



October 29, 2019

VIA ONLINE PORTAL

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
441 G St NW, 6th Floor  
Washington, DC 20530  
Via FOIAOnline

**Re: Expedited 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 9, 2019, President Trump’s personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country’s president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president’s former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e’re not meddling in an election, we’re meddling in an investigation.”<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government’s law enforcement efforts for political gain, Mr. Giuliani canceled his trip to Ukraine.<sup>3</sup> Subsequent reports indicate that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>4</sup> The State Department has acknowledged that Mr. Volker helped arrange talks

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats’ ‘Spin,’* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump’s Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html>.



between Mr. Giuliani and a Ukrainian official.<sup>5</sup> Additionally, the U.S. Ambassador to the European Union, Gordon Sondland, has reportedly been included in calls with Giuliani regarding Ukraine.<sup>6</sup> Reports also indicate that Giuliani’s meeting with a Ukrainian official occurred shortly after the President Trump’s July 25, 2019, call with Ukraine’s president, in which President Trump reportedly asked Ukraine’s government to prioritize “corruption” investigations.<sup>7</sup>

Reports also indicate that the administration acted to withhold vital aid to Ukraine days before President Trump’s July phone call with Ukraine’s President Zelensky.<sup>8</sup> President Trump has also now acknowledged—following reports of a whistleblower complaint that the administration initially refused to provide to Congress—that he discussed his potential political opponent, Joe Biden, with Ukraine’s president in the July call.<sup>9</sup> A transcript or summary of the call released by the White House shows, further, that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president’s personal attorney, Mr. Giuliani, regarding his request that Ukraine investigate his political opponent.<sup>10</sup> In light of these allegations that Trump sought to pressure Ukraine to investigate Biden, Speaker of the House Nancy Pelosi on September 24, 2019 announced a formal impeachment inquiry against President Trump.<sup>11</sup>

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<sup>5</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>6</sup> Erin Banco, et al., *U.S. Ambassador Roped Into Rudy’s Quest to Smear Biden*, THE DAILY BEAST (Sept. 25, 2019, 7:26 AM), <https://www.thedailybeast.com/impeachment-inquiry-us-ambassador-roped-into-rudy-giulianis-quest-to-smear-biden>.

<sup>7</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep’t of State, Sept. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

<sup>8</sup> Karoun Demirjian et al., *Trump Ordered Hold on Military Aid Days Before Calling Ukraine President*, WASH. POST (Sept. 23, 2019, 10:40 PM), [https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0\\_story.html](https://www.washingtonpost.com/national-security/trump-ordered-hold-on-military-aid-days-before-calling-ukrainian-president-officials-say/2019/09/23/df93a6ca-de38-11e9-8dc8-498eabc129a0_story.html).

<sup>9</sup> Devan Cole, *Trump Says He Discussed Biden with Ukrainian President and Democrats Threaten ‘New Stage of Investigation,’* CNN (Sept. 22, 2019, 6:41 PM), <https://www.cnn.com/2019/09/22/politics/adam-schiff-donald-trump-ukraine-whistleblower-investigation-impeachment/index.html>.

<sup>10</sup> THE WHITE HOUSE, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

<sup>11</sup> Nicholas Fandos, *Nancy Pelosi Announces Formal Impeachment Inquiry of Trump*, N.Y. TIMES, Sept. 24, 2019, <https://www.nytimes.com/2019/09/24/us/politics/democrats-impeachment-trump.html>.

Further reporting highlights the roles of Mr. Giuliani's allies Lev Parnas and Igor Fruman—who have since been indicted for violations of campaign finance law—in encouraging an investigation of the Bidens, lobbying to remove the career diplomat serving as U.S. Ambassador in Kyiv, and working with Energy Secretary Rick Perry to add multiple U.S. board members to the Ukrainian gas company Naftogaz this past spring.<sup>12</sup> Parnas also worked for diGenova and Toensing in their representation of Ukrainian oligarch Dmytro Firtash, a Ukrainian oligarch whom U.S. authorities have sought to extradite from Vienna on bribery charges.<sup>13</sup>

In June 2019, Brady Toensing—the son of Victoria Toensing—left diGenova & Toensing where he worked for more than 23 years and joined the Department of Justice as Senior Counsel in the Office of Legal Policy.<sup>14</sup> In this role, Toensing is positioned to provide guidance to Attorney General Barr on matters central to the administration's actions in Ukraine and the ongoing impeachment inquiry—including those on which his family members have personal financial interests.

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced the administration's policies and actions in Ukraine, including actions related to the efforts of the president's personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Department of Justice (DOJ) produce the following records as soon as practicable, and at least within twenty business days:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) Brady Toensing, Senior

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<sup>12</sup> Desmond Butler et al., *Profit, Not Politics: Trump Allies Sought Ukraine Gas Deal*, AP NEWS, Oct. 7, 2019, <https://apnews.com/d7440cffba4940f5b85cd3dfa3500fb2>; Aram Roston et al., *Indicted Giuliani Associate Worked on Behalf of Ukrainian Oligarch Firtash*, REUTERS (Oct. 11, 2019, 2:48 PM), <https://www.reuters.com/article/us-usa-trump-whistleblower-firtash/indicted-giuliani-associate-worked-on-behalf-of-ukrainian-oligarch-firtash-idUSKBN1WQ2H5>.

<sup>13</sup> *Id.*

<sup>14</sup> Brady Toensing, LINKEDIN, <https://www.linkedin.com/in/brady-toensing-6703a86/> (last visited Oct. 16, 2019).

Counsel in the Office of Legal Policy and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, Joseph diGenova, Lev Parnas, Igor Fruman, or Dmytro Firtash.

2. All email communications (including email messages, email attachments, calendar invitations, and attachments thereto) between Brady Toensing and anyone with an email address ending in digenovatoensing.com.
3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) Brady Toensing, Senior Counsel in the Office of Legal Policy and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.
4. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of Brady Toensing, Senior Counsel in the Office of Legal Policy regarding:
  - a. any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, Joseph diGenova, Lev Parnas, and/or Igor Fruman to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials
  - b. any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden
  - c. any issues regarding the August 12, 2019 Intelligence Community whistleblower complaint that involves the president and/or the administration's actions with respect to Ukraine and/or the Biden family<sup>15</sup>

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<sup>15</sup> This request references the whistleblower complaint discussed in the following: Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Rep. Adam Schiff, Chair, and Rep. Devin Nunes, Ranking Member, of the U.S. House of Reps. Permanent Select Committee on Intelligence, Sept. 17, 2019, <https://www.lawfareblog.com/inspector-general-intelligence-community-letters->

- d. any effort to review the origins of investigations of the president and his campaign for the presidency in 2016<sup>16</sup>
- e. any effort to investigate the American company CrowdStrike, hacks of the DNC email servers, or issues related to the Clinton email server<sup>17</sup>
- f. any effort to investigate any matter related to any candidates for any U.S. elections in 2020

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[congressional-intelligence-committees](#); Letter from Michael K. Atkinson, Inspector General of the Intelligence Community, to Rep. Adam Schiff, Chair, and Rep. Devin Nunes, Ranking Member, of the U.S. House of Reps. Permanent Select Committee on Intelligence, Sept. 9, 2019, <https://www.lawfareblog.com/inspector-general-intelligence-community-letters-congressional-intelligence-committees>; Julian Barnes et al., *White House Knew of Whistle-Blower's Allegations Soon After Trump's Call With Ukraine Leader*, N.Y. TIMES, Sept. 27, 2019, <https://www.nytimes.com/2019/09/26/us/politics/who-is-whistleblower.html>.

<sup>16</sup> See Ltr. From Stephen E. Boyd, Assistant Attorney General, Dep't of Justice, Office of Legislative Affairs to Rep. Jerrold Nadler, Chair, U.S. House of Representatives Committee on the Judiciary, June 10, 2019, <http://cdn.cnn.com/cnn/2019/images/06/10/2019-6-10.doj.review.of.intelligence.activities.-.nadler.pdf>; Barbie Latza Nadeau, *Barr Went to Rome to Hear a Secret Tape from Joseph Mifsud, the Professor Who Helped Ignite the Russia Probe*, THE DAILY BEAST (Oct 2, 2019, 5:04 AM), <https://www.thedailybeast.com/barr-went-to-rome-to-hear-a-secret-tape-from-joseph-mifsud-the-professor-who-helped-ignite-the-russia-probe>; Devlin Barrett et al., *Barr Personally Asked Foreign Officials to Aid Inquiry into CIA, FBI Activities in 2016*, WASH. POST (Sept. 30, 2019, 8:28 PM), [https://www.washingtonpost.com/national-security/attorney-general-barr-personally-asked-foreign-officials-to-aid-inquiry-into-cia-fbi-activities-in-2016/2019/09/30/d50cd5c4-e3a5-11e9-b403-f738899982d2\\_story.html](https://www.washingtonpost.com/national-security/attorney-general-barr-personally-asked-foreign-officials-to-aid-inquiry-into-cia-fbi-activities-in-2016/2019/09/30/d50cd5c4-e3a5-11e9-b403-f738899982d2_story.html). Public reporting indicates that as recently as September 2019, Attorney General Barr and U.S. Attorney John Durham traveled to Italy to meet with Italian government officials regarding events leading up to the Special Counsel Robert Mueller's investigation into Russian interference in the 2016 presidential elections. In addition, separate reporting suggests Barr has reportedly engaged with British and Australian intelligence officials on the same topic. A Justice Department spokeswoman has further confirmed in public reporting that "Mr. Durham is gathering information from numerous sources, including a number of foreign countries. At Attorney General Barr's request, the President has contacted other countries to ask them to introduce the Attorney General and Mr. Durham to appropriate officials."

<sup>17</sup> THE WHITE HOUSE, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>. A summary of the call released by the White House shows that the president stated that he would direct Attorney General Barr to call the president of Ukraine with the president's personal attorney, Mr. Giuliani, regarding his request that Ukraine investigate his political opponent. The call also suggests the president has prioritized investigating CrowdStrike and email servers in Ukraine.

Please provide all responsive records from June 1, 2019, through the date the search is conducted.

### **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."<sup>18</sup> The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president's potential political opponents,<sup>19</sup> and actions reportedly taken by the U.S. Government to aid those efforts. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether administration officials are involved in an effort to use the president's private attorney to lobby Ukrainian officials,<sup>20</sup> or whether other U.S. Government actions are being undertaken to pressure a foreign government to investigate the president's political opponent for President Trump's electoral advantage. The subject of this request is a matter of public interest, and the public's understanding of the government's activities and use of resources would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.<sup>21</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>22</sup>

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<sup>18</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>19</sup> See Vogel *supra* note 1; Vogel *supra* note 3.

<sup>20</sup> See Vogel *supra* note 5.

<sup>21</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>22</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK,

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>23</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>24</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>25</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>26</sup> posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;<sup>27</sup> 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>28</sup>

Accordingly, American Oversight qualifies for a fee waiver.

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<https://www.facebook.com/weareoversight/> (last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

<sup>23</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>24</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>25</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>26</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>.

<sup>27</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>28</sup> *Sessions’ Letter Shows DOJ Acted On Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

## Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that there is a compelling need for expedited processing of the above request because the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on whether the current administration has, potentially at the behest of President Trump, undertaken inappropriate actions to pressure a foreign government to conduct an investigation of one of the president's potential political opponents in order to give the president an electoral advantage. Because voting in the presidential primary elections—in which both President Trump and candidate Joe Biden will be candidates—is scheduled to commence in less than five months, on February 3, 2020, and voting in the general election will start in just over a year, there is plainly an urgent need to inform the public about the administration actions that would be revealed by the records requested here.<sup>29</sup> Second, factual developments in the last two weeks have demonstrated that there are immense public concerns that the president, his administration, and his private attorney, Mr. Giuliani, may be continuing or intensifying their efforts to use the authority and resources of the federal government to pressure the Ukrainian government to undertake an investigation of presidential candidate Joe Biden and his family. There is also widespread public concern that a whistleblower complaint within the intelligence community relates to the president's efforts to pressure the Ukrainian government to conduct an investigation of a political opponent for the president's electoral benefit.<sup>30</sup> Mr. Giuliani, the president's

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<sup>29</sup> Catherine Kim, *The 2020 Election Calendar*, VOX (Sept. 12, 2019, 11:56 PM), <https://www.vox.com/2019/6/26/18693259/2020-presidential-election-calendar-primaries>.

<sup>30</sup> See, e.g., John Wagner, *Trump Declines to Say Whether He Discussed Joe Biden in Call with Ukrainian President*, WASH. POST (Sept. 20, 2019, 12:27 PM), [https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b\\_story.html](https://www.washingtonpost.com/politics/trump-issues-fresh-denial-of-a-dicey-conversation-with-a-foreign-leader/2019/09/20/00da79dc-dba3-11e9-a688-303693fb4b0b_story.html); Phil Helsel, *Whistleblower Complaint About Trump Involves Ukraine, Report Says*, NBC NEWS (Sept. 19, 2019, 9:54 PM), <https://www.nbcnews.com/politics/white-house/whistleblower-complaint-about-trump-involves-ukraine-report-says-n1056751>.

personal lawyer, has again confirmed that he has endeavored to pressure Ukrainian authorities to begin an investigation.<sup>31</sup>

American Oversight's request seeks information that can shed light on whether and to what extent the Trump administration is attempting to use government resources to pressure a foreign nation to undertake actions designed to threaten, weaken, or otherwise target the president's political opponent for the purpose of giving him an electoral advantage. The public urgently needs the information American Oversight has requested before voting in the 2020 presidential election, including before voting in the primaries of that election. The public has a right to know if the president's administration has inappropriately used government power to gain electoral advantage against an opponent through pressure on a foreign nation.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>32</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>33</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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>34</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>35</sup>

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<sup>31</sup> Robert Legare, *Rudy Giuliani Says He Didn't Ask Ukraine to Investigate Biden—And Then Says He Did*, CBS NEWS (Sept. 20, 2019, 10:31 AM), <https://www.cbsnews.com/news/rudy-giuliani-chris-cuomo-interview-did-not-ask-ukraine-to-investigate-biden-and-then-says-he-did-cnn-appearance/>.

<sup>32</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>33</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>34</sup> American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK,

<https://www.facebook.com/weareoversight>

(last visited Sept. 20, 2019); American Oversight (@weareoversight), TWITTER,

<https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

<sup>35</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, AMERICAN OVERSIGHT,

Accordingly, American Oversight's request satisfies the criteria for expedition.

### **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.

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

- 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.<sup>36</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>37</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>38</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

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<sup>36</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>37</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>38</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>.

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 Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213. Also, if American Oversight's request for expedition is not granted or its 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight