to any person using an email address ending in @kochind.com)</li> <li>▪ Marathon Petroleum (including but not limited to any person using an email address ending in @MarathonPetroleum.com)</li> <li>▪ Molex (including but not limited to anyone using an email address ending in @molex.com)</li> </ul>
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This request includes all prior messages (whether incoming or outgoing) reflected in the responsive correspondence and any attachments thereto.

For parts 3 and 4, please provide all responsive records from January 20, 2017, through the date of the search.

### **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. 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 government.”<sup>5</sup> The public has a significant interest in knowing the factual, technical, and scientific information agency officials had available in making policy decisions, including information contrary to action taken by the agency. This is particularly so when there is reason to believe that agency officials may have misrepresented or mischaracterized the information available to them in statements to the public.<sup>6</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the true factual underpinnings of agency policy. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests

<sup>5</sup> 40 C.F.R. § 2.107(l)(1); see 40 C.F.R. § 2.107(l)(2)(i)–(iv).

<sup>6</sup> See Carper & Pallone Ltr., *supra* note 1.

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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;<sup>10</sup> 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;<sup>11</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>12</sup> posting records and analysis relating to the

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<sup>7</sup> See 40 C.F.R. § 2.107(l)(1); see 40 C.F.R. § 2.107(3)(i)-(ii).

<sup>8</sup> American Oversight currently has approximately 12,600 followers on Facebook and 54,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 1, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 1, 2019).

<sup>9</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>10</sup> *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>.

<sup>11</sup> See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall 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>.

<sup>12</sup> *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>.

federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>13</sup> 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.<sup>14</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **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," and "document," 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 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,

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<sup>13</sup> *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>.

<sup>14</sup> *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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.<sup>15</sup> 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.<sup>16</sup>

- 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,<sup>17</sup> 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.
- 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.

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<sup>15</sup> 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).

<sup>16</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>17</sup> 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>.

## 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](mailto:foia@americanoversight.org) or (202) 788-0606. 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,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight