



July 22, 2020

VIA ONLINE PORTAL & ELECTRONIC MAIL

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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, 28 C.F.R. Part 16, American Oversight makes the following request for records.

Attorney General William Barr directed U.S. Attorney for the District of Connecticut John Durham to examine the origins of investigations into now-President Trump and his campaign, though the parameters of Mr. Durham's politically sensitive probe are not clear.¹ In light of the Attorney General's early and incredible characterization of aspects of these investigations—referring to them as “spying”²—there is substantial public concern about Mr. Durham's efforts. Documents released by the Department of Justice (DOJ) show that Attorney General Barr and his closest aides have been heavily involved in

¹ Adam Goldman et al., *Barr Assigns U.S. Attorney in Connecticut to Review Origins of Russia Inquiry*, N.Y. Times, May 13, 2019, <https://www.nytimes.com/2019/05/13/us/politics/russia-investigation-justice-department-review.html>.

² *Id.*



overseeing Mr. Durham's probe, undermining confidence in Mr. Durham's ability to impartially investigate sensitive matters.³

White House Chief of Staff Mark Meadows recently commented about the imminent coming findings of Mr. Durham's investigation, remarking that, "I expect indictments based on the evidence I've seen," and that it's "time for people to go to jail."⁴

Mr. Meadows also stated that "you're going to see a couple of other documents come out in the coming days that will suggest that not only was the campaign spied on, but the FBI did not act appropriately as they were investigating."⁵ American Oversight seeks records with the potential to shed light on this matter.

Requested Records

American Oversight requests that the U.S. Department of Justice (DOJ)⁶ produce the following records within twenty business days:

1. 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, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) Attorney General William Barr, Chief of Staff William Levi, Counselor John Moran, Principal Associate Deputy Attorney General and Acting U.S. Attorney for the Eastern District of New York Seth DuCharme,⁷ U.S. Attorney John Durham, or anyone serving under the supervision of U.S. Attorney Durham in conducting an investigation outside Mr. Durham's ordinary remit (including, but not limited to, Anthony Scarpelli), and (2) White

³ Katelyn Polantz & Marshall Cohen, *Exclusive: Barr Met with Prosecutor Now Reviewing Russia Probe Immediately After Mueller Investigation Ended, Documents Reveal*, CNN (May 20, 2020, 9:00 AM), <https://www.cnn.com/2020/05/20/politics/barr-russia-prosecutor-mueller/index.html>.

⁴ Gregg Re, *Meadows Signals Imminent Indictments in Durham Probe: 'It's Time for People to Go to Jail,'* Fox News, July 20, 2020, <https://www.foxnews.com/politics/meadows-previews-school-reopening-plans-durham-probe-results-i-expect-indictments>.

⁵ *Id.*

⁶ American Oversight has addressed and sent this request to the components that appear likely to have responsive records. The Justice Management Division was included because it is unclear where Mr. Durham and his team's files are housed for the investigation he is conducting outside his ordinary remit at the Attorney General's direction.

⁷ American Oversight requests responsive records reflecting communications from Mr. DuCharme's service at both Main Justice and in the U.S. Attorney's Office for the Eastern District of New York.

House Chief of Staff Mark Meadows or his senior advisor Ben Williamson, regarding the investigation Mr. Durham is conducting outside his ordinary remit at the Attorney General's direction or matters related to that investigation.

2. All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by (1) Attorney General William Barr, Chief of Staff William Levi, Counselor John Moran, Principal Associate Deputy Attorney General and Acting U.S. Attorney for the Eastern District of New York Seth DuCharme, U.S. Attorney John Durham, or anyone serving under the supervision of U.S. Attorney Durham in conducting an investigation outside Mr. Durham's ordinary remit (including, but not limited to, Anthony Scarpelli), to (2) any email address ending in eop.gov, containing the key terms below:
 - a. Indictment
 - b. Indict
 - c. Durham
 - d. Russia
 - e. Investigation
 - f. Probe
 - g. Charges
 - h. Spying
 - i. Horowitz
 - j. Crossfire
 - k. Hurricane
 - l. Declassify
 - m. Downgrade
 - n. Counterintelligence
 - o. "Carter Page"
 - p. Steele
 - q. Election
 - r. November
 - s. Nov
 - t. Mueller
 - u. Brennan
 - v. Clapper

For Item 2, American Oversight has limited its request to sent messages to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a government official sent a response to an incoming message containing one of the key terms above, the email chain containing the initially received message and the response is responsive to this request.

For both Item 1 and Item 2, please provide all responsive records from March 31, 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."⁸ The public has a significant interest in understanding whether the White House Chief of Staff or other White House staff are inappropriately interfering in a very sensitive, politically charged investigation. Records with the potential to shed light on communications between the White House and DOJ may also shed light on whether the Trump administration has violated its own policies for preventing the politicization of DOJ investigations.⁹ 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.¹⁰ 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.¹¹

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ The White House, Memorandum to All White House Staff, from Donald McGahn, White House Counsel, Jan. 27, 2017, <https://www.politico.com/f/?id=0000015a-dde8-d23c-a7ff-dfef4d530000>.

¹⁰ See *id.*

¹¹ American Oversight currently has approximately 15,600 page likes on Facebook and 104,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 22, 2020); American

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.¹² 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;¹³ 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;¹⁴ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁵ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁶ 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.¹⁷

Accordingly, American Oversight qualifies for a fee waiver.

Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 22, 2020).

¹² News, American Oversight, <https://www.americanoversight.org/blog>.

¹³ *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>.

¹⁴ 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>.

¹⁵ *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>.

¹⁶ *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>.

¹⁷ *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.
- 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.¹⁸ 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.¹⁹
- 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,²⁰ 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

¹⁸ 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).

¹⁹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁰ 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>.

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 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,

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