VIA EMAIL

Dena Kozanas
Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Avenue SE
Washington, DC 20528-065
foia@hq.dhs.gov

Re: 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, 6 C.F.R. Part 5, American Oversight makes the following request for records.

In August 2020, the U.S. Department of Justice indicted four leaders of “We Build the Wall,” an online fundraising campaign with the stated goal of privately building a stretch of wall on the southern border, for defrauding donors.1 American Oversight seeks records with the potential to shed light on whether and to what extent We Build the Wall’s effort was coordinated with the Department of Homeland Security (DHS).

Requested Records

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

All records reflecting communications (including complete email chains, email attachments, calendar invitations/entries and attachments, text messages and attachments, handwritten or electronic notes taken at meetings, or an informational material exchanged during meetings) between (a) any of the DHS officials identified below and (b) any of the outside individuals specified below associated with We Build the Wall.

DHS Officials:

a. Chad Wolf, former Acting Secretary and former Under Secretary for Strategy, Policy, and Plans  
b. Ken Cuccinelli, former Senior Official Performing the Duties of the Deputy Secretary  
c. Chad Mizelle, former Acting General Counsel, former Acting Chief of Staff, and Former Deputy General Counsel  
d. John Gountanis, former Acting Chief of Staff  

Outside Individuals:  

i. Brian Kolfage (including but not limited to email addresses bkolfage@gmail.com or bkolfage@yahoo.com)  
ii. Stephen Bannon  
iii. Kris Kobach (including but not limited to email addresses kkobach@gmail.com or kris@kriskobach.com)  
iv. Robert S. Spalding III  
v. John Daniel Moran, Jr.  
vi. Erik Prince  
vii. Curt Schilling  
viii. David Clarke, Jr.  
ix. Tom Tancredo  

Please provide all responsive records from September 1, 2019 through August 31, 2020.

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.” The public has a significant interest in whether and to what extent the We Build the Wall effort was coordinated with DHS. Records with the potential to shed light on this question would

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contribute significantly to public understanding of operations of the federal
government, including whether DHS officials coordinated with a private wall-building
operation whose leaders were later accused of defrauding donors. 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. 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

demands-documents-from-dhs-on-interactions-with-we-build-the-wall.
5 American Oversight currently has approximately 15,500 page likes on Facebook and
104,300 followers on Twitter. American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited July 20, 2020); American
Oversight (@weareoversight), Twitter, https://twitter.com/weareoversight (last
visited July 20, 2020).
7 Trump Administration’s Contacts with Ukraine, American Oversight,
https://www.americanoversight.org/investigation/the-trump-administrations-
contacts-with-ukraine.
8 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., CDC Calendars from 2018 and 2019: Pandemic-Related
Briefings and Meetings, American Oversight, https://www.americanoversight.org/cdc-
9 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,
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;\textsuperscript{10} 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. For instance, if the request seeks “communications,” 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 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.\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 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 Hart Wood at foia@americanoversight.org or (202) 873-1743. 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,

/s/ Hart Wood  
Hart Wood  
on behalf of  
American Oversight