



January 24, 2018

**VIA FOIA ONLINE**

U.S. Department of the Navy  
Office of the Chief of Naval Operations  
FOIA/Privacy Act Program Office/Service Center  
ATTN: DNS 36  
2000 Navy Pentagon  
Washington DC 20350-2000

**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Defense (DOD), 32 C.F.R. Part 286, American Oversight makes the following request for records regarding the visitors Vice President Mike Pence receives.

**Requested Records**

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

1. Records sufficient to identify all visitors to the Naval Observatory (including the name of the visitor and the date(s) and time(s) of any visit(s)) from January 20, 2017, through 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 DOD 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.<sup>1</sup> **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, through negligence or willfulness, failed to meet their obligations.**<sup>2</sup>

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.”<sup>3</sup> 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.”<sup>4</sup> 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.”<sup>5</sup> 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.’”<sup>6</sup>

---

<sup>1</sup> 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).

<sup>2</sup> 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)).

<sup>3</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>4</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>5</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>6</sup> *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)).

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.<sup>7</sup> 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, DOD 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 DOD 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 15<sup>th</sup> 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 32 C.F.R. § 286.12(l)(1), 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. 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” government operations.<sup>8</sup> The Vice President is the second highest official in the executive branch. With whom he spends his time is both clearly government operations and of significant public interest.<sup>9</sup> As discussed further below, American Oversight has both the ability and the intention to effectively convey the information it receives to the public.

---

<sup>7</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>8</sup> 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 286.12(l)(2)(i)-(ii).

<sup>9</sup> See, e.g., Philip Bump, *It’s Not the Cost of Pence’s Trip That Was Galling. It Was the Preparation for It.*, WASH. POST, Oct. 9, 2017,

This request is primarily and fundamentally for non-commercial purposes.<sup>10</sup> 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 our public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>11</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, American Oversight promptly posted the records to its website<sup>12</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>13</sup> Additionally, 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>14</sup>

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 Air Force 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 Cerissa Cafasso at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5244. Also, if American

---

[https://www.washingtonpost.com/news/politics/wp/2017/10/09/its-not-the-cost-of-pences-trip-that-was-galling-it-was-the-preparation-for-it/?utm\\_term=.b02807e30c9c](https://www.washingtonpost.com/news/politics/wp/2017/10/09/its-not-the-cost-of-pences-trip-that-was-galling-it-was-the-preparation-for-it/?utm_term=.b02807e30c9c); Jane Mayer, *The Danger of President Pence*, THE NEW YORKER, Oct. 23, 2017,

<https://www.newyorker.com/magazine/2017/10/23/the-danger-of-president-pence>.

<sup>10</sup> 32 C.F.R. § 286.12(l)(1); 32 C.F.R. § 286.12(l)(2)(iii)(A)-(B).

<sup>11</sup> American Oversight currently has approximately 11,800 page likes on Facebook, and 39,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 24, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 24, 2018).

<sup>12</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>13</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>14</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).

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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight