



September 2, 2020

VIA EMAIL/FOIA Online

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Ms. Kathy Dixon
HQ FOIA and Privacy
Defense Logistics Agency
8725 John J. Kingman Road
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Fort Belvoir, VA 22060
VIA FOIAonline

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.

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. Since late 2019, the virus has spread across the globe, sickened millions of people, and resulted in over 180,000 deaths in the U.S. alone.¹

American Oversight seeks records with the potential to shed light on the federal government's continued management of this public health emergency.

¹ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (Sept. 2, 2020, 8:25 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.



Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that your agency produce the following records as soon as practicable, and at least within twenty business days:²

All daily briefings or situation reports (or other similar updates designed to keep leadership apprised of breaking events) prepared for, or otherwise provided to the officials leading or involved in the federal Supply Chain Stabilization Task Force³ named below, that contain information regarding the ongoing coronavirus outbreak.

Department of Defense

- Rear Admiral John Polowczyk
- Brigadier General David J. Sanford

Federal Emergency Management Agency

- Administrator Pete T. Gaynor
- Chief of Staff Eric Heighberger
- Acting Deputy Administrator Daniel Kaniewski
- Bob Farmer

Please provide responsive records for the following dates:

- June 12–22, 2020
- June 28–August 5, 2020
- August 12–13, 2020
- August 21–28, 2020

² In this request, American Oversight seeks records maintained by FEMA and DOD. 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.

³ For background information on the multi-agency Supply Chain Stabilization Task Force, please refer to Rear Admiral John Polowczyk's July 2, 2020 submitted remarks to the U.S. House of Representatives Select Subcommittee on the Coronavirus Crisis. Statement of John Polowczyk, Rear Admiral, Dep't of Defense, July 2, 2020, <https://docs.house.gov/meetings/VC/VC00/20200702/110851/HHRG-116-VC00-Wstate-PolowczykR-20200702.pdf>.

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."⁴ The public has a significant interest in the federal government's response to a national public health emergency. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including how effectively the government is protecting both the health and human rights of everyone in the country during this crisis.⁵ 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.⁶ 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ *Public Health and Law Experts Issue Guidelines for U.S. Response to Coronavirus*, Yale Law School, <https://law.yale.edu/yls-today/news/public-health-and-law-experts-issue-guidelines-us-response-coronavirus-transmission>.

⁶ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ American Oversight currently has approximately 15,600 page likes on Facebook and 104,700 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 2, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 2, 2020).

to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁹ posting records and editorial content about the federal government’s response to the coronavirus pandemic;¹⁰ 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;¹¹ 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;¹² and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹³

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, 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—the type and frequency of briefing materials for leaders of the federal Supply

⁸ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹⁰ See generally *The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *‘We’ve All Given Up Getting a Straight Answer From You Guys: Frustrated Emails Between Illinois Governor’s Office and White House*, <https://www.americanoversight.org/weve-all-given-up-getting-a-straight-answer-from-you-guys-frustrated-emails-between-illinois-governors-office-and-white-house>.

¹¹ 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>.

¹² *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>.

¹³ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer>.

Chain Task Force—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.

American Oversight has requested records with the potential to inform the public about how federal officials are keeping tracking of and responding to an unprecedented national emergency. As the novel coronavirus has surged across the country, killing more than 180,000 people in the United States and sickening millions more,¹⁴ federal officials are faced with the difficult task of learning about the rapidly changing pandemic. There has been widespread reporting of Trump Administration officials, including the President himself, failing to stay abreast of the latest developments in how the country is being affected by the virus and, as a result, sharing inaccurate information about it.¹⁵ The Administration’s resistance to gathering and analyzing facts about the pandemic has gone so far as to cause the White House to fight against funding for coronavirus testing¹⁶—which supplies the most fundamental data needed for every federal official responding to the virus. One reporter recently explained that “at the core, the United States has been profoundly crippled by the challenge of putting together the most basic information about what’s happening.”¹⁷ The public urgently needs to know whether federal officials managing the nation’s supply chain are being briefed on the pandemic or whether they are, instead, making decisions without fresh and accurate information. The records requested by American Oversight would provide urgently needed information about the

[expense](#); see e.g., *New Information on Pompeo’s 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

¹⁴ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times (Sept. 2, 8:25 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

¹⁵ See, e.g., David Leonhardt, *The Unique U.S. Failure to Control the Virus*, N.Y. Times, Aug. 8, 2020, <https://www.nytimes.com/2020/08/06/us/coronavirus-us.html> (“President Trump has said the virus was not serious; predicted it would disappear; spent weeks questioning the need for masks; encouraged states to reopen even with large and growing caseloads; and promoted medical disinformation.”); Savannah Smith, *Unmasked: How Trump’s Mixed Messaging on Face-Coverings Hurt U.S. Coronavirus Response*, CNBC (Aug. 9, 2020, 10:28 PM), <https://www.nbcnews.com/politics/donald-trump/calendar-confusion-february-august-trump-s-mixed-messages-masks-n1236088>; Brian Bennett, *The Coronavirus Task Force Reemerges After 2 Months, With Bad News and No President in Sight*, Time (June 26, 2020, 5:12 PM), <https://time.com/5860570/coronavirus-task-force-trump-absent/>.

¹⁶ *Trump Administration Aims to Block New Funding for Coronavirus Testing and Tracing*, N.Y. Times, July 24, 2020, <https://www.nytimes.com/2020/07/18/world/coronavirus-news.html> (“[I]n talks over the weekend, administration officials instead pushed to zero out the funding for testing and for the nation’s top health agencies”)

¹⁷ Donald F. Kettl, *A Federal Data Failure Is Making It Hard to Talk About COVID*, Government Executive, July 17, 2020, <https://www.govexec.com/management/2020/07/federal-data-failure-making-it-hard-talk-about-covid/166988/>.

type and frequency of briefings, as well as the sharing with the public the information contained in the briefings.

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,¹⁸ 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."¹⁹ 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.²⁰ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.²¹

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:

¹⁸ 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).

¹⁹ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²⁰ See *supra* note 8.

²¹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; see, e.g., *Emails and Resume of Trump's Pick to Head Government Personnel Office*, American Oversight, <https://www.americanoversight.org/emails-and-resume-of-trumps-pick-to-head-government-personnel-office>; *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>; *State Department Releases Ukraine Documents to American Oversight*, American Oversight, <https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight>; *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>.

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please understand the terms “record,” 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.²² 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.²³
- 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,²⁴ and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching

²² 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).

²³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁴ 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>.

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 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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight