VIA MAIL & EMAIL

Walter Reed National Military Medical Center
ATN SJA Office
8901 Wisconsin Ave
Bethesda, MD 20889-5600

DHA Freedom of Information Service Center
(note that request seeks records from
the White House Medical Unit and Walter Reed)
7700 Arlington Boulevard Suite 5101
Falls Church, Virginia 22042-5101
DHA.FOIA@mail.mil

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, American Oversight makes the following request for records.

Public reporting has long raised concerns that the Trump administration has employed inappropriate non-disclosure agreements (NDAs) to restrict the ability of government officials from sharing unclassified information about their government service, a potential infringement on their First Amendment rights.¹ Now reports suggest that President Trump required hospital staff at Walter Reed National Military Medical Center to sign NDAs in 2019.² If the commander-in-chief has pressured government employees, including members of the military, to sign NDAs, that would almost certainly be inappropriate and would likely infringe on those employees' freedom of speech.

¹ Ruth Marcus, Trump Had Senior Staff Sign Nondisclosure Agreements. They’re Supposed to Last Beyond His Presidency., Wash. Post (Mar. 18, 2018, 3:56 PM),
² Carol E. Lee & Courtney Kube, Trump Asked Walter Reed Doctors to Sign Non-Disclosure Agreements in 2019, NBC News (Oct. 8, 2020, 5:00 AM),
American Oversight seeks records to shed light on whether government employees signed potentially inappropriate and unconstitutional NDAs after pressure from the president.

**Requested Records**

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

Copies of all non-disclosure agreements (NDAs) or other contracts or agreements limiting the ability of government employees or members of the military at (i) Walter Reed National Military Medical Center or (ii) the White House Military Office’s White House Medical Unit to share information related to President Trump.

This request does not seek documents reflecting generally applicable acknowledgments of Health Insurance Portability and Accountability Act (HIPAA) privacy obligations or agreements solely limited to maintaining the confidentiality of classified information.

Please provide all responsive records from January 1, 2019, 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.”\(^3\) The public has a significant interest in whether the federal government has required government officials to sign overly broad NDAs that restrict their ability to share important information with the public gained in the course of government service. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the breadth of information covered by NDAs signed by federal government officials. The requested records would, further, shed light on whether these officials have been pressured into signing agreements that unlawfully restrict their First Amendment rights. 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.

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This request is primarily and fundamentally for non-commercial purposes. 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.

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. 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; posting records and editorial content about the federal government’s response to the Coronavirus pandemic; 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; 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;

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and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.\textsuperscript{11}

Accordingly, American Oversight qualifies for a fee waiver.

**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.

- 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.\textsuperscript{12} 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.\textsuperscript{13}

- 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,\textsuperscript{14} and many

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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.

**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,

[Signature]

Austin R. Evers  
Executive Director  
American Oversight