



June 5, 2020

**VIA EMAIL & FOIA ONLINE**

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245 Murray Lane SW  
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FOIA Office  
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500 12th Street SW  
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**Re: Expedited 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.

In response to public protests against police brutality, including the recent police killings of George Floyd and Breonna Taylor, Attorney General William Barr has ordered federal



agents to “flood the zone” and “dominate” the streets of the District of Columbia.<sup>1</sup> Federal agents from each of your agencies reportedly have been deployed to the area to participate in this effort.<sup>2</sup> Attorney General Barr also ordered that special riot control teams from the Bureau of Prisons be deployed in Miami.<sup>3</sup> Federal law enforcement officers have been engaged in other cities, as well, including San Diego, Buffalo, and Las Vegas.<sup>4</sup>

At the same time, the United States continues to grapple with a coronavirus pandemic that has already killed more than 108,000 people in the United States,<sup>5</sup> and disproportionately affects communities of color and, in particular, African Americans.<sup>6</sup> Significant outbreaks and clusters of cases have also been occurring in facilities and workplaces staffed by the same agencies that are now deploying officers against protestors.<sup>7</sup>

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<sup>1</sup> Devlin Barrett, *Barr Seeks to Subdue D.C. Protests by ‘Flooding the Zone’ with Federal Firepower*, WASH. POST (June 3, 2020, 9:08 PM), [https://www.washingtonpost.com/national-security/william-barr-george-floyd-protests-fbi-atf-us-marshals/2020/06/02/6d093d0a-a515-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/national-security/william-barr-george-floyd-protests-fbi-atf-us-marshals/2020/06/02/6d093d0a-a515-11ea-b473-04905b1af82b_story.html); see also Zolan Kanno-Youngs & Katie Benner, *Trump Deploys the Full Might of Federal Law Enforcement to Crush Protests*, N.Y. TIMES, June 3, 2020, <https://www.nytimes.com/2020/06/02/us/politics/trump-law-enforcement-protests.html>; Ryan Lucas, *Attorney General Steps up Federal Law Enforcement Response to Protests*, NPR (June 1, 2020, 1:40 PM), <https://www.npr.org/2020/06/01/867059312/attorney-general-steps-up-federal-law-enforcement-response-to-protests>.

<sup>2</sup> *Id.*; Priscilla Alvarez & Ellie Kaufman, *Why Trump Has the FBI, ICE and TSA Patrolling Washington Streets*, CNN (June 4, 2020, 7:40 AM), <https://www.cnn.com/2020/06/03/politics/federal-authorities-washington-dc/index.html>.

<sup>3</sup> Barrett, *supra* note 1; Lucas, *supra* note 1.

<sup>4</sup> Kanno-Youngs & Benner, *supra* note 1.

<sup>5</sup> *Coronavirus in the U.S.: Latest Map and Case Count* (updated June 5, 2020, 8:04 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>6</sup> *The COVID Racial Data Tracker*, THE COVID TRACKING PROJECT AT THE ATLANTIC, <https://covidtracking.com/race> (last visited June 4, 2020).

<sup>7</sup> See, e.g., Kevin Johnson & Michael Collins, *11 Secret Service Employees Infected with Coronavirus, 60 in Self-Quarantine*, USA TODAY (May 9, 2020, 2:01 PM), <https://www.usatoday.com/story/news/politics/2020/05/08/coronavirus-secret-service-employees-infected-covid-19/3101578001/>; Adam Edelman, *TSA Says 500 of its Employees Have Tested Positive for COVID-19*, NBC NEWS (Apr. 29, 2020, 3:58 PM), <https://www.nbcnews.com/politics/politics-news/tsa-says-500-its-employees-have-tested-positive-covid-19-n1195566>; Geneva Sands & Priscilla Alvarez, *CBP Front-Line Officers Frustrated Over Continued Travel and Lack of Agency Guidance*, CNN (Apr. 29, 2020, 7:59 PM), <https://www.cnn.com/2020/04/29/politics/cbp-officers-frustrated-travel-guidance/index.html>; Ryan Lucas, *‘They’re All Really Afraid’: Coronavirus Spreads in Federal Prisons*, NPR (Apr. 7, 2020, 5:01 AM), <https://www.npr.org/2020/04/07/828319691/they-re-all-really-afraid-coronavirus->

American Oversight seeks records with the potential to shed light on the extent of efforts taken, if any, by the federal government to ensure that this mass mobilization of federal agents does not exacerbate the spread of coronavirus.

### **Requested Records**

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

All records reflecting any screening or testing for potential coronavirus infection of federal officers or agents dispatched to assist local authorities (including guidance regarding screening or testing for potential coronavirus infection of aforementioned federal officers or agents) in responding to protests or purportedly unlawful activity following the May 25, 2020 police killing of George Floyd, including but not limited to in the national capital region.

To be clear, American Oversight is not requesting details about individual cases and does not object to the redaction of such details, e.g., names or other identifying information, from records responsive to this request.

Please provide all responsive records from May 26, 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

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[spreads-in-federal-prisons](#); Joseph Neff & Keri Blakinger, *Federal Prisons Agency 'Put Staff in Harm's Way' of Coronavirus*, THE MARSHALL PROJECT (Apr. 3, 2020, 6:14 PM), <https://www.themarshallproject.org/2020/04/03/federal-prisons-agency-put-staff-in-harm-s-way-of-coronavirus>; Molly O'Toole, *Coronavirus Has Sidelined 9000 Homeland Security Employees*, L.A. TIMES (Apr. 1, 2020, 10:46 AM), <https://www.latimes.com/politics/story/2020-04-01/coronavirus-sidelines-border-patrol-tsa-ice-officers>; Seth Freed Wessler, *The Coronavirus Has Spread to the US Marshals' Detention Empire*, MOTHER JONES, Apr. 1, 2020, <https://www.motherjones.com/politics/2020/04/us-marshals-coronavirus-pretrial-detainees-updated/>; Jamie Ross, *Coronavirus Hits U.S. Immigration Detention Centers as ICE Employees Test Positive*, DAILY BEAST (Mar. 20, 2020, 6:28 AM), <https://www.thedailybeast.com/coronavirus-hits-immigration-detention-centers-as-ice-employees-test-positive>.

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>8</sup> The public has a significant interest in the extent to which the federal government is protecting the public, and its own workers, from the coronavirus. CNN has reported that members of the White House Coronavirus Task Force have “discussed the ‘increasing’ risk that the virus is spreading among protesters at the demonstrations across the U.S.,”<sup>9</sup> and the Surgeon General has expressed similar concerns.<sup>10</sup> Records with the potential to shed light on whether and to what extent the federal government has taken actions to minimize the risk of spread from its own officers being deployed to the protests would contribute significantly to public understanding of operations of the federal government, including the federal government’s efforts to protect the public from a deadly disease. 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>11</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>12</sup>

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<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>9</sup> Jim Acosta, *Coronavirus Task Force Members Discussed Possibility of Virus Spreading at Protests, Source Says*, CNN (June 2, 2020, 4:07 PM), [https://www.cnn.com/world/live-news/coronavirus-pandemic-06-02-20-intl/h\\_1855d086e311919458e43d41cbd6c539](https://www.cnn.com/world/live-news/coronavirus-pandemic-06-02-20-intl/h_1855d086e311919458e43d41cbd6c539).

<sup>10</sup> Sarah Oweremohle, *Surgeon General: ‘You Understand the Anger’*, POLITICO (June 1, 2020, 8:06 PM), [https://www.politico.com/news/2020/06/01/surgeon-general-protests-coronavirus-294270?mod=article\\_inline](https://www.politico.com/news/2020/06/01/surgeon-general-protests-coronavirus-294270?mod=article_inline).

<sup>11</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>12</sup> American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 4, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 4, 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>13</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>14</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>15</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>16</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>17</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>18</sup>

Accordingly, American Oversight qualifies for a fee waiver.

#### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1), American Oversight requests that your agency expedite the processing of this request.

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<sup>13</sup> *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>14</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>15</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>16</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>17</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>18</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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. There is an urgent need to inform the public about whether and to what extent the federal government is conducting coronavirus screening or testing of the agents it is deploying against police brutality protests. There has been widespread reporting that the federal agencies deploying these agents are currently facing coronavirus outbreaks and clusters among their workers.<sup>19</sup> There has also been widespread speculation in the media—and by government officials—regarding whether and to what extent the coronavirus could spread among the crowds at protests.<sup>20</sup>

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 whether and to what extent the federal government is exacerbating this risk by choosing to deploy federal agents who are at an elevated risk of carrying the coronavirus at public protests without prior screening or testing. Despite the broad concern, including among policymakers, that the protestors could spread the coronavirus, much less attention has been paid to the choices of the government in responding to the protests and the serious effects these choices are having on public health.<sup>21</sup>

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,<sup>22</sup> American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn

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<sup>19</sup> See *supra* note 7.

<sup>20</sup> See, e.g., Acosta, *supra* note 9; Owerhohle, *supra* note 10; Ruth Reader, *Will the Protests Spread COVID-19? The Police Response is the More Likely Culprit*, FAST CO. (June 4, 2020, 11:35 AM), <https://www.fastcompany.com/90512773/will-the-protests-spread-covid-19-the-police-response-is-the-more-likely-culprit>; Jaimy Lee, *Will the Protests Lead to a Spike in Coronavirus Cases? That Depends*, MARKETWATCH (Jun 4, 2020, 10:29AM), <https://www.marketwatch.com/story/will-the-protests-lead-to-a-spike-in-coronavirus-cases-that-depends-2020-06-03>; Roni Caryn Rabin, *Will Protests Set Off a Second Viral Wave?*, N.Y. TIMES (June 4, 2020, 9:30 AM), <https://www.nytimes.com/2020/05/31/health/protests-coronavirus.html>; *Protests Spark Fears of New COVID-19 Surges*, CBS NEWS (June 3, 2020, 10:00 PM), <https://www.cbsnews.com/news/protests-coronavirus-fear-spread-covid-19/>; Jessica Glenza, *‘Really Scary’: Experts Fear Protests and Police Risk Accelerating Covid-19 Spread*, THE GUARDIAN (June 3, 2020, 6:30 AM), <https://www.theguardian.com/us-news/2020/jun/03/protests-police-covid-19-coronavirus-spread>.

<sup>21</sup> Reader, *supra* note 20.

<sup>22</sup> 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).



the raw material into a distinct work, and distributes that work to an audience.”<sup>23</sup> 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.<sup>24</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>25</sup>

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. For instance, to the extent communications may be responsive to this request, 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

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<sup>23</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>24</sup> See *supra* note 12.

<sup>25</sup> 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>.

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>26</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>27</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>28</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

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<sup>26</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>27</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>28</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>.



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 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 Christine H. Monahan at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202-869-5244. 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,

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