



August 30, 2019

VIA ELECTRONIC MAIL

Michael Bell
Office of the Secretary
U.S. Department of Transportation
1200 New Jersey Ave. SE, W94-122
Washington, DC 20590
ost.foia@dot.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records. The records requested herein may reside in multiple components or offices within your agency. We ask that you coordinate this request across your agency in your role as the agency's FOIA contact.

The Hatch Act is intended to ensure that the federal government operates in a nonpartisan, apolitical way, with an unwavering focus on serving the public. It is important that federal employees keep all political activity—no matter the party involved—out of government buildings and off of government time.

American Oversight seeks records to identify if there have been any communications between the federal government and President Trump's reelection campaign or certain organizations—including PACs—that are supporting the president's reelection.

Requested Records

American Oversight requests that your agency produce the following within twenty business days:

All email communications (including emails, email attachments, and calendar invitations) regardless of subject matter sent by (a) any of the employees listed in Column A below to (b) any of the individuals or entities listed in Column B below, including but not limited to at the email addresses and domains specified:



Column A: Federal Employees	Column B: Campaign Committees, Political Action Committees, Consultants, and Other Outside Organizations
<ul style="list-style-type: none"> • Secretary Elaine Chao • Anyone communicating on behalf of Secretary Chao including executive assistants, personal assistants, or schedulers. • Chief of Staff Todd Inman • White House Liaison Doug Simon • Office of Public Affairs Associate Director Lori A. Irving • Special Advisor Christopher Hess 	<ul style="list-style-type: none"> • Donald J. Trump for President (@donaldtrump.com, @victory.donaldtrump.com, @trump.com, @donaldjtrump.com) • Trump Make America Great Again Committee • Trump Victory • America First Action (@a1apac.org, @prochcpas.com, @redprintstrategy.com) • America First Policies (@americafirstpolicies.org) • Republican National Committee (@gop.com, @rnchq.com) • Great America Committee (@greatamericacommittee) • Great America PAC (@GreatAmericaPAC.com) • Great America Alliance (@greatamericaalliance.com) • 45 Committee (@45committee.com) • Committee to Defend the President (@committeetodefendthepresident.com, dan@political.law, @dbcapitolstrategies.com) • Brad Parscale • Parscale Strategies (@parscaledigital.com, @gilesparscale.com, @parscale.com) • Thomas (Tommy) Hicks • William Stepien (wstepien@aol.com, wstepien1@aol.com) • Linda McMahon (@wwe.com, @wwecorp.com, @mcmahonventures.com, @mcm06.com) • Nick Ayers (jnayers@gmail.com, na@nickayers.com, nick@targetla.com) • Rob Porter • Stefan Passantino (spassantino@michaelbest.com, stefanpassantino@onebox.com)

	<ul style="list-style-type: none"> • Hope Hicks • Tim Murtaugh • Kayleigh McEnany Ronna McDaniel
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Please provide all responsive records for communications with all entities in column B except Tim Murtaugh, Linda McMahon, Stefan Passantino, and Nick Ayers from June 1, 2018 to the date the search is conducted.

Please provide all responsive records for communications with Nick Ayers outside of his tenure at the White House from February 19, 2019 to the date the search is conducted.

Please provide all responsive records for communications with Stefan Passantino outside of his tenure at The White House from August 31, 2019 to the date the search is conducted.

Please provide all responsive records for communications with Tim Murtaugh outside of his tenure at USDA from February 23, 2019, to the date the search is conducted.

Please provide all responsive records for communications with Linda McMahon outside of her tenure at SBA from April 13, 2019, to the date the search is conducted.

In an effort to accommodate your agency and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by listed custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both the sent messages and the prior received messages in each email chain. This means, for example, that both an agency custodian’s response to an email from a listed entity and the initial received message are responsive to this request and should be produced.

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.”¹ The disclosure of the information sought under this

¹ 5 U.S.C. § 552(a)(4)(A)(iii).

request will document and reveal the operations of the federal government, including whether political appointees are discharging their responsibilities in the apolitical manner required by law. Promoting a partisan political agenda in the course of official activities distorts the government's operations, undercuts its mission of serving the American people, and tarnishes the public's ability to trust the government. The public does not currently have a window into whether and to what extent political appointees advocate for particular candidates in their official capacity. The requested records reflect directly on the integrity of federal officials, institutions, and activities, and significant media interest in these issues show that the requested disclosures will contribute significantly to the understanding of the American people.²

This request is primarily and fundamentally for non-commercial purposes.³ 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.⁴

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.⁵ 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;⁶ posting records received as part of American

² See, e.g., Ellie Kaufman, *6 White House Officials Found in Violation of the Hatch Act*, CNN (Dec. 3, 2018, 6:21 PM), <https://www.cnn.com/2018/11/30/politics/six-white-house-officials-hatch-act/index.html>; Tina Nguyen, *Government Employees Told to Keep Quiet as Trump Comes Unglued*, VANITY FAIR (Nov. 30, 2019, 1:37 PM), <https://www.vanityfair.com/news/2018/11/donald-trump-hatch-act-resistance>; Anne Flaherty, *Memo to Federal Workers: Leave That #ResistTrump Coffee Mug at Home*, ABCNEWS (Dec. 5, 2018, 10:28 AM), <https://abcnews.go.com/Politics/memos-federal-workers-leave-resisttrump-coffee-mug-home/story?id=59609400>.

³ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ American Oversight currently has approximately 12,200 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 29, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 29, 2019).

⁵ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁶ *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,

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;⁷ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁸ posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;⁹ 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.¹⁰

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.
- 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

<https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁷ 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>.

⁸ *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>.

⁹ *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>.

¹⁰ *Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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.¹¹ 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.¹²

- 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,¹³ 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.

¹¹ 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).

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

¹³ 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 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,

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