



November 4, 2019

VIA EMAIL

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.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 your agency, American Oversight makes the following request for records.

On September 24, 2019, Speaker of the House Nancy Pelosi announced an impeachment inquiry of President Trump in light of allegations that Trump pressured Ukraine to investigate former Vice President Joseph Biden.<sup>1</sup> Press reporting indicates that multiple current and former members of Congress, including Rep. Greg Pence, Rep. Devin Nunes, Sen. Ron Johnson, former Rep. Pete Sessions, and former Rep. Robert Livingston may have distinct interests and agendas that concern Ukraine and the matters that are at the center of Congress's ongoing impeachment inquiry.<sup>2</sup>

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<sup>1</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>.

<sup>2</sup> Kadia Goba, *Vice President Mike Pence's Big Brother Is Sitting in on Congress's Closed-Door Impeachment Depositions*, BUZZFEED NEWS (Oct. 23, 2019, 12:42 PM), <https://www.buzzfeednews.com/article/kadiagoba/greg-pence-impeachment-inquiry-congress-brother>; Spencer Ackerman, et al., *Nunes Aide Is Leaking the Ukraine Whistleblower's Name, Sources Say*, THE DAILY BEAST (Oct. 29, 2019, 12:54 PM), <https://www.thedailybeast.com/devin-nunes-aide-is-leaking-the-ukraine-whistleblowers-name-sources-say>; Elise Viebeck & Dalton Bennett, *Sen. Johnson, Ally of Trump and Ukraine, Surfaces in Crucial Episodes in the Saga*, WASH. POST (Oct. 28, 2019, 9:14 AM), [https://www.washingtonpost.com/politics/sen-johnson-ally-of-trump-and-ukraine-surfaces-in-crucial-episodes-in-the-saga/2019/10/28/40b9e44c-f684-11e9-8cf0-4cc99f74d127\\_story.html](https://www.washingtonpost.com/politics/sen-johnson-ally-of-trump-and-ukraine-surfaces-in-crucial-episodes-in-the-saga/2019/10/28/40b9e44c-f684-11e9-8cf0-4cc99f74d127_story.html); Catie Edmondson, *Ukraine Scandal Snags Pete Sessions's Congressional Comeback Bid*, N.Y. TIMES, Oct. 10, 2019, <https://www.nytimes.com/2019/10/10/us/politics/pete-sessions-ukraine.html>; Nicholas Fandos & Adam Goldman, *John Bolton Is Summoned to Testify in Trump Impeachment Inquiry*,



American Oversight seeks records to shed light on whether and to what extent members of Congress are communicating with key individuals with knowledge relevant to Congress’s ongoing impeachment inquiry.

**Requested Records**

American Oversight requests that the U.S. Department of State (State) produce the following records 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 (a) the State officials specified below and (b) the members of Congress and their staff members specified below.

Specified State Officials:	Specified Congressional Members and Staffers:
i. Secretary Mike Pompeo	i. Rep. Greg Pence
ii. Executive Assistant Richard Buangan	ii. Kyle Robertson (including but not limited to the email address <a href="mailto:kyle.robertson@mail.house.gov">kyle.robertson@mail.house.gov</a> )
iii. Executive Secretary Lisa Kenna	iii. Katherine Hill (including but not limited to the email address <a href="mailto:katherine.hill@mail.house.gov">katherine.hill@mail.house.gov</a> )
iv. Counselor to the Secretary T. Ulrich Brechbuhl	iv. Hillary Lassiter (including but not limited to the email address <a href="mailto:hillary.lassiter@mail.house.gov">hillary.lassiter@mail.house.gov</a> )
v. Senior Advisors (to Secretary Pompeo) P. Michael McKinley, Mary Kissel, and Toni Porter	v. Rep. Devin Nunes
vi. U.S. Ambassador to the European Union, Gordon Sondland	vi. Jilian Plank (including but not limited to the email address <a href="mailto:jilian.plank@mail.house.gov">jilian.plank@mail.house.gov</a> )
vii. U.S. Special Representative for Ukraine Negotiations Kurt Volker	vii. Jennifer Morrow (including but not limited to the email address <a href="mailto:jennifer.morrow@mail.house.gov">jennifer.morrow@mail.house.gov</a> )
viii. Acting Legal Advisor Marik String and former Acting Legal Advisor Richard Visek	viii. Derek Harvey (including but not limited to the email address <a href="mailto:derek.harvey@mail.house.gov">derek.harvey@mail.house.gov</a> )

N.Y. TIMES, Oct. 30, 2019, <https://www.nytimes.com/2019/10/30/us/politics/john-bolton-ukraine-impeachment.html>.

<p>ix. Assistant Secretary for Legislative Affairs, Mary Elizabeth Taylor</p> <p>x. White House Liaison Carrie Cabelka</p>	<p>ix. Sen. Ron Johnson</p> <p>x. Tony Blando (including but not limited to the email address <a href="mailto:tony_blando@ronjohnson.senate.gov">tony_blando@ronjohnson.senate.gov</a>)</p> <p>xi. Chloe Pickle (including but not limited to the email address <a href="mailto:chloe_pickle@ronjohnson.senate.gov">chloe_pickle@ronjohnson.senate.gov</a>)</p> <p>xii. Sean Riley (including but not limited to the email address <a href="mailto:sean_riley@ronjohnson.senate.gov">sean_riley@ronjohnson.senate.gov</a>)</p> <p>xiii. Former Rep. Pete Sessions</p> <p>xiv. Ryan Young, Former Deputy Campaign Manager for Pete Sessions</p> <p>xv. Anyone communicating from an email address ending in @petesessions.com</p> <p>xvi. Former Rep. Robert Livingston</p> <p>xvii. Former Rep. Bob McEwen</p> <p>xviii. Anyone communicating from an email address ending in @bobmcewen.com</p> <p>xix. Jane Graham, Executive Assistant for former Rep. Livingston</p> <p>xx. Anyone communicating from an email address ending in @livingstongroupdc.com</p>
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For this item, please provide all responsive records from May 1, 2019, through the date the search is conducted.

- 2) 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 (a) the State officials specified above and (b) then-Rep. Pete Sessions, his then-Chief of Staff Kyle Matous (including, but not limited to, [kyle.matous@mail.house.gov](mailto:kyle.matous@mail.house.gov)), his then-Chief of Staff and Communications Director Caroline Boothe (including, but not limited to, [caroline.boothe@mail.house.gov](mailto:caroline.boothe@mail.house.gov)), his then-Legislative Director Ryan Ethington (including, but not limited to, [ryan.ethington@mail.house.gov](mailto:ryan.ethington@mail.house.gov)), his then-Scheduler Katherine Runkle (including, but not limited to, [katherine.runkle@mail.house.gov](mailto:katherine.runkle@mail.house.gov)), and his then-Deputy Campaign Manager Ryan Young.

For this item, please provide all responsive records from March 1, 2018, through January 3, 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."<sup>3</sup> The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding efforts by the personal attorney to the president to advance his and the president's personal interests, 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 former administration officials were involved in an effort to use the president's private attorney to lobby Ukrainian officials. This request seeks to shed light on whether members of Congress are seriously pursuing the weighty task of considering whether the president should be impeached and removed from office, and whether certain members of Congress have interests related to the impeachment inquiry that may affect their performance of their duties.<sup>4</sup> 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>5</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>6</sup>

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<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>4</sup> See *supra* note 2.

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

<sup>6</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>7</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>8</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>9</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>10</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>11</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>12</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>7</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>8</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>9</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>10</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>11</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>12</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

## 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.<sup>13</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

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<sup>13</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).

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>14</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>15</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 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

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<sup>14</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>15</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>.

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,



Melanie Sloan  
Senior Advisor  
American Oversight