



April 7, 2020

VIA EMAIL/FOIA ONLINE

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**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.

On March 6, 2020, President Donald Trump announced his intent to appoint then-Representative Mark Meadows to the position of White House Chief of Staff.<sup>1</sup> Public reporting indicates that on March 24, 2020, Meadows met with administration officials and, at a White House press briefing, National Economic Council Director Larry Kudlow referred to him as “the Chief of Staff, Mark Meadows.”<sup>2</sup> Meadows had not officially resigned from the House of Representatives and had publicly stated he was not White House Chief of Staff yet, but rather planned to resign “toward the end of this month” to become Chief of Staff.<sup>3</sup> This has raised questions as to the role Meadows had been playing in negotiations between the executive and legislative branches regarding an emergency relief package to aid those harmed by the coronavirus outbreak.<sup>4</sup>

American Oversight seeks records with the potential to shed light on Meadows’s influence on federal decision-making during his period of transition from his role as a congressman to that of White House Chief of Staff.

### **Requested Records**

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

All text messages and messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Twitter DMs, or Facebook messages) between (1) the agency officials specified below, and (2) Mark Meadows, including

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<sup>1</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Mar. 6, 2020, 8:08 PM), <https://twitter.com/realDonaldTrump/status/1236096307103707136> (“I am pleased to announce that Congressman Mark Meadows will become White House Chief of Staff. I have long known and worked with Mark, and the relationship is a very good one....”).

<sup>2</sup> *Remarks by President Trump, Vice President Pence, and Members of Coronavirus Task Force in Press Briefing*, THE WHITE HOUSE, Mar. 24, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-10/>; Niels Lesniewski, *Mark Meadows Really Isn’t Donald Trump’s Chief Of Staff — Yet*, ROLL CALL (Mar. 24, 2020, 3:08 PM), <https://www.rollcall.com/2020/03/24/mark-meadows-really-isnt-donald-trumps-chief-of-staff-yet/>.

<sup>3</sup> See Lesniewski, *supra* note 2.

<sup>4</sup> Kyle Cheney, *Senate Clinches Coronavirus Emergency Package*, POLITICO (Mar. 25, 8:13 AM), <https://www.politico.com/newsletters/huddle/2020/03/25/senate-clinches-coronavirus-emergency-package-488711>.

messages on any personal devices, as well as official devices attributed to Meadows, and anyone serving on his staff, including Chief of Staff Ben Williamson, Scheduler Kate Morgan, or Legislative Director Eric Heigis.

**Specified Agency Officials:**

U.S. Department of Commerce

- i. Secretary Wilbur Ross and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

Department of Health and Human Services

- i. Secretary Alex Azar and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

U.S. Centers for Disease Control and Prevention

- i. Director Robert Redfield and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

U.S. Centers for Medicare & Medicaid Services

- i. Administrator Seema Verma and anyone communicating on her behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

Office of Management and Budget

- i. Acting Director Russell Vought and anyone communicating on his behalf, such as a scheduler or assistant

- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

U.S. Department of State

- i. Secretary Mike Pompeo and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

Department of the Treasury

- i. Secretary Steven Mnuchin and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

Office of the U.S. Trade Representative

- i. U.S. Trade Representative Robert E. Lighthizer and anyone communicating on his behalf, such as a scheduler or assistant
- ii. Anyone serving in the capacity of Chief of Staff or Executive Secretary
- iii. Anyone serving in the capacity of White House Liaison or White House Advisor, and their deputies
- iv. Anyone serving in the capacity of Director of Legislative Affairs

Please note that on March 26, 2020, American Oversight previously submitted a nearly identical request to your agency for records from an earlier time period. This request seeks records that post-date the search cut-off dates your agency has employed for the March 26, 2020 request, through March 31, 2020.

**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>5</sup> The public has a significant interest in the actions of a Member of Congress preparing to assume a position in the White House. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent a sitting Member of Congress has influenced federal, executive branch decision-making during his period of transition to White House Chief of Staff. 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>6</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>7</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>8</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>9</sup> posting records received as part of American Oversight’s “Audit the Wall” project

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

<sup>6</sup> *See id.*

<sup>7</sup> American Oversight currently has approximately 15,400 page likes on Facebook and 102,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 17, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 17, 2020).

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

<sup>9</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

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

Accordingly, American Oversight qualifies for a fee waiver.

Notwithstanding its fee waiver request, pursuant to 31 C.F.R. § 1.7(e), American Oversight hereby states that it is willing to pay fees charged by the U.S. Department of the Treasury in an amount not more than \$25.00.

### **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

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OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>10</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>11</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>12</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>13</sup> *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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>14</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 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>15</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>16</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

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<sup>14</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).

<sup>15</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>16</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>.

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 Mehreen Rasheed at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 848-1320. 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