



March 1, 2018

VIA ELECTRONIC MAIL

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, DC 20528-0655
foia@hq.dhs.gov

Catrina Pavlik-Keenan
Freedom of Information Act Office
U.S. Immigration & Customs Enforcement
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
ice-foia@dhs.gov

Re: Freedom of Information Act Request

Dear Ms. Barksdale-Perry and Ms. Pavlik-Keenan:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 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.

On August 16, 2017, Attorney General Jeff Sessions spoke at a news conference in Miami in which he praised the city's mayor for reversing sanctuary policies and cooperating with federal immigration law enforcement.¹ Mr. Sessions noted that Miami-Dade was a "good" example of a city in compliance with immigration law and urged other cities to follow its lead.²

¹ Douglas Hanks, *In Miami, Jeff Sessions Praises an End to Sanctuary for 'Criminal Aliens'*, MIAMI HERALD, Aug. 16, 2017, <http://www.miamiherald.com/news/local/community/miami-dade/article167606497.html>; Doug Phillips, *Attorney General Jeff Sessions Will Be in South Florida Today Discussing Sanctuary Cities Policies*, SUN SENTINEL (Aug. 16, 2017, 5:10 AM), <http://www.sun-sentinel.com/local/miami-dade/fl-reg-jeff-sessions-sanctuary-cities-miami-20170815-story.html>.

² Adriana Gomez Licon, *Sessions Blasts Sanctuary Cities, Calls Miami 'Good' Example*, U.S. NEWS (Aug. 16, 2017, 5:56 PM), <https://www.usnews.com/news/best-states/florida/articles/2017-08-16/sessions-to-praise-miami-for-ending-sanctuary-policy>.



Since Mr. Sessions delivered those remarks, the debate surrounding sanctuary cities has become a hot button issue for Florida's upcoming gubernatorial elections on November 6, 2018. In mid-January 2018, Florida's House of Representatives voted to pass a bill that "would ban sanctuary city policies and penalize local officials who uphold them."³ The bill's passage followed on the heels of Immigration and Customs Enforcement (ICE) raids of dozens of 7-Eleven stores in the Orlando and Fort Meyers areas.⁴ Similar raids have taken place in other Florida cities. On January 22, 2018, Customs and Border Protection (CBP) agents boarded a Greyhound bus in Fort Lauderdale to conduct "routine investigation" of each passenger on the bus. CBP arrested, detained, and have started deportation proceedings against a passenger on the bus who refused to provide proof of citizenship.⁵

The rapid increase in ICE raids, rise in CBP arrests of civilians, and legislative push for banning sanctuary city policies that have taken place under Governor Rick Scott's tenure is alarming and requires further public scrutiny. Furthermore, the fact that Mr. Sessions has lauded Florida as a leader in immigration enforcement raises concerns that Florida may be an experimental testing grounds for DHS and ICE's immigration enforcement. American Oversight seeks documents that have the potential to shed light on cooperation between DHS and/or ICE and Governor Scott's office related to immigration enforcement.

Requested Records

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

All communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, or other materials) between any of the following individuals at DHS and Florida Governor Rick Scott or his staff related to Florida townships or localities deemed sanctuary cities by DOJ, ICE or Governor Scott's Office and their compliance with federal immigration laws; immigration-related raids of any localities in Florida; and immigration detainer requests issued by ICE to governmental entities including local sheriffs' and mayors' offices in Florida:

- a. Former Secretary John Kelly acting in his capacity as Secretary of DHS
- b. Secretary Kirstjen Nielson

³ Matt Dixon, *Sanctuary Cities Debate Erupts in Florida Governor's Race*, POLITICO, Feb. 1, 2018, <https://www.politico.com/story/2018/02/01/florida-sanctuary-city-governor-race-381318>.

⁴ Patricia Mazzei, *Immigration Agents Target 7-Eleven Stores in Push to Punish Employers*, N.Y. TIMES, Jan. 10, 2018, <https://www.nytimes.com/2018/01/10/us/7-eleven-raids-ice.html>; Nick Miroff, *Immigration Agents Target 7-Eleven Stores in Nationwide Sweep*, MIAMI HERALD, Jan. 10, 2018, <http://www.miamiherald.com/news/local/immigration/article194038649.html>.

⁵ Aric Chokey, *Border Patrol Officers Get on Greyhound Bus to Ask for ID, then Arrest Woman*, SUN SENTINEL (Jan. 22, 2018, 7:25 PM), <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-reg-greyhound-border-patrol-20180121-story.html>; Jeff Lennox & Katrina Bush, *Immigrant Raid on Greyhound Bus Ends in Passenger Deportation*, WSVN 7NEWS (Jan. 22, 2018), <https://wsvn.com/news/local/immigrant-raid-on-greyhound-bus-ends-in-passenger-deportation/>.

- c. Deputy Secretary Elaine C. Duke
- d. Chief of Staff Chad Wolf
- e. Deputy Director of ICE Thomas D. Homan
- f. Chief of Staff of ICE Thomas Blank
- g. Homeland Security Executive Associate Director Peter T. Edge

We believe that a reasonable search for records responsive to this request should include at least the following terms as keyword search terms:

- i. Raid(s)
- ii. Detainer(s)
- iii. Sanctuary
- iv. Sanctuaries
- v. Immigration and Customs Enforcement
- vi. ICE
- vii. Customs and Border Patrol
- viii. CBP
- ix. 8 U.S.C. § 1373

However, we ask that DHS, ICE, and CBP not confine its search to at least these search terms if others may yield responsive records.

Please provide responsive records from January 20, 2017, to the date of the search.

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.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁶ **It is not adequate to rely on policies and procedures that**

⁶ 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).

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, through negligence or willfulness, failed to meet their obligations.⁷

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered DHS’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**⁸ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but DHS’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DHS 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.**

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.”⁹ 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.”¹⁰ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing

⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

⁸ 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>.

⁹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹⁰ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

the sought-after information.”¹¹ 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.’”¹²

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.¹³ 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 DHS before it undertakes a search or incurs 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 significant way.¹⁴ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁵

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 the

¹¹ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹² *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)).

¹³ *Mead Data Central*, 566 F.2d at 261.

¹⁴ 6 C.F.R. § 5.11(k)(1)(i).

¹⁵ 6 C.F.R. § 5.11(k)(1)(ii).

operations or activities of the government.”¹⁶ There is significant public interest in DHS’s role in the ensuing ICE raids and CBP arrests across Florida, and Governor Scott or his staff’s involvement in aiding DHS’s efforts to enforce anti-sanctuary city policies. These records have the potential to shed significant light on any communications between DHS officials and Governor Scott related to implementing such policies; whether Governor Scott has played a role in identifying localities for ICE raid targets; and any grants or funding DHS has provided to Governor Scott to end sanctuary city policies in Florida. As discussed below, American Oversight has the capacity and intention to inform a broad audience about government activities that are the subject of these records.

This request is primarily and fundamentally for non-commercial purposes.¹⁷ 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 promote their availability on social media platforms, such as Facebook and Twitter.¹⁸ 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, American Oversight promptly posted the records to its website¹⁹ and published an analysis of what the records reflected about DOJ’s process for ethics waivers.²⁰ Additionally, this particular FOIA request is part of a public project conducted by American Oversight 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.²¹

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

¹⁶ 6 C.F.R. § 5.11(k)(1)(i); *see also* 6 C.F.R. § 5.11(k)(2)(i)-(iv).

¹⁷ 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)-(ii).

¹⁸ American Oversight currently has approximately 11,800 page likes on Facebook, and 40,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 1, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 1, 2018).

¹⁹ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

²⁰ *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>.

²¹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

Pooja Chaudhuri at foia@americanoversight.org or 202.869.5244. 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 of the first letter.

Austin R. Evers
Executive Director
American Oversight