

September 16, 2019

VIA EMAIL

USAID FOIA Office
Bureau for Management
Office of Management Services
Information and Records Division
Room 2.07C – RRB
Washington, DC 20523-2701
foia@usaid.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 the U.S. Agency for International Development (USAID), 22 C.F.R. Part 212, American Oversight and the Southern Poverty Law Center (SPLC) make the following request for records.

In August 2017, BuzzFeed News reported that then-Department of Homeland Security official John Barsa was among a new set of political appointees working on anti-terrorism measures in the department “who harbor[ed] a distinctly darker view of Islam.”¹ In addition, Barsa is married to a lobbyist for ACT for America,² an organization revealed by SPLC investigation to push anti-Muslim conspiracy theories, denigrate American Muslims, and conflate mainstream and radical Islam.³

American Oversight and SPLC seek to understand whether and to what extent Mr. Barsa’s work at USAID has been influenced by individuals and organizations with records of bias against immigrants and Muslim individuals.

¹ John Hudson, *The Gorka That Matters Isn’t Leaving the Trump Administration*, BUZZFEED NEWS (Aug. 29, 2017, 3:41 PM), <https://www.buzzfeednews.com/article/johnhudson/the-gorka-that-matters-isnt-leaving-the-trump-administration>.

² Ken Klippenstein, *Group Behind Ilhan Omar 9/11 Poster Tied to Trump Nominee*, THE YOUNG TURKS, Mar. 6, 2019, <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/1S2B8FbUiUKNRni1nowvfl>.

³ *ACT for America*, S. POVERTY LAW CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/act-america>.



Requested Records

American Oversight and SPLC request that USAID produce the following records within twenty business days:

All email communications (including complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by Assistant Administrator John Barsa to any of the following individuals or entities:

- a. ACT for America (including any person using an email address ending in @actforamerica.org)
- b. Brigitte Gabriel
- c. Lisa Piraneo
- d. Camvia, Inc.
- e. Center for Security Policy (including any person using an email address ending in @securefreedom.org)
- f. Frank Gaffney
- g. David Horowitz Freedom Center America (including any person using an email address ending in @horowitzfreedomcenter.org)
- h. David Horowitz
- i. Clarion Project (including any person using an email address ending in @clarionproject.org)
- j. Family Research Council (including any person using an email address ending in @frc.org)
- k. William G. "Jerry" Boykin
- l. Federation for American Immigration Reform (FAIR) (including any person using an email address ending in @fairus.org)
- m. Immigration Reform Law Institute (IRLI) (including any person using an email address ending in @irli.org)
- n. Center for Immigration Studies (CIS) (including any person using an email address ending in @cis.org)
- o. NumbersUSA (including any person using an email address ending in @numbersusa.org)
- p. The Remembrance Project (including any person using an email address ending in @theremembranceproject.org)
- q. Heritage Foundation (including any person using an email address ending in @heritage.org)
- r. Thomas More Law Center (including any person using an email address ending in @thomasmore.org)
- s. Pamela Geller
- t. VDARE Foundation (including any person using an email address ending in @vdare.com)
- u. Peter Brimelow

In an effort to accommodate USAID and reduce the number of potentially responsive records, American Oversight agrees that the search for responsive

email communications may be limited to emails sent by Mr. Barsa. Despite this search accommodation, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. For example, if Mr. Barsa responded to an email sent to him from a listed individual, both the response Mr. Barsa sent and the message he responded to should be produced.

Please provide all responsive records from June 10, 2019, through the date of your search.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight and SPLC request 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 and SPLC request 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."⁴ The public has a significant interest in whether and to what extent organizations outside the government are influencing public policy. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether policy implementation at USAID has been influenced by anti-Muslim and anti-immigrant organizations, particularly at a time when significant national attention is focused on the impact of such sentiments.⁵ 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

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ See, e.g., Sasha Abramsky, *Trump Tried—and Failed—to Slash and Burn Foreign Aid Programs*, TRUTHOUT (Aug. 23, 2019), <https://truthout.org/articles/trump-tried-and-failed-to-slash-and-burn-foreign-aid-programs/>; Janell Ross & Suzanne Gamboa, *El Paso, Racism and Rhetoric: The Growing Toll of Bigotry in American*, NBC NEWS (Aug. 15, 2019, 4:30 AM), <https://www.nbcnews.com/news/latino/el-paso-racism-rhetoric-growing-toll-bigotry-america-n1042511>; Talal Ansari, *It Could Happen Here*, THE ATLANTIC, Mar. 17, 2019, <https://www.theatlantic.com/ideas/archive/2019/03/christchurch-attack-muslim-rhetoric/585106/>.

⁶ See 5 U.S.C. § 552(a)(4)(A)(iii).

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 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

⁷ American Oversight currently has approximately 12,250 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 13, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 13, 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 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>.

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

SPLC likewise is a 501(c)(3) nonprofit and does not have a commercial purpose, nor is the release of the information requested in SPLC's financial interest. Using litigation, education, and other forms of advocacy, the SPLC works toward the ideals of equal justice and equal opportunity.

In furtherance of this mission, SPLC engages in disseminating information and regularly participating in public forums regarding civil rights. SPLC gathers information through research and FOIA requests on emerging and ongoing civil rights issues. That information is used to create and publish unique reports and public education materials, which are published in print and/or on the internet at www.splcenter.org.¹⁴ Further, SPLC qualifies as a representative of the news media pursuant to the OPEN Government Act of 2007. Pursuant to the statute, a representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."¹⁵ The information SPLC seeks out and the publications it creates, such as the unique reports and public education materials described above, are intended to educate and inform the public of policies, events, and news that affects their civil rights. The intended audience is elected officials and policy makers, the general public, interest groups, and various stakeholders nationwide.

Accordingly, American Oversight and SPLC qualify for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with their request for records, American Oversight and SPLC provide 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

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

¹⁴ See, e.g., Hatewatch Staff, *FOIA Documents Reveal How Anti-Muslim Groups Use Idaho State Representative Eri Redman to Sound the False Alarm on "Sharia Law,"* S. POVERTY LAW CTR., Feb. 12, 2018, <https://www.splcenter.org/hatewatch/2018/02/12/foia-documents-reveal-how-anti-muslim-groups-use-idaho-state-representative-eric-redman>.

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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 and SPLC have 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
- 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 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

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).

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>.

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 and SPLC, please do not hesitate to contact us to discuss this request. We welcome an opportunity to discuss our request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we 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, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight and SPLC look forward to working with your agency on this request. If you do not understand any part of this request, please contact Katherine Anthony at foia@americanoversight.org or (202) 897-3918. Also, if our 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



Heidi Beirich
Intelligence Project Director
Southern Poverty Law Center