



July 17, 2018

**VIA ELECTRONIC MAIL**

Anthony McCarthy<sup>1</sup>  
Baltimore City  
Mayor's Office  
250 City Hall  
Baltimore, MD 21202  
[anthony.mccarthy@baltimorecity.gov](mailto:anthony.mccarthy@baltimorecity.gov)

**Re: Public Information Act Request**

Dear Mr. McCarthy:

Pursuant to the Maryland Public Information Act ("MPIA"), codified at Title 4 of the General Provisions Article, American Oversight makes the following request for records.

Public reports and public records have suggested that HUD resources have been diverted for the private benefit of the Carson family and their associates. For example, government documents obtained by American Oversight and by the press have revealed that Ben "BJ" Carson, Jr. has played an expansive role at HUD.<sup>2</sup> He orchestrated Secretary Carson's tour of Baltimore last year and used the opportunity to cultivate business relationships and opportunities by doing the bidding of representatives of private businesses.<sup>3</sup>

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<sup>1</sup> Mr. McCarthy is designated as the MPIA representative by the Maryland Attorney General. *See* Maryland Public Information Act Manual, Appendix J, Public Information Act Representatives (Last Revised July 2, 2018),

[http://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix\\_J.pdf](http://www.marylandattorneygeneral.gov/OpenGov%20Documents/Appendix_J.pdf). The Mayor's Office has not responded to my queries for confirmation of the correct contact.

<sup>2</sup> Alec MacGillis, *Is Anybody Home at HUD*, N.Y. MAG. (Aug. 22, 2017, 8:00 am),

<http://nymag.com/daily/intelligencer/2017/08/ben-carson-hud-secretary.html>; Juana Summers *et al.*, *Emails Show Carson Family Fingerprints at HUD Despite Warnings*, CNN (Feb. 5, 2018, 12:44 PM) <https://www.cnn.com/2018/02/02/politics/ben-carson-family-hud/index.html>; Juliet

Eilperin & Jack Gillum, *'Using His Position for Private Gain': Ben Carson Was Warned He Might Run Afoul of Ethics Rules by Enlisting His Son*, WASH. POST, Jan. 31, 2018,

[https://www.washingtonpost.com/politics/using-his-position-for-private-gain-hud-lawyers-warned-ben-carson-risked-running-afoul-of-ethics-rules-by-enlisting-son/2018/01/31/bb20c48e-0532-11e8-8777-2a059f168dd2\\_story.html?utm\\_term=.0f7a4a2533fb](https://www.washingtonpost.com/politics/using-his-position-for-private-gain-hud-lawyers-warned-ben-carson-risked-running-afoul-of-ethics-rules-by-enlisting-son/2018/01/31/bb20c48e-0532-11e8-8777-2a059f168dd2_story.html?utm_term=.0f7a4a2533fb).

<sup>3</sup> Summers *et al.*, *supra* note 2; Eilperin & Gillum, *supra* note 2.



## Requested Records

American Oversight requests that the Baltimore City Mayor's Office ("the Mayor's Office") produce the following records as soon as reasonably possible upon approval, and in no more than thirty days of receipt of this request<sup>4</sup>:

All records reflecting communications (including emails, email attachments, text messages, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning any visit by HUD Secretary Ben Carson exchanged between 1) the Mayor's Office and 2) HUD Secretary Ben Carson, any representative of HUD Secretary Ben Carson, Secretary Carson's son, Benjamin Carson Jr., or Secretary Carson's daughter-in-law, Merlynn Carson.

Please provide all responsive records from March 2, 2017, through the date the Mayor's Office conducts the search.

In addition, American Oversight requests that the Mayor's Office produce a copy of all regulations it has adopted that implement the Public Information Act, including but not limited to those "govern[ing] timely production and inspection of a public record."<sup>5</sup>

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

In addition, American Oversight insists that the Mayor's Office use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Pursuant to the MPIA, American Oversight is entitled to a prompt grant or denial of its request, to be issued no more than thirty days after receipt of the request.<sup>6</sup> Failure to provide a timely response will be considered a denial, and American Oversight will seek appropriate judicial relief in that event.<sup>7</sup> **You should institute a preservation hold on information responsive to this request.**

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<sup>4</sup> Md. Gen. Provis. § 4-203(b)(1).

<sup>5</sup> See Md. Gen. Provis. § 4-201(b).

<sup>6</sup> Md. Gen. Provis. § 4-203(a).

<sup>7</sup> See Md. Gen. Provis. § 4-203(b)(3) (failure to produce the record or provide written notice within ten business days of the amount of time needed to comply with the request and reason for the

American Oversight intends to pursue all legal avenues to enforce its right of access under the MPIA, including litigation if necessary. Accordingly, the Mayor's Office is on notice that litigation is reasonably foreseeable.

If all or any part of this request is denied, American Oversight requests that you provide, with the denial itself or within ten business days following the denial, a written statement of the grounds for each denial, including citation to the law(s) or regulation(s) supporting your decision, and the available remedies for review of a denial.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.<sup>11</sup>

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 the Mayor's Office 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 a rolling basis.

### **Fee Waiver Request**

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest,"<sup>12</sup> given the public benefit in making available information likely to contribute significantly to public understanding of operations or activities of the government.<sup>13</sup> The

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delay); § 4-362(a)(1) (allowing for filing of complaint with the circuit court upon denial of a Public Records Act request).

<sup>8</sup> Md. Gen. Provis. § 4-203(c)(1).

<sup>9</sup> See *Blythe v. State*, 161 Md. App. 492, 519, cert. granted, 388 Md. 97 (2005); see also Md. Gen. Provis. § 4-203(c)(1)(ii).

<sup>10</sup> Md. Gen. Provis. § 4-203(c)(1)(ii).

<sup>11</sup> Md. Gen. Provis. § 4-203(c)(1)(i)(2).

<sup>12</sup> See *id.*

<sup>13</sup> See *Mayor of Baltimore v. Burke*, 67 Md. App. 147, 156-57, 506 A.2d 683, 688 (1985), cert. denied, 300 Md. 118, 507 A.2d 631 (1986) (recognizing public benefit of dissemination of information concerning government operations, and noting similarity of federal Freedom of Information Act fee provision, rendering interpretations of that provision "persuasive" in interpretation of Maryland Public Information Act ("MPIA")); 81 Op. Att'y Gen. 154, 157-58 (1996) (citing cases interpreting the federal Freedom of Information Act (FOIA) fee waiver

requested records will help American Oversight and the general public understand whether and to what extent the Mayor's Office is being influenced by nepotism, favoritism or private interests connected to HUD Secretary Carson or his family members.<sup>14</sup> Secretary Carson has visited Baltimore in his professional capacity, and his son was involved in planning his visit, so the records requested here have the potential to shed light on the influence of Secretary Carson and his family members have had on the Mayor's Office. American Oversight is committed to transparency and makes the responses agencies provide in response to its public-records requests publicly available. The subject of this request is a matter of public interest, 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.<sup>15</sup> 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.<sup>16</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,<sup>17</sup> American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>18</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>19</sup>

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provision in discussion of MPIA fee waiver provision and recognizing a public interest in, *inter alia*, "an agency's performance of its public duties").

<sup>14</sup> See Summers *et al.*, *supra* note 2; Eilperin & Gillum, *supra* note 2.

<sup>15</sup> See *Mayor of Baltimore*, 67 Md. App. at 156 (noting that the analogous fee waiver provision in the federal Freedom of Information Act (FOIA) "has been liberally construed in favor of the media or other requesters who will provide broad public dissemination of the information sought.").

<sup>16</sup> American Oversight currently has approximately 11,900 page likes on Facebook, and 43,900 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 17, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 17, 2018).

<sup>17</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>18</sup> *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>.

<sup>19</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

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 the Mayor's Office 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 Dan McGrath at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.4213.

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