



March 15, 2017

VIA ELECTRONIC MAIL

Michael Marquis
Freedom of Information Officer
Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, SW
Washington, DC 20201
FOIARequest@hhs.gov

Re: Freedom of Information Act Request

Dear Mr. Marquis:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Department of Health and Human Services (HHS), 45 C.F.R. Part 5, American Oversight makes the following request for records.

American Oversight promotes accountability in government through transparency, informing the public's right to know what the government is up to. With scores of new individuals joining the government in key, senior positions, it is essential to understand who they are and the backgrounds they bring to their work. Without such transparency, the public cannot have confidence that government decisions are shaped by the interests of the American people, not personal or professional allegiances.

Requested Records

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

1. Records sufficient to identify all employees who entered into a position at the agency as "political appointees" since January 20, 2017, and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position). For purposes of this request, please consider any employee in a PAS position, a presidentially-appointed position, a non-career SES position, or a Schedule C position a "political appointee."
2. Records sufficient to identify all career employees who have been detailed into a leadership office or component front office since January 20, 2017; the title or position of each employee while on detail (to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position); and each employee's originating agency or component, and title.

3. Records sufficient to identify the members of the “beachhead teams” who joined the agency at the beginning of the Trump administration, and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position).
4. For each individual identified in response to requests 1 to 3:
 - a. The resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or, if that is not available, a recent resume contained within the agency’s records. We have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and professional association information is not exempt and we object to any redactions of such information.
 - b. Any conflicts or ethics waivers or authorizations issued for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
5. Records sufficient to identify the members of the “landing teams” or “transition teams” who were embedded with the agency for transition purposes by the Trump transition organization between the November 2016 election and the Trump administration.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹ If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”² Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”³ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”⁴

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 it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.⁵ Claims of nonsegregability must be made with the same degree of detail as required for

¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

³ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

⁴ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

⁵ *Mead Data Central*, 566 F.2d at 261.

claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. American Oversight intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, HHS is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, 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 HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF 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 rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, 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 public understanding of those operations.⁶ Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).⁷

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 government operations and “is not primarily in the commercial interest of the requester.”⁸ The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

As required by HHS’s regulations at 45 C.F.R. § 5.54(b)(1)-(2), the subject of the requested records clearly and directly “concern[s] identifiable operations or activities of the Federal Government,” and the disclosure of the requested information would meaningfully inform the understanding of a reasonably broad audience of persons regarding these aspects of the operation of the federal government. Since January 20, 2017, the Trump administration has been appointing or assigning individuals to play significant roles in shaping the agenda of every federal agency. Identifying who these people are, and the background and perspectives that they bring to their jobs as federal employees, is essential to informing the public regarding the operations and

⁶ 45 C.F.R. § 5.54(b)(1)-(2).

⁷ 45 C.F.R. § 5.54(b)(3); *see, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii); 45 C.F.R. § 5.54(a).

decisionmaking of the federal government. In particular, only with clarity regarding the identity and background of these appointees can the public make informed assessments regarding whether decisions might have been influenced by conflicts of interest among the decisionmakers and whether those employees have personal or private interests affected by their policy actions.

As required by HHS's regulations at 45 C.F.R. § 5.54(b)(3)(i)-(ii), this request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. 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 commercial 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 will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on our public website.

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

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, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at foia@americanoversight.org or 202-869-5246. 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight