



November 6, 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 – Simple Request for Readily Identifiable Documents**

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> The testimony of former State Department Senior Advisor Michael McKinley, given as a part of that inquiry, highlights the failure of U.S. State Department (State) senior officials to defend career foreign service officers, as well as to respond to Congressional requests related to the impeachment inquiry.<sup>2</sup>

American Oversight seeks records to shed light on State's handling of matters related to the ongoing impeachment inquiry.

**Requested Records**

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

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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> *Committees Release Testimony of Yovanovitch and McKinley as Part of New Public Phase of Impeachment Inquiry*, U.S. HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE, Nov. 4, 2019, <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=757>.



1. A copy of the email message, referenced in Mr. McKinley's testimony, sent on or about September 28, 2019, by former Senior Advisor Michael McKinley to Under Secretary for Political Affairs David Hale, Director General of the Foreign Service Carol Perez, Department Spokesperson Morgan Ortagus, Executive Secretary Lisa Kenna, and Acting Assistant Secretary for Europe Phil Reeker (or any subset of these officials) regarding former Ambassador to Ukraine Yovanovitch or a call for a statement of support for career foreign service officers.<sup>3</sup>
2. A copy of the memorandum, referenced in Mr. McKinley's testimony, written by Deputy Assistant Secretary George Kent and subsequently forwarded by Senior Advisor Michael McKinley, on or about October 3-4, 2019, to Under Secretary for Political Affairs David Hale, Acting Legal Advisor Marik String, Deputy Secretary John Sullivan (or any subset of these officials) regarding the State Department's response to Congressional inquiries or handling of requests for documents related to the impeachment inquiry.<sup>4</sup>

American Oversight expects this request for two readily-identifiable, specific documents will be assigned to the Simple Processing track given the relative ease of conducting a search for these records. American Oversight expects that State will, consequently, issue a determination within the statutorily required period.

### **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

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<sup>3</sup> If further identifying information is needed, please see pages 50-53 of Mr. McKinley's testimony. *Committees Release Testimony of Yovanovitch and McKinley as Part of New Public Phase of Impeachment Inquiry*, U.S. HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE, Nov. 4, 2019, <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=757>.

<sup>4</sup> If further identifying information is needed, please see page 24 of Mr. McKinley's testimony. *Committees Release Testimony of Yovanovitch and McKinley as Part of New Public Phase of Impeachment Inquiry*, U.S. HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE, Nov. 4, 2019, <https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=757>.

public understanding of operations or activities of the government.”<sup>5</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—these matters are now the subject of the U.S. House of Representatives’ impeachment inquiry. 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 how senior State Department officials are handling responses to the ongoing impeachment inquiry and decisions on whether to issue statements of support for career foreign service members.<sup>6</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>7</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>8</sup>

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>9</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>10</sup> posting records received as part of American Oversight’s “Audit the Wall”

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

<sup>6</sup> See *supra* note 2.

<sup>7</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>8</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>9</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>10</sup> DOJ Records Relating to Solicitor General Noel Francisco’s Recusal, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco->

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>11</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>12</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>13</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>14</sup>

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 use all tools available to your agency to conduct a complete and efficient search for potentially responsive records.
- 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.

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[compliance](https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents); *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>11</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>12</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>13</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>14</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- 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 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