



April 30, 2020

VIA EMAIL

FEMA Information Management
Division
FOIA Request
500 C Street SW, Mailstop 3172
Washington, DC 20472
fema-foia@fema.dhs.gov

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528
foia@hq.dhs.gov

Re: Expedited 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.

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.¹ Since late 2019, the virus has spread to dozens of countries, sickened millions of people, and resulted in more than 200,000 deaths.² This is a rapidly evolving situation that is demanding coordinated attention and action across the federal government, and cooperation with state and local officials. Across the country, public officials, healthcare leaders, and first responders have reported shortages of urgently needed medical supplies, personal protective equipment (PPE), and sanitation materials.³ The Federal Emergency Management Agency (FEMA)'s supply chain task force, reportedly under the leadership of

¹ *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

² *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (Apr. 28, 2020, 8:44 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

³ See, e.g., Katherine Q. Seelye, et al., *Doctors and Governors Vie for Masks in Cloak-and-Dagger Deals*, N.Y. TIMES, Apr. 20, 2020, <https://www.nytimes.com/2020/04/20/us/coronavirus-states-masks.html>; Martha Mendoza & Kimberlee Kruesi, *Nurses Push Back on Pressure to Work Without Right Equipment*, WASH. POST, Apr. 16, 2020, https://www.washingtonpost.com/politics/nurses-suspended-for-refusing-covid-19-care-without-n95-mask/2020/04/16/dc0428ce-7f99-11ea-84c2-0792d8591911_story.html; Martin Kaste, *Ventilator Shortages Loom as States Ponder Rules for Rationing*, NPR (Apr. 3, 2020, 5:00 AM), <https://www.npr.org/sections/health-shots/2020/04/03/826082727/ventilator-shortages-loom-as-states-ponder-rules-for-rationing>.



Rear Adm. John Polowczyk,⁴ has assumed a central role in coordinating government-wide efforts to obtain and distribute desperately needed supplies and emergency aid.⁵

American Oversight seeks records with the potential to shed light on Rear Adm. Polowczyk's role in leading this aspect of the federal government's response to this public health crisis.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that your office produce the following records⁶ as soon as practicable, and at least within twenty business days:

1. All calendars or calendar entries for Rear Adm. John Polowczyk, including any calendars maintained on behalf of Rear Adm. Polowczyk, from February 15, 2020 to the date the search is conducted.

American Oversight requests 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 calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

2. All email communications (including email messages, complete email chains, email attachments, calendar invitations) sent by the government officials specified below containing any of the following key terms:

FEMA Officials:

⁴ Joann Muller & Jonathan Swan, *Fixing America's Broken Coronavirus Supply Chain*, AXIOS, Mar. 29, 2020, <https://www.axios.com/coronavirus-supply-chain-task-force-2b6be629-170c-4874-9991-7f8b3f6c5320.html>.

⁵ *FEMA Supply Chain Task Force Leads Four-Pronged Approach to Securing Needed Supplies and Equipment in COVID-19 Fight*, FEMA, Apr. 7, 2020, <https://www.fema.gov/fema-supply-chain-task-force-leads-four>; *Economic Support & Recovery*, FEMA, Apr. 21, 2020, <https://www.fema.gov/coronavirus/economic>.

⁶ In this request, American Oversight seeks records maintained by FEMA. Because it is our understanding that the Department of Homeland Security (DHS) is processing all coronavirus-related records on FEMA's behalf, we are submitting this request to DHS in addition to FEMA. However, we are sending to FEMA for awareness and because, in the event that FEMA regains responsibility for processing such requests, American Oversight expects that this request would then be referred to FEMA for any outstanding processing.

- a. Rear Adm. John Polowczyk, and anyone serving as his Chief of Staff or Deputy in his role on the FEMA Supply Chain Task Force⁷
- b. Anyone serving as Chief of Staff or Deputy to Rear Adm. Polowczyk, on FEMA’s Supply Chain Taskforce⁸

Key Terms:

i.	Airbridge	xxxiii.	DeSantis
ii.	jck@who.eop.gov	xxxiv.	Pritzker
iii.	cassidy.m.dumbauld@who.eop.gov	xxxv.	Newsom
	ov	xxxvi.	Whitmer
iv.	Jared	xxxvii.	Cuomo
v.	Kushner		
vi.	“the kids”	xxxviii.	“out-bid”
vii.	“slim suit”	xxxix.	Seizure
viii.	“Insight partners”	xl.	Seizures
ix.	“Flatiron”	xli.	Reroute
x.	Welsh	xlii.	Barr
xi.	“gratuitous-services agreement”	xliii.	Hoard
xii.	“voluntary service agreement”	xliv.	hoarding
xiii.	“Stafford Act”	xlv.	gouging
xiv.	NDA	xlvi.	Somerset
xv.	Boehler	xlvii.	Baystate
xvi.	Parekh	xlviii.	“New England Journal of Medicine”
xvii.	POTUS		
xviii.	VPOTUS	xlix.	NEJM
xix.	Pence	l.	Artenstein
xx.	“White house”	li.	Bellingham
xxi.	Navarro	lii.	“St. Joseph”
xxii.	Bannon	liii.	“PeaceHealth”
xxiii.	Prestige	liv.	“Kentucky hospital association”
xxiv.	Ameritech	lv.	Polis
xxv.	Bowen		
xxvi.	Ballard	lvi.	“Defense Production Act”
xxvii.	McConnell	lvii.	DPA
xxviii.	Gardner	lviii.	Title VII
xxix.	McSally	lix.	Title III
xxx.	Holcomb	lx.	“National Stockpile”
xxxi.	Hogan	lxi.	SNS
xxxii.	“Bel Edwards”	lxii.	Ventilator

⁷ Public reporting indicates that Rear Adm. John Polowczyk has been detailed to FEMA. Muller, *supra* note 4.

⁸ *FEMA Supply Chain Task Force Leads Four-Pronged Approach to Securing Needed Supplies and Equipment in COVID-19 Fight*, *supra* note 5.

- | | |
|------------------------|--------------------|
| lxiii. Ventilators | lxvii. Respironics |
| lxiv. G.M. | lxviii. Airboss |
| lxv. 3M | lxix. “Red Dawn” |
| lxvi. “Royal Phillips” | lxx. Whistleblower |
| | lxxi. Indutex |

In an effort to accommodate your agency and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the named officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Rear Adm. John Polowczyk’s response to an email discussing hoarding and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from February 24, 2020, through the date of the search.

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.”⁹ The public has a significant interest in the federal government’s response to the national shortage of equipment urgently needed to respond to pandemic.¹⁰ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including elucidating how FEMA is interacting with state officials¹¹ and whether political concerns have affected management of the nation’s supply-chain.¹² American Oversight is committed to transparency and makes the responses

⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁰ See, e.g., Mendoza, *supra* note 3; Kaste, *supra* note 3.

¹¹ See, e.g. Anita Kumar & Gavin Bade, *States Still Baffled Over How to Get Coronavirus Supplies from Trump*, POLITICO (Apr. 13, 2020, 7:02 AM), <https://www.politico.com/states/florida/story/2020/04/13/states-still-baffled-over-how-to-get-coronavirus-supplies-from-trump-1275083>.

¹² See, e.g. Jonathan Allen, et al., *Want a Mask Contract or Some Ventilators? A White House Connection Helps*, NBC NEWS (Apr. 24, 2020, 5:01 AM),

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.¹³ 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.¹⁴

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.¹⁵ 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;¹⁶ 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;¹⁷ posting records regarding potential self-dealing at the Department of Housing &

<https://www.nbcnews.com/politics/white-house/political-influence-skews-trump-s-coronavirus-response-n1191236>.

¹³ See 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁴ American Oversight currently has approximately 15,500 page likes on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 28, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 28, 2020).

¹⁵ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹⁶ *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>.

¹⁷ 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>.

Urban Development and related analysis;¹⁸ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁹ 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.²⁰

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and your agency's regulations, 6 C.F.R. Part 5.5(e), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.²¹

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request: how the federal government is responding to the nation's need for supplies, including alleged political interference with supply allocation²² and potential federal interference with equipment orders by states or healthcare systems²³.

First, American Oversight has requested records with the potential to shed light on the steps the administration has taken to respond to the novel coronavirus outbreak, which has resulted in a major public health emergency. Because the virus has spread rapidly, has

¹⁸ *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>.

¹⁹ *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>.

²⁰ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

²¹ 6 C.F.R. § 5.5(e)(ii).

²² Allen, *supra* note 12.

²³ See, e.g. *Hospitals Say Feds are Seizing Masks and Other Coronavirus Supplies Without a Word*, L.A. TIMES, Apr. 7, 2020, <https://www.latimes.com/politics/story/2020-04-07/hospitals-washington-seize-coronavirus-supplies>; Andrew W. Artenstein, *In Pursuit of PPE*, The New England Journal of Medicine, Apr. 17, 2020, <https://www.nejm.org/doi/full/10.1056/NEJMc2010025>.

already killed tens thousands of people in the United States,²⁴ there is plainly an urgent need to inform the public about how federal agencies are responding to the virus. While there is widespread reporting on the equipment shortages faced by healthcare providers, first responders, and essential workers,²⁵ there remains considerable confusion—even amongst state officials, members of congress, and healthcare leaders—about how to obtain needed supplies.²⁶ The extraordinary media interest on coronavirus demonstrates that the public urgently needs information about the federal government’s efforts and policies concerning the subject matter of this request.²⁷

Second, factual developments have demonstrated a series of government failures to appropriately handle decisions regarding the virus, including obscure federal policies leading to confusion amongst governors and hospitals over how to obtain needed materials²⁸ and an effort by government officials to minimize press coverage and reduce

²⁴ Coronavirus Map: Tracking the Global Outbreak, N.Y. TIMES (Apr. 28, 2020, 8:44 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

²⁵ See, e.g., Tucker Doherty & Brianna Ehley, *Trump Called PPE Shortages 'Fake News.'* *Health Care Workers Say They're Still a Real Problem*, POLITICO (Apr. 26, 2020, 7:00 AM), <https://www.politico.com/news/2020/04/26/trump-ppe-fake-news-207523>; Kaste, *supra* note 3.

²⁶ See, e.g., *Outbid and Left Hanging, U.S. States Scramble for Ventilators*, REUTERS, Apr. 10, 2020, <https://www.nytimes.com/reuters/2020/04/10/us/10reuters-health-coronavirus-usa-ventilators.html>; JM Rieger, *The Trump Administration Says States Have the Testing Capacity They Need. Governors Say They Lack Testing Supplies*, WASH. POST (Apr. 22, 2020, 8:17 PM), <https://www.washingtonpost.com/politics/2020/04/22/trump-administration-says-states-have-testing-capacity-they-need-governors-say-they-lack-testing-supplies/>; Toluse Olorunnipa, et al., *Governors Plead for Medical Equipment From Federal Stockpile Plagued by Shortages and Confusion*, WASH. POST (Mar. 31, 2020, 3:39 PM), https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html.

²⁷ Adam Taylor, et al., *Live Updates: States Move to Reopen as U.S. Coronavirus Cases Near 1 Million; White House Issues Testing Guidance*, WASH. POST (Apr. 28, 2020, 10:42 AM EST), <https://www.washingtonpost.com/coronavirus/>; *Coronavirus live updates: Coronavirus Worsens in L.A. County as Hopes of an Early Reopening Fade*, L.A. TIMES (Apr. 28, 2020, 8:24 AM), <https://www.latimes.com/california/liveblog/coronavirus-live-updates-tuesday-april-28>; Ben Westcott, et al., *Live Updates: Dr. Fauci on a Second Wave of Coronavirus: "I'm Almost Certain it Will Come Back,"* CNN (Apr. 28, 2020, 10:38 AM) <https://www.cnn.com/us/live-news/us-coronavirus-update-04-28-20/index.html>.

²⁸ See, e.g., Kumar, *supra* note 11; Artenstein, *supra* note 23; Annie Linskey, et al., *As Feds Play 'Backup,' States Take Unorthodox Steps to Compete in Cutthroat Global Market for Coronavirus Supplies*, WASH. POST (Apr. 11, 2020, 4:49 AM), https://www.washingtonpost.com/politics/as-feds-play-backup-states-take-unorthodox-steps-to-compete-in-cutthroat-global-market-for-coronavirus-supplies/2020/04/11/609b5d84-7a70-11ea-a130-df573469f094_story.html.

public information²⁹ about the risks associated with the virus. Reports of these failures are particularly alarming given simultaneous reporting of alleged political pressure dictating which locales receive supplies.³⁰

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about decision-making regarding coronavirus. American Oversight's request seeks information that can shed light on the federal government's policies and practices of managing the nation's supply chain of equipment needed to respond to the coronavirus. State government officials and healthcare providers, urgently need information contained in the requested records to understand how to obtain equipment.³¹ Further, the general public needs more information about the extent of confusion or potential mismanagement of the supply-chain crisis.³²

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,³³ American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."³⁴ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.³⁵ As discussed previously, American

²⁹ Rebecca Ballhaus & Stephanie Armour, *Health Chief's Early Missteps Set Back Coronavirus Response*, WALL ST. J. (Apr. 22, 2020, 12:44 PM), <https://www.wsj.com/articles/health-chiefs-early-missteps-set-back-coronavirus-response-11587570514>; Brianna Ehley, *Trump's Team Shifts Tone from Preventing Coronavirus to Containing It*, POLITICO (Mar. 2, 2020, 7:52 PM), <https://www.politico.com/news/2020/03/02/trump-coronavirus-pence-119051>; Brett Samuels & Peter Sullivan, *Trump Downplays Need for Widespread Testing Before Reopening Economy*, THE HILL (Apr. 9, 2020, 7:55 PM), <https://thehill.com/homenews/administration/492129-trump-downplays-need-for-widespread-testing-before-reopening-economy>.

³⁰ Allen, *supra* note 12; Jill Colvin, *Calling Trump: When Connections Help Steer Virus Supplies*, AP News, Apr. 11, 2020, <https://apnews.com/4b50dd9806e6d31607b23dfe38df4408>.

³¹ Linskey, *supra* note 28.

³² Olorunnipa, *supra* note 26.

³³ See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

³⁴ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³⁵

American Oversight currently has approximately 15,500 page likes on Facebook and 102,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 28, 2020); American

Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.³⁶

Accordingly, American Oversight's request satisfies the criteria for expedition.

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 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

Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 28, 2020).

³⁵ News, American Oversight, <https://www.americanoversight.org/blog>.

³⁶ See generally News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; *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>; *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>; *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>; *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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.³⁷ 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.³⁸

- 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,³⁹ 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.

³⁷ 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).

³⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

³⁹ 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>.

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 Megan Field at 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight