



March 18, 2020

VIA EMAIL

Freedom of Information Officer  
Bureau of Industry and Security, Room 6622  
U.S. Department of Commerce  
Washington, DC 20230  
[efoiarequest@bis.doc.gov](mailto:efoiarequest@bis.doc.gov)

**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 public reporting, former National Security Advisor John Bolton's forthcoming book raises serious concerns that "President Trump was effectively granting personal favors to [] autocratic leaders," including the President of China, Xi Jinping.<sup>1</sup> In March 2017, Chinese telecom company Zhongxing Telecommunications Equipment Corporation (ZTE) reached a settlement agreement with the Departments of Commerce (Commerce) and Treasury over the company's violation of U.S. sanctions against exports to Iran.<sup>2</sup> In April 2018, Commerce announced that it was imposing trade restrictions on ZTE after discovering that the company was not abiding by its 2017 agreement.<sup>3</sup> Less than a month later, after Mr. Xi "personally asked Mr. Trump to intervene to save ZTE," President Trump announced that "he was working with Mr. Xi to give ZTE a way to get

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<sup>1</sup> Michael S. Schmidt & Maggie Haberman, *Bolton Was Concerned That Trump Did Favors for Autocratic Leaders, Book Says*, N.Y. TIMES, Jan. 27, 2020,

<https://www.nytimes.com/2020/01/27/us/politics/john-bolton-trump-book-barr.html>.

<sup>2</sup> *ZTE Corporation Agrees to Plead Guilty and Pay Over \$430.4 Million for Violating U.S. Sanctions by Sending U.S.-Origin Items to Iran*, U.S. Dep't of Justice, Mar. 7, 2017,

<https://www.justice.gov/opa/pr/zte-corporation-agrees-plead-guilty-and-pay-over-4304-million-violating-us-sanctions-sending>.

<sup>3</sup> *Secretary Ross Announces Activation of ZTE Denial Order in Response to Repeated False Statements to the U.S. Government*, U.S. Dep't of Commerce, Apr. 16 2018,

<https://www.commerce.gov/news/press-releases/2018/04/secretary-ross-announces-activation-zte-denial-order-response-repeated>.



back in business”<sup>4</sup> and that “Commerce Department has been instructed to get it done!”<sup>5</sup> In June, President Trump announced that he had agreed to lift the restrictions against ZTE.<sup>6</sup>

American Oversight seeks documents with the potential to shed light on whether and to what extent President Trump improperly interfered with the process of enforcement actions against ZTE.

### **Requested Records**

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

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, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (i) any of the specified officials listed below,\* and (ii) any person at the White House Office or National Security Council, including anyone with an email address ending in @who.eop.gov or @nsc.eop.gov, regarding ZTE.

- a. Anyone serving as Under Secretary for Industry and Security
- b. Anyone serving as Deputy Under Secretary
- c. Anyone serving as Deputy Chief of Staff for Policy
- d. Anyone serving as serving as Deputy Chief of Staff
- e. Anyone serving as Assistant Secretary for Export Enforcement
- f. Anyone serving as serving as Assistant Secretary for Export Administration
- g. Anyone serving as serving as Deputy Assistant Secretary for Export Administration

Please provide all responsive records from April 1, 2018, through August 1, 2018.

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<sup>4</sup> Ana Swanson, *Trump Strikes Deal to Save China’s ZTE as North Korea Meeting Looms*, N.Y. TIMES, June 7, 2018, <https://www.nytimes.com/2018/06/07/business/us-china-zte-deal.html>.

<sup>5</sup> Henry Farrell, *Bolton Alleges that Trump Helped out China’s Leader on ZTE. What’s ZTE?*, WASH. POST (Jan. 28, 2020, 6:00 AM), <https://www.washingtonpost.com/politics/2020/01/28/bolton-alleges-that-trump-helped-out-chinas-leader-zte-whats-zte/>.

<sup>6</sup> Swanson, *supra* note 4.

\*American Oversight requests the records of individuals acting in the above mentioned roles, whether or not they were Senate confirmed.

### **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>7</sup> The public has a significant interest in understanding how sanctions and trade restrictions are applied to and removed from international companies, including ZTE. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the extent to which the President interfered with agencies' law enforcement efforts.<sup>8</sup> 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.<sup>9</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>10</sup>

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

<sup>8</sup> Schmidt & Haberman, *supra* note 1.

<sup>9</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>10</sup> American Oversight currently has approximately 15,460 page likes on Facebook and 101,800 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 26, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 26, 2020).

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>11</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>12</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>13</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>14</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>15</sup> 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.<sup>16</sup>

Accordingly, American Oversight qualifies for a fee waiver.

Notwithstanding its fee waiver request, pursuant to 31 C.F.R. § 1.5(b)(7), American Oversight hereby states that it is willing to pay fees in an amount not more than \$25.00.

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<sup>11</sup> *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>12</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>13</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>14</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>15</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>16</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>17</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>17</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>18</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>19</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>18</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>19</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 Megan Field at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.2465. 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