



May 31, 2022

VIA EMAIL

Monica Potter-Johnson
Office of Justice Programs
810 7th Street, NW, Room 5400
Washington, DC 20531
FOIAOJP@usdoj.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 the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

In October 2020, the DOJ's Office of Justice Programs (OJP) hired John Lott, an economist known for his research that argues widespread gun ownership can reduce crime in communities, as a senior adviser for research and statistics.¹ Lott left DOJ in January 2021,² and has since written and published papers and opinion pieces casting doubt on the outcome of the 2020 presidential election.³ American Oversight seeks records with the potential to shed light on Lott's communications during his time at DOJ.

Requested Records

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

¹ Josh Gerstein, *Controversial Gun Advocate Hired by Justice Department Last Month*, Politico (Nov. 25, 2020, 12:02 AM), <https://www.politico.com/news/2020/11/24/controversial-gun-advocate-justice-department-440251>.

² Jennifer Mascia, *Discredited Gun Researcher out at Justice Department*, The Trace, Jan. 21, 2021, <https://www.thetrace.org/2021/01/john-lott-trump-appointee-leave-justice-department-gun-data/>.

³ See e.g., John Lott, *Montana's 2020 Election Irregularities are Still Unaddressed Despite Recounts Gone Wrong, Erased Records, and Suddenly Surfacing Ballots*, The Federalist, Apr. 18, 2022, <https://thefederalist.com/2022/04/18/montanas-2020-election-irregularities-are-still-unaddressed-despite-recounts-gone-wrong-erased-records-and-suddenly-surfacing-ballots/>; John Lott, *Simple Test for the Extent of Vote Fraud with Absentee and Provisional Ballots in the 2020 US Presidential Election*, Dec. 21, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3756988.



All email communications (including emails, email attachments, complete email chains, and calendar invitations) between (a) former Senior Adviser for Research and Statistics John Lott, and (b) any of the external individuals listed below, including, but not limited to, at the listed email addresses or at email addresses ending in the listed domains.

External Entities:

1. Al Hartman, Jenny Limcher, and/or anyone communicating on behalf of Hartman REIT (@hi-reit.com)
2. Boris Epshteyn (bepshteyn@gmail.com)
3. Catherine Engelbrecht, Courtney Kramer, or any person communicating from an email address ending in @truethevote.org
4. Charles Bundren III (charles@bundrenlaw.net)
5. Chris Witt, Earl Eugene Kern, and/or anyone communicating on behalf of Wake Technology Services, Inc. (@waketsi.com)
6. Christina Bobb (christina@cgbstrategies.com), Chanel Rion, Graham Ledger (grahamledger@yahoo.com), and/or anyone communicating on behalf of One America News Network, including anyone communicating from an email address ending in @oann.com
7. Cleta Mitchell (cleta@cletamitchell.com, cmitchell@foley.com, and/or email addresses ending in @bradleyfdn.org)
8. Colonel Phil Waldron (phil@onewarrior.com or anyone communicating from an email address ending in @bonfiresearch.org)
9. Doug Logan, and/or anyone communicating on behalf of Cyber Ninjas (@cyberninjas.com)
10. Emily Newman (enewman@protonmail.com), Todd Sanders (todd@krknsys.com), and/or anyone communicating from an email address ending in @americaproject.com
11. Former National Security Advisor Michael Flynn (@generalflynn.com), Joseph Flynn, Charles Flynn, Michael Flynn Jr., and/or anyone communicating on behalf of America's Future (@americasfuture.net)
12. Garland Favorito (garlandf@msn.com), or anyone communicating from an email address ending in @voterga.net or @voterga.org
13. Bruce Marks (marks@mslegal.com)
14. Ivan Raiklin (ivan@raiklin.com, ivan.raiklin@gmail.com and/or socialmediaraiklin@gmail.com)
15. Jacqueline Timmer, Mary Coran, and/or anyone communicating on behalf of the American Voter's Alliance (@got-freedom.org)
16. Jenna Ellis (jenna.ellis.esq@gmail.com) and/or anyone communicating on behalf of Liberty University's Falkirk Center (@falkirkcenter.com) or the American Greatness Fund (@americangreatnessfund.com)
17. Joe Oltmann (joe@fecunited.com, joe@pinbn.com)
18. John Eastman (jeastman@claremont.org, jeastman@chapman.edu, john.eastman@colorado.edu) and/or anyone communicating on behalf of Constitutional Counsel Group (@ccg1776.com)
19. Jovan Hutton Pulitzer (jovanhuttonpulitzer@gmail.com)
20. Katherine Friess (kfriess@protonmail.com)

21. Kurt Olsen (kurtols@protonmail.com)
22. Matt Braynard and/or anyone communicating on behalf of Look Ahead America (@lookaheadamerica.org)
23. Matthew DePerno (matthew@depernolaw.com)
24. Mike Lindell (mike@mypillow.com)
25. Mike Roman (mikeroman@protonmail.com)
26. Pennsylvania Senator Doug Mastriano, or anyone communicating from an email address ending in @fight4pa.com or @pasen.gov
27. Phill Kline (phillklineva@gmail.com), Luis Cornelio (luis.cornelio@protonmail.com, lcornel001@citymail.cuny.edu), and/or anyone communicating on behalf of the Thomas More Society (@thomasmoresociety.org) or The Amistad Project
28. Russell Ramsland (yrku9sqs@protonmail.com), J. Keet Lewis (keet@jkeetlewis.com), and/or anyone communicating on behalf of Allied Security Operations Group (@alliedspecialops.us)
29. Shiva Ayyadurai (vashiva@vashiva.com) and/or anyone communicating from an email address ending in @echomail.com
30. Sidney Powell (sp@seeking-justice.org, sherlock1776@protonmail.com, and/or sidney@federalappeals.com)
31. Montana Representative Brad Tschida (brad.tschida@mtleg.gov, brad@themilkywhey.com, betschida54@gmail.com)
32. Montana Senator Theresa Manzella (Theresa.manzella@mtleg.gov, theresa@manzellaformontana.com)
33. Kris Kobach (including, but not limited to, communications with the email kkobach@gmail.com or kris@kriskobach.com)
34. J. (John) Christian Adams, Maureen Riordan, Logan Churchwell or any person communicating from an email address ending in @publicinterestlegal.org or @electionlawcenter.com
35. Hans von Spakovsky or any person communicating from an email address ending in @heritage.org
36. John Lott (johnlott@crimeresearch.org, johnlott@gmail.com)

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

In an effort to accommodate the Department of Justice and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by John Lott. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Lott's response to an email and the initial received message are responsive to this request and should be produced.

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 communications John Lott may have had with individuals perpetuating falsehoods about the electoral process during his tenure at DOJ. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent John Lott was communicating with individuals spreading such falsehoods while at DOJ. 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.⁵ 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.⁶

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.⁷ 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;⁸ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;⁹ posting records received as part of American Oversight’s

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ American Oversight currently has approximately 16,000 page followers on Facebook and 117,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited May 17, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited May 17, 2022).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁹ See generally *The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations->

“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;¹⁰ 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;¹¹ and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹²

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:

- 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

[response-to-coronavirus](https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings); 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>.

¹⁰ 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>.

¹¹ *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>.

¹² 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>.

Federal Records Act and FOIA.¹³ 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.¹⁴

- 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,¹⁵ 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

¹³ 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).

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

¹⁵ 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>.

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 Taylor Stoneman at foia@americanoversight.org or (202) 848-1319. 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/ Taylor Stoneman
Taylor Stoneman
on behalf of
American Oversight