



April 24, 2017

VIA ELECTRONIC MAIL

Carrie Hyde-Michaels
Chief, Branch of FOIA, Records, Privacy
U.S. Fish and Wildlife Service
5275 Leesburg Pike
MS:IRTM
Falls Church, VA 22041
fwfq_foia@fws.gov

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 *et seq.* and Department of Interior (DOI) implementing regulations, 43 C.F.R. Part 2, American Oversight makes the following request for records.

Shortly after President Trump took office, there were reports that the new administration was placing restrictions on how employees of certain federal agencies—including DOI—could communicate with the public.¹ More recently, it has been reported that federal agencies in the Trump administration have not been responding to congressional requests for information.² In particular, the Washington Post recently reported that a staff member for Representative Raul Grijalva (D-Ariz.) was told that employees of the U.S. Fish and Wildlife Service (FWS) could not speak to minority congressional staff unless they were called as a witness at a hearing.³ American Oversight seeks to promote transparency in government, which depends upon open and honest

¹ See, e.g., Juliet Eilperin & Brady Dennis, *Federal Agencies Ordered to Restrict Their Communications*, WASH. POST, Jan. 24, 2017, https://www.washingtonpost.com/politics/federal-agencies-ordered-to-restrict-their-communications/2017/01/24/9daa6aa4-e26f-11e6-ba11-63c4b4fb5a63_story.html?utm_term=.7e542a9cb52a; Coral Davenport, *Federal Agencies Told to Halt External Communications*, N.Y. TIMES, Jan. 25, 2017, <https://www.nytimes.com/2017/01/25/us/politics/some-agencies-told-to-halt-communications-as-trump-administration-moves-in.html>.

² Justin Elliott, *How the Trump Administration Responds to Democrats' Demands for Information: It Doesn't*, PROPUBLICA (Mar. 30, 2017, 11:12 AM), https://www.propublica.org/article/how-the-trump-administration-responds-to-democrats-demands-for-information?utm_source=pardot&utm_medium=email&utm_campaign=dailynewsletter.

³ Darryl Fears, *Democrats Fear that Trump has Barred Key Federal Workers from Speaking to Them*, WASH. POST, Apr. 15, 2017, https://www.washingtonpost.com/news/energy-environment/wp/2017/04/15/democrats-fear-that-trump-has-barred-key-federal-workers-from-speaking-to-them/?tid=sm_tw&utm_term=.d0f9cdc1cb17.



disclosure of information to the public. We therefore seek information about any recent guidance or directives regarding disclosure of information by federal agencies.

Requested Records

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

1. All FWS records containing memoranda, policies, rules, protocols, restrictions, directives, guidance, or other guidelines addressing the provision of information to representatives of the press or media by employees of FWS (including but not limited to responses to requests for information or other communication). This request includes any such directives or guidance issued internally by FWS or issued to FWS by the White House or any other office.
2. All FWS records containing memoranda, policies, rules, protocols, restrictions, directives, guidance, or other guidelines addressing the provision of information to Congress, including members or staff, by employees of FWS (including but not limited to responses to requests for information or other communication). This request includes any such directives or guidance issued internally by FWS or issued to FWS by the White House or any other office.

Please provide all responsive records from January 20, 2017, through the date the search is conducted.

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.”⁴ 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.”⁵ 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.”⁶ Further, “the withholding agency must supply ‘a relatively detailed

⁴ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁵ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁶ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

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.”⁷

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.⁸ 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, FWS 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 FWS 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 43 C.F.R. § 2.45(a), 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.⁹ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁰

Disclosure of the requested information is in the public interest because it is “likely to contribute to public understanding” of “the operations or activities of the Federal government.”¹¹ Transparency in government is essential to a functioning democracy. Similarly, our democratic system of checks and balances depends on Congress being able to get information about the activities of the

⁷ *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)).

⁸ *Mead Data Central*, 566 F.2d at 261.

⁹ 43 C.F.R. § 2.45(a)(1).

¹⁰ 43 C.F.R. § 2.45(a)(2).

¹¹ 43 C.F.R. § 2.48(a)(1)-(4).

Executive branch of government. If federal agencies have issued any guidance or directives regarding whether and how they should disclose information to the press or in response to congressional inquiries—or if the White House has issued such guidance to the agencies—it is essential for the public to know so that it can utilize other tools (such as Freedom of Information Act requests) to solicit information from those agencies. Among other things, such directives could improperly chill whistleblowers from coming forward, which is of critical importance.

This request is primarily and fundamentally for non-commercial purposes.¹² 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 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 and promote their availability on social media platforms, such as Facebook and Twitter.¹³ One example of American Oversight’s demonstrated public disclosure of documents and creation of editorial content is in its recently launched “Audit the Wall” effort, 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.¹⁴

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,



Austin R. Evers
Executive Director
American Oversight

¹² 43 C.F.R. § 2.48(b)(1)-(3).

¹³ American Oversight currently has over 10,700 page likes on Facebook, and over 27,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 24, 2017); American Oversight (@weareoverwsight), TWITTER (last visited Apr. 24, 2017).

¹⁴ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.