



March 22, 2021

VIA ONLINE PORTAL

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
441 G Street NW, 6th Floor
Washington, DC 20530

Re: Freedom of Information Act Request

Dear Mr. Hibbard

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

The Republican Attorneys General Association (RAGA) and its associated Rule of Defense Legal Fund (RLDF) has recently come under scrutiny for its involvement in the January 6, 2021 insurrection attempt on the U.S. Capitol¹ and for its opposition to expanded access to voting during the coronavirus pandemic.²

American Oversight seeks records with the potential to shed light on the relationship between DOJ leadership and that of RAGA and the RLDF.

Requested Records

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

All 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

¹ Laura Strickler & Lisa Cavazuti, *Republican AGs Group Sent Robocalls Urging March to the Capitol*, NBC News (Jan. 8, 2021, 8:36 PM), <https://www.nbcnews.com/news/us-news/republican-ags-group-sent-robocalls-urging-march-capitol-n1253581>.

² Dennis Owens, *Republican Attorneys General Associate Believes P.A. Supreme Court Made a Mistake in Approving Mail-In Ballot Extension*, ABC 27 News (Nov. 9, 2020, 5:46 PM), <https://www.abc27.com/news/us-world/politics/election/republican-attorneys-general-association-believes-pa-supreme-court-made-a-mistake-in-approving-mail-in-ballot-extension/>.



oral communications, summaries of any oral communications, or other materials) between (a) any of the DOJ officials listed in Column A below, and (b) any of the external entities listed in Column B, below, or their representatives:

Column A: DOJ Officials	Column B: External Individuals & Entities
<ol style="list-style-type: none"> 1. Attorney General William Barr 2. Chief of Staff Will Levi (and anyone subsequently serving in the role of Chief of Staff to AG Barr) 3. Jeffrey Rosen, Acting Attorney General and Deputy Attorney General 4. Patrick Hovakimian, Chief of Staff to Acting AG Rosen 	<p>Republican Attorney General Association:</p> <ol style="list-style-type: none"> 1. Any employee or representative of the Republican Attorneys General Association (including, but not limited to, anyone communicating from an email address ending in @republicanags.com) 2. Adam Piper, Executive Director (including, but not limited to, at apiper@republicanags.com or adampiper1@gmail.com) 3. Chris Carr, Georgia Attorney General (including, but not limited to, at agcarr@law.ga.gov or ccarr@law.ga.gov) 4. Eric Schmitt, Missouri Attorney General (including, but not limited to, at ag@ago.mo.gov or eric.schmitt@ago.mo.gov) 5. Steve Marshall, Alabama Attorney General (including, but not limited to, at steve.marshall@alabamaag.gov) 6. Jeff Landry, Louisiana Attorney General (including, but not limited to, at executive@ag.state.la.us or landryj@ag.louisiana.gov) 7. Ken Paxton, Texas Attorney General (including, but not limited to, at ken.paxton@oag.texas.gov) 8. Curtis Hill, former Indiana Attorney General (including, but not limited to, at curtis.hill@atg.in.gov) 9. Doug Peterson, Nebraska Attorney General (including, but not limited to, at doug.peterson@nebraska.gov)

	<p>10. Sean Reyes, Utah Attorney General (including but not limited to at, uag@agutah.gov or seanreyes@agutah.gov)</p> <p>Rule of Law Defense Fund:</p> <p>11. Any employee or representative of the Rule of Law Defense Fund (including, but not limited to, anyone communicating from an email address ending in @rldf.org or @ruleoflawdefensefund.org)</p> <p>12. Peter Bisbee, Executive Director of the Rule of Law Defense Fund (including, but not limited to, at pbisbee@rldf.org)</p>
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Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Attorney General Barr received a mass-distribution news clip email, that initial email would not be responsive to this request. However, if Attorney General Barr forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from January 1, 2020, through January 20, 2021.

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 the communications of top DOJ officials with the members of RAGA. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including

³ 5 U.S.C. § 552(a)(4)(A)(iii).

whether and to what extent the DOJ coordinated or worked with RAGA and the RLDF during the coronavirus pandemic and 2020 election. 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.⁴ 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.⁵

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.⁶ 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;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ 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;⁹ the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those

⁴ *See id.*

⁵ American Oversight currently has approximately 15,700 page likes on Facebook and 105,500 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 18. 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 18. 2021).

⁶ *See generally News*, American Oversight, <https://www.americanoversight.org/blog>.

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-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

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, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

records demonstrated regarding the Department's process for issuing such waivers;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.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.
- 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.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

¹⁰ *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>.

¹¹ *See generally Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-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>.

¹² *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).

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.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,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

¹³ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁴ 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>.

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,

/s/ Dan McGrath
Dan McGrath
on behalf of
American Oversight