



March 5, 2020

VIA ONLINE PORTAL

USAID FOIA Office
Bureau for Management
Office of Management Services
Information and Records Division
Room 2.07C – RRB
Washington, DC 20523-2701
Via Online Portal

Re: Freedom of Information Act Request

Dear FOIA Officers:

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.

According to press reporting, last summer the Trump administration froze military aid to the Lebanese government—approximately \$105 million in foreign military financing (FMF) and \$115 million in economic support fund (ESF)—with little explanation.¹ Reports suggest that the direction for the holds came from the National Security Council over the objections of State and Defense officials.² In addition, testimony from U.S. House of Representatives’ impeachment inquiry suggests that aid to Lebanon was “being held in the same fashion” as the aid package to Ukraine, as early as July 2019—and senior State and Department of Defense (DOD) officials then speculated that “this is a new normal on assistance.”³ According to press, the administration notified Congress in early December

¹ Edward Wong, et al. *White House Freezes Military Aid to Lebanon, Against Wishes of Congress, State Dept. and Pentagon*, N.Y. TIMES, Nov. 1, 2019, <https://www.nytimes.com/2019/11/01/world/middleeast/lebanon-military-aid.html>; Nick Wadhams & Jennifer Jacobs, *Pompeo Intervenes to Release \$115 Million in Aid for Lebanon*, BLOOMBERG, Dec. 12, 2019 (Updated 10:53 PM), <https://www.bloomberg.com/news/articles/2019-12-12/pompeo-intervenes-to-release-115-million-in-aid-for-lebanon>.

² *Id.*

³ See Testimony of Ambassador David Hale’s at 80, U.S. HOUSE OF REPRESENTATIVES PERMANENT SELECT COMMITTEE ON INTELLIGENCE, Nov. 6, 2019, <https://docs.house.gov/meetings/IG/IG00/CPRT-116-IG00-D018-U1.pdf>.



that the funds were being released, but few additional details have emerged about the nature or motivation for the hold.⁴

American Oversight seeks records to shed light on the administration's decision-making regarding the provision or withholding of congressionally-obligated foreign assistance, including whether and to what extent outside influences affected the administration's decision to halt assistance to Lebanon without explanation.

Requested Records

American Oversight requests that your agency 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, Twitter Direct Messages, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of Mike Harvey, Assistant Administrator of the Middle East Bureau, regarding assistance to Lebanon, including but not limited to the withholding and subsequent release of approximately \$105 million in foreign military financing, or the withholding and subsequent release of approximately \$114.5 million in economic support funds.

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

2. All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by Mike Harvey, Assistant Administrator of the Middle East Bureau, containing at least one term from column A and one term from column B:⁵

⁴ Catie Edmondson & Edward Wong, *White House Lifts Mysterious Hold on Military Aid to Lebanon*, N.Y. TIMES, Dec. 2, 2019, <https://www.nytimes.com/2019/12/02/us/politics/trump-lebanon-aid.html>.

⁵ To be clear, American Oversight requests all emails sent by the specified officials containing the key terms listed here without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, and the key terms listed are those likely to be used in communications concerning vitally important matters related to the matters discussed in this letter, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any email communications sent by specified officials containing these key terms.

Column A	Column B
i. Lebanon	i. aid
ii. Beirut	ii. assistance
iii. Lebanese	iii. FMF
iv. "Lebanese Armed Forces"	iv. funding
v. LAF	v. funds
vi. Hezbollah	vi. financing
vii. Hizballah	vii. "foreign military financing"
viii. Hizbullah	viii. ESF
	ix. "economic support funds"
	x. "105 million"
	xi. "105 mill"
	xii. 105mil
	xiii. 105m
	xiv. "105,000,000"
	xv. "114.5 million"
	xvi. "114 million"
	xvii. "115 million"
	xviii. "114.5 mill"
	xix. "114 mill"
	xx. "115 mill"
	xxi. 114.5mil
	xxii. 115mil
	xxiii. 114mil
	xxiv. 114.5m
	xxv. 115m
	xxvi. 114m
	xxvii. Obligate
	xxviii. Obligated
	xxix. Obligation

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

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

- All calendars or calendar entries for Mike Harvey, Assistant Administrator of the Middle East Bureau, including any calendars maintained on his behalf.

We request that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

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

4. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter Direct Messages, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) Mike Harvey, Assistant Administrator of the Middle East Bureau, and (2) Joel Rayburn, Deputy Assistant Secretary for Levant Affairs in the Bureau of Near Eastern Affairs at the State Department; Victoria Coates, National Security Council adviser; Rob Fairweather, International Affairs Division at the Office of Management and Budget.

To be clear, American Oversight requests all emails exchanged between officials specified here without subject matter limitation. American Oversight has provided significant contextual background information concerning the reasons for its request, but the contextual information American Oversight provided should not be used to exclude, or treat as non-responsive, any communications between specified officials.

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

5. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter Direct Messages, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between Mike Harvey, Assistant Administrator of the Middle East Bureau, and any of the following external individuals and entities:

External individuals or entities:

- a. Walid Phares, and anyone communicating on his behalf

- b. Sen. Ted Cruz, and anyone serving on his staff (including anyone with an email address ending in cruz.senate.gov or judiciary-rep.senate.gov)
- c. Rep. Lee Zeldin, and anyone serving on his staff (including Chief of Staff Eric Amidon at eric.amidon@mail.house.gov, Scheduler Andrea Grace at andrea.grace@mail.house.gov, Legislative Director Conor Carney at conor.carney@mail.house.gov, or Press Secretary Katie Vincentz at katie.vincentz@mail.house.gov)

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."⁶ The public has a significant interest in federal government decision-making regarding the provision or withholding of Congressionally-obligated foreign assistance, especially in light of President Trump's recent impeachment over the withholding of aid to Ukraine. Records with the potential to shed light on the issue of the U.S. government's withholding of aid to Beirut last year would contribute significantly to public understanding of operations of the federal government, including whether and to what extent outside influences affected the administration's decision to halt assistance to Lebanon without explanation. 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.⁷ 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

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ See 5 U.S.C. § 552(a)(4)(A)(iii).

materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁸

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.⁹ 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;¹⁰ 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;¹¹ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ 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.¹⁴

⁸ American Oversight currently has approximately 15,400 page likes on Facebook and 101,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 10, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 10, 2020).

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

¹⁰ *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>.

¹¹ *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>.

¹² *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>.

¹³ *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>.

¹⁴ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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. 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.¹⁵ 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

¹⁵ 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.¹⁶

- 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,¹⁷ 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

¹⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁷ 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 or 202.897.4213. 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,



Melanie Sloan
Senior Advisor
American Oversight