VIA FOIA ONLINE

Sabrina Burroughs  
FOIA Officer  
U.S. Customs & Border Protection  
90 K Street NW  
9th Floor, Mail Stop 1181  
Washington, DC 20229-1181  
Via FOIAOnline

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.

In the past few months, details have emerged about “overcrowded, squalid conditions” at immigrant detention centers on the southern U.S. border. Members of Congress, senior administration officials, political candidates, and federal inspectors have sought visits to facilities of Customs and Border Protection (CBP), Immigration and Customs


Enforcement (ICE), and the Department of Health and Human Services’ Administration for Children and Families (ACF).

American Oversight seeks records to shed light on the ways in which federal law enforcement and immigration agencies are managing engagements with prominent visitors.

**Requested Records**

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

1. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP headquarters leadership to agents and officers—including guidance directed to the leadership of Border Patrol field offices, facilities, and stations including processing and detention centers—regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors or (3) providing...
instructions following visits by members of Congress, political candidates or officials, or federal inspectors.

2. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP regional or local leadership at the McAllen detention center to agents and officers regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors or (3) providing instructions following visits by members of Congress, political candidates or officials, or federal inspectors.

Responsive documents may include—but should not be limited to—any email instructions or other guidance regarding Senator Jeff Merkley’s visit to the CBP facility on June 3, 2018,\(^5\) and Vice President Mike Pence’s visit to the CBP facility in McAllen, Texas, on July 12, 2019.\(^6\)

3. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP regional or local leadership at the Clint border facility to agents and officers regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors or (3) providing instructions following visits by members of Congress, political candidates or officials, or federal inspectors.

Responsive documents may include—but should not be limited to—any email instructions or other guidance regarding Democratic lawmakers’ visit to the CBP facility in Clint, Texas, on July 1, 2019.\(^7\)

4. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP regional or local leadership at the El Paso border facility to agents and officers regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors or (3) providing instructions following visits by members of Congress, political candidates or officials, or federal inspectors.

\(^6\) Resto-Montero, supra note 2.
\(^7\) Kim, supra note 2.
Responsive documents may include—but should not be limited to—any email instructions or other guidance regarding Democratic lawmakers’ visit to the CBP facility in El Paso, Texas, on July 1, 2019.\(^8\)

5. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP regional or local leadership at the Brownsville border facility to agents and officers regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors (3) providing instructions following visits by members of Congress, political candidates or officials, or federal inspectors.

Responsive documents may include—but should not be limited to—any email instructions or other guidance regarding Senator Markey’s visit to the CBP facility in Brownsville, Texas, on July 12, 2019.\(^9\)

6. Any guidance and directives (including memoranda, protocols, or other records reflecting guidance) disseminated by email or otherwise provided by CBP regional or local leadership at the Weslaco border facility to agents and officers regarding (1) managing inquiries or requests to visit by members of Congress, political candidates or officials, or federal inspectors (2) preparing for and managing visits by members of Congress, political candidates or officials, or federal inspectors or (3) providing instructions following visits by members of Congress, political candidates or officials.

Responsive documents may include—but should not be limited to—any email instructions or other guidance regarding Senator Markey’s visit to the CBP facility in Weslaco, Texas, on July 12, 2019.\(^10\)

To be clear, the items in this request encompass guidance originating in CBP headquarters, as well as guidance originating in McAllen, Clint, El Paso, Brownsville, and Weslaco.

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

\(^8\) Id.
\(^10\) Id.
**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.”11 The public has a significant interest in the ways in which the federal government is managing public opinion regarding the conditions of migrant facilities at the southern border of the U.S.12 Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including how the federal government is managing optics during visits of prominent government officials and outside individuals, and whether agencies are fulfilling its legal obligations in the housing of migrants. 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.13 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

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also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.\textsuperscript{14}

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.\textsuperscript{15} 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;\textsuperscript{16} 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;\textsuperscript{17} posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;\textsuperscript{18} posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;\textsuperscript{19} 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.\textsuperscript{20}

\textsuperscript{14} American Oversight currently has approximately 12,200 page likes on Facebook and 54,400 followers on Twitter. American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited July 17, 2019); American Oversight (@weareoversight), Twitter, https://twitter.com/weareoversight (last visited July 17, 2019).
\textsuperscript{15} News, AMERICAN OVERSIGHT, https://www.americanoversight.org/blog.
\textsuperscript{20} Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton, AMERICAN OVERSIGHT, https://www.americanoversight.org/sessions-letter.
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,” “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. 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.

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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.  

- 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, 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, 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 Hart Wood at foia@americanoversight.org or 202.873.1743. 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