



July 6, 2017

VIA EMAIL

Nicole Barksdale-Perry
Acting Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
foia@hq.dhs.gov

Re: Freedom of Information Act Request

Dear Ms. Barksdale-Perry:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of the Department of Homeland Security (DHS), 6 C.F.R. Part 5, American Oversight makes the following request for records.

American Oversight promotes accountability in government through transparency, informing the public about government activities and compliance with rules and regulations critical for maintaining integrity in government. Political appointees hold key positions of public trust, and so are held to even higher ethical and disclosure standards than other federal employees.¹ American Oversight seeks documents that will shed light on guidance the Trump Administration has provided these officials as they have assumed their new roles.

Requested Records

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

1. A copy of a document, binder, booklet, or other collection of materials entitled “Orientation for Political Appointees, Department of Homeland Security” and used since January 2017, or any comparable document, binder, booklet, or collection bearing a substantially similar title or distributed specifically to political appointees as part of their onboarding/orientation process.

¹ See, e.g., OFFICE OF GOV’T ETHICS, POLITICAL APPOINTEES (Mar. 31, 2017), <https://www.oge.gov/Web/oge.nsf/Resources/Political+Appointees>.



2. A copy of a document, binder, booklet, or other collection of materials entitled “Orientation for Political Appointees, Department of Homeland Security” and used during 2005, or any comparable document, binder, booklet, or collection bearing a substantially similar title or distributed specifically to political appointees as part of their onboarding/orientation process at that time.
3. A copy of a document, binder, booklet, or other collection of materials entitled “Orientation for Political Appointees, Department of Homeland Security” and used during 2009, or any comparable document, binder, booklet, or collection bearing a substantially similar title or distributed specifically to political appointees as part of their onboarding/orientation process at that time.

For the above requests, American Oversight only seeks one copy of each distinct version of the requested document(s). Thus, while the search for responsive records should include all individuals and locations where records are likely to exist (including but not limited to the Office of the Secretary, the White House Liaison, and the Management Directorate including the Office of the Chief Human Capital Officer), American Oversight is not seeking every duplicate copy of each responsive record. If revisions were made to a responsive document, American Oversight requests a copy of each revision.

For Request 1, please provide all responsive records from January 20, 2017, to the date the search is conducted. For Requests 2 and 3, please provide all responsive records from calendar years 2005 and 2009, respectively.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If DHS uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

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.”² 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

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

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.”³ 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.”⁴ 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.’”⁵

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.⁶ Claims of nonsegregability must be made with the same degree of detail as required for 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, DHS 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 DHS 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

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), 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

³ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁴ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

⁵ *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)).

⁶ *Mead Data Central*, 566 F.2d at 261.

significant way.⁷ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁸

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.”⁹ The requested records “direct[ly] and clear[ly]” concern “identifiable operations or activities” of the government.¹⁰ They will be “meaningfully informative” about guidance governing activities of political appointees and add substantially to the public’s understanding of these activities.¹¹ Political appointees enjoy positions of substantial influence, yet little public information is currently available to reassure the public that the Trump Administration is providing adequate guidance to ensure these appointees fully appreciate and responsibly fulfill their ethical and other responsibilities. Thus, the disclosure will enhance the public understanding of these activities significantly as compared to that understanding today.¹² Finally, as described more fully below, American Oversight will use its public website and social media accounts to ensure that the requested material will “contribute to the understanding of a reasonably broad audience of persons interested” in the integrity of operations at DHS.¹³

This request is primarily and fundamentally for non-commercial purposes.¹⁴ 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.¹⁵ 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,¹⁶ American Oversight promptly posted the records to its website and

⁷ 6 C.F.R. § 5.11(k)(1)(i).

⁸ 6 C.F.R. § 5.11(k)(1)(ii).

⁹ 6 C.F.R. § 5.11(k)(1)(i)-(ii).

¹⁰ 6 C.F.R. § 5.11(k)(2)(i).

¹¹ 6 C.F.R. § 5.11(k)(2)(ii).

¹² 6 C.F.R. § 5.11(k)(2)(iv).

¹³ 6 C.F.R. § 5.11(k)(2)(iii).

¹⁴ 6 C.F.R. § 5.11(k)(3).

¹⁵ American Oversight currently has over 11,000 page likes on Facebook, and over 32,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 6, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 6, 2017).

¹⁶ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

published an analysis of what the records reflected about DOJ's process for ethics waivers.¹⁷ As another example, American Oversight's 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.¹⁸

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 DHS 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 Beth France 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

¹⁷ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

¹⁸ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.