



July 3, 2019

VIA EMAIL

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208
FOIArequest@state.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

On May 24, 2019, Secretary of State Michael Pompeo sent a letter to the Senate Foreign Relations Committee stating his determination that an emergency exists requiring the sale of arms to Saudi Arabia, the United Arab Emirates, and Jordan, in order to “deter Iranian malign influence,” and announcing that the Trump administration would employ a little-used provision of the Arms Export Control Act to waive congressional review requirements.¹ The emergency declaration is particularly significant because it allows the defense contractor Raytheon Co. to partner with the Saudis to assemble sensitive weapons parts in Saudi Arabia, rather than in the U.S. as is traditionally done for national security reasons.² Although Secretary Pompeo and Acting Defense Secretary Patrick Shanahan had participated in a closed-door briefing for Congress on Iran threats just three days before the emergency declaration, they did not mention the emergency requiring these arms

¹ Dion Nissenbaum, *Trump Invokes Emergency Arms Sales Authority to Counter Iran*, WALL ST. J., May 24, 2019, https://www.wsj.com/articles/trump-invokes-emergency-arms-sales-authority-to-counter-iran-11558721927?mod=article_inline; Dan De Luce, *Trump Bypasses Congress to Push Through Arms Sales to Saudis, UAE*, NBC NEWS (May 24, 2019, 5:01 PM), <https://www.nbcnews.com/politics/national-security/trump-bypasses-congress-push-through-arms-sales-saudis-uae-n1010116>; Ltr. from Secretary of State Michael Pompeo, Dep’t of State, to Sen. James Risch, Chairman, Senate Foreign Relations Committee, May 24, 2019, <https://int.nyt.com/data/documenthelper/1109-pompeo-memo-arms-sales/0300852ef550787be7dc/optimized/full.pdf#page=1>.

² Michael LaForgia & Walt Bogdanich, *Trump Allows High-Tech U.S. Bomb Parts to Be Built in Saudi Arabia*, N.Y. TIMES, June 7, 2019, <https://www.nytimes.com/2019/06/07/us/saudi-arabia-arms-sales-raytheon.html>.



sales—causing congressional members to question whether State Department purposefully concealed the plan from Congress.³

Press reporting also suggests that former Acting Assistant Secretary and Deputy Assistant Secretary for Legislative Affairs Charles Faulkner may have played a leading role in crafting the emergency declaration approach before he was reportedly pushed out of the State Department on May 10, 2019, due to his involvement in the effort.⁴ A former lobbyist for Raytheon Co., Faulkner has a history of advocating for arms sales during his tenure at the State Department—including in September 2018 when he reportedly pushed Pompeo to certify that Saudi Arabia and the United Arab Emirates were taking steps to reduce casualties because of the potential impact that a lack of certification would have on arms sales.⁵

American Oversight seeks records to shed light on whether or to what extent a State Department official may have promoted policies to the advantage of a former client.

Requested Records

American Oversight requests that the Department of State (State) produce the following records within twenty business days:

1. Any conflicts or ethics waivers or authorizations for former Acting Assistant Secretary and Deputy Assistant Secretary of Legislative Affairs Charles Faulkner.
2. Records reflecting any recusal determinations made or issued for former Acting Assistant Secretary and Deputy Assistant Secretary of Legislative Affairs Charles Faulkner.

Please provide all responsive records from May 8, 2017, through the date of search.

³ Catie Edmondson & Edward Wong, *State Department Defends Saudi Arms Sales Before Hostile House Panel*, N.Y. TIMES, June 12, 2019,

<https://www.nytimes.com/2019/06/12/us/politics/arms-sales-saudi-arabia.html>.

⁴ Dion Nissenbaum & Alex Leary, *State Dept. Forces Out Official Who Worked on Plan That Led to Ex-Employer's Arms Deals*, WALL ST. J. (June 5, 2019, 7:44 PM),

<https://www.wsj.com/articles/state-dept-forces-out-official-who-worked-on-plan-that-led-to-ex-employers-arms-deals-11559772745>.

⁵ Lee Fang & Alex Emmons, *State Department Team Led By Former Raytheon Lobbyist Pushed Mike Pompeo to Support Yemen War Because of Arms Sales*, THE INTERCEPT (Sept. 21, 2018, 10:21 AM), <https://theintercept.com/2018/09/21/mike-pompeo-yemen-war-raytheon/>.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's 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 operations or activities of the government."⁶ The public has a significant interest in whether a State Department official with significant potential conflicts of interest propelled a policy that would benefit his former client's bottom line and would ultimately result in sensitive technology being shared with foreign nations and the outsourcing of American jobs.⁷ Records with the potential to shed light on this question would contribute significantly to public understanding of operations of the federal government, including whether State took appropriate steps to avoid ethical conflicts of interest. The request also has the potential to shed light on State's approach to engaging with private industry interests more broadly. 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.⁸ 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.⁹

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ Ltr. from Sen. Elizabeth Warren & Rep. Ted Lieu to Steve Linick, Inspector General, Dep't of State, June 11, 2019, <https://lieu.house.gov/sites/lieu.house.gov/files/2019.06.11%20Letter%20to%20State%20OIG%20re%20Arm%20Rales.pdf>; Michael LaForgia & Walt Bogdanich, *Trump Allows High-Tech U.S. Bomb Parts to Be Built in Saudi Arabia*, N.Y. TIMES, June 7, 2019, <https://www.nytimes.com/2019/06/07/us/saudi-arabia-arms-sales-raytheon.html>.

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 14, 2019); American

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.¹⁰ 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;¹¹ 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;¹² posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁴ 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.¹⁵

Accordingly, American Oversight qualifies for a fee waiver.

Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 14, 2019).

¹⁰ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹¹ *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>.

¹² *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>.

¹³ *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>.

¹⁴ *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>.

¹⁵ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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 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.¹⁶ 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.¹⁷

¹⁶ 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).

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

- 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,¹⁸ 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.

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,

¹⁸ 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>.

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 Dan McGrath at foia@americanoversight.org or 202.897.4213. 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,



Melanie Sloan
Senior Advisor
American Oversight