



October 2, 2019

VIA ONLINE PORTAL

National FOIA Office
Office of the General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (2822T)
Washington, DC 20460
Via FOIA Online

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 Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight makes the following request for records.

The EPA recently released a proposed rule that, if finalized, would roll back regulations governing the emission of methane, a significant contributor to climate change.¹ This controversial move was met with mixed reactions within the oil and gas industry, and denounced by environmental advocates and science experts.²

American Oversight seeks records with the potential to shed light on whether and to what extent this proposed policy change was influenced by external parties.

Requested Records

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

¹ See Juliet Eilperin & Brady Dennis, *Trump Administration to Relax Restrictions on Methane, a Powerful Greenhouse Gas*, WASH. POST, Aug. 29, 2019, <https://www.washingtonpost.com/climate-environment/2019/08/29/trump-administration-reverse-limits-methane-powerful-greenhouse-gas/>; Merrit Kennedy, *EPA Aims to Roll Back Limits on Methane Emissions from Oil and Gas Industry*, NPR (Aug. 29, 2019: 5:16 PM), <https://www.npr.org/2019/08/29/755394353/epa-aims-to-roll-back-limits-on-methane-emissions-from-oil-and-gas-industry>.

² See *id.*



1. All email communications (including email messages, email attachments, calendar invitations, and calendar invitation attachments) sent by (a) any of the EPA officials specified below, to (b) any of the external individuals specified below.

In an effort to accommodate EPA and reduce the number of responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed officials. 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 Administrator Wheeler's response to an email from Erik Milito and the initial received message are responsive to this request and should be produced.

2. To the extent not captured by Part 1 of this request, any calendar entries reflecting meetings involving (1) any of the EPA officials specified below, and (2) any of the external individuals specified below.

EPA Officials:

- i. Andrew Wheeler, Administrator, and anyone communicating on his behalf, such as an assistant or scheduler
- ii. Scott Pruitt, Former Administrator, and anyone communicating on his behalf, such as an executive or special assistant, or scheduler
- iii. Henry Darwin, Acting Deputy Administrator
- iv. Matthew Z. Leopold, General Counsel
- v. Ryan Jackson, Chief of Staff
- vi. Kevin DeBell, Acting Deputy Chief of Staff
- vii. Brittany Bolen, Associate Administrator, Office of Policy
- viii. Tom Brennan, Acting Director of the Science Advisory Board Staff Office
- ix. Anne Idsal, Acting Assistant Administrator, Office of Air and Radiation
- x. Elizabeth Shaw, Deputy Assistant Administrator, Office of Air and Radiation
- xi. Clint Woods, Deputy Assistant Administrator, Office of Air and Radiation
- xii. Amy Hambrick, Sector Policies and Programs Division, Office of Air Quality Planning and Standards
- xiii. Marcia Mia, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency
- xiv. Anyone serving in the role of White House Liaison or White House Advisor (including deputies)

External Individuals:

- i. Employees or representatives of American Petroleum Institute, including Erik Milito, and anyone communicating with an email address ending in @api.org.
- ii. Employees or representatives of Independent Petroleum Association of America, including Lee Fuller, and anyone communicating with an email address ending in @ipaa.org.

- iii. Employees or representatives of GPA Midstream Association, including anyone communicating with an email address ending in @gpamidstream.org.
- iv. Employees or representatives of American Energy Alliance, including anyone communicating with an email address ending in @energydc.org or @hblegacy.com.
- v. Employees or representatives of Western Energy Alliance, including anyone communicating with an email address ending in @westernenergyalliance.org.
- vi. Employees or representatives of Heritage Foundation, including Nick Loris, and anyone communicating with an email address ending in @heritage.org.

Please provide all responsive records from March 28, 2017, through September 24, 2019.

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."³ The public has a significant interest in policy changes that weaken regulations on climate-damaging gases. As NPR has reported, "[m]ethane powerfully traps heat, and can warm the atmosphere at 25 times the rate of carbon dioxide."⁴ In 2017, methane accounted for more than 10% of U.S. greenhouse gas emissions,⁵ and experts caution that EPA's proposed rule change "is likely to result in higher methane emissions" and "have significant negative impact."⁶ Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and how members of the oil and gas industry—the largest source of methane emissions in the

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ Kennedy, *supra* note 1; see also *Methane Emissions, Overview of Greenhouse Gases*, EPA, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases> ("Pound for pound, the comparative impact of CH₄ is more than 25 times greater than CO₂ over a 100-year period.").

⁵ *Id.*

⁶ Kennedy, *supra* note 1.

United States⁷—and their allies influenced this proposed policy change. 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

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 &

⁷ *Methane Emissions, Overview of Greenhouse Gases*, EPA, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases>.

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ American Oversight currently has approximately 12,260 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 18, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 18, 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,

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 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.¹⁵

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 devices in the personal custody of your officials, such as personal email accounts. 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;

<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>.

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).

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

- 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

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>.

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 Christine H. Monahan at foia@americanoversight.org or (202) 788-0606. 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