



March 14, 2018

**VIA ONLINE PORTAL**

Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
1425 New York Avenue NW, Suite 11050  
Washington, DC 20530-0001  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear Ms. Day:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

On March 13, 2018, Attorney General Jeff Sessions addressed members of the federal judiciary at the Judicial Conference.<sup>1</sup> The event was closed press, and DOJ has not released Attorney General Sessions's remarks.<sup>2</sup> American Oversight submits this request to learn what the nation's chief law-enforcement officer said to the leaders of the third branch of the federal government.

**Requested Records**

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

1. A copy of the prepared remarks, talking points, or other materials used by Attorney General Sessions for his remarks at the meeting of the Judicial Conference on March 13, 2018.
2. A copy of the section of Attorney General Sessions's briefing book for March 13, 2018, preparing him for his attendance at and appearance before the Judicial Conference.

In light of the discrete nature of this search and the public-facing nature of the responsive records, American Oversight anticipates that this request will be assigned to the Simple track and a response will be provided promptly.

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<sup>1</sup> Zoe Tillman (@ZoeTillman), TWITTER (Mar. 13, 2018, 2:19 PM), <https://twitter.com/ZoeTillman/status/973624569398427648>.

<sup>2</sup> Zoe Tillman (@ZoeTillman), TWITTER (Mar. 13, 2018, 2:47 PM), <https://twitter.com/ZoeTillman/status/973631684947206144>.



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).

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>4</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.

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 DOJ 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 28 C.F.R. § 16.10(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.<sup>5</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>6</sup>

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

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

<sup>4</sup> *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

<sup>5</sup> 28 C.F.R. § 16.10(k)(2).

<sup>6</sup> *Id.*

operations or activities of the government.”<sup>7</sup> President Trump has repeatedly criticized both his attorney general,<sup>8</sup> members of the federal judiciary,<sup>9</sup> and the judicial branch itself.<sup>10</sup> Attorney General Sessions is the nation’s leading law enforcement officer and one of the highest-ranking members of President Trump’s cabinet. Particularly in light of the attorney general’s recent criticisms of federal judges, what message he delivered to a co-equal branch of the federal government on behalf of himself, his department, and his president are of significant public interest.<sup>11</sup> American Oversight is committed to transparency and makes the responses agencies provide in response to FOIA requests publicly available. As noted, 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.<sup>12</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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>13</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of

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<sup>7</sup> 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)–(B).

<sup>8</sup> Jonathan Allen, *Why Attorney General Jeff Sessions Survives Trump’s Wrath*, NBC NEWS (Jan. 7, 2018, 7:58 AM), <https://www.nbcnews.com/politics/politics-news/why-attorney-general-jeff-sessions-survives-trump-s-wrath-n835251>; Rebecca Ballhaus, *Trump Again Criticizes Jeff Sessions over Russia Probe*, WALL ST. J. (Sept. 25, 10:07 AM), <https://www.wsj.com/articles/trump-again-criticizes-jeff-sessions-over-russia-probe-1506434848>; Josh Gerstein & Cristiano Lima, *Sessions Defends Himself After Trump Bashed Him on Twitter*, POLITICO (Feb. 28, 2018, 2:28 PM), <https://www.politico.com/story/2018/02/28/trump-criticize-sessions-inspector-general-430620>.

<sup>9</sup> Alan Fram & Ken Thomas, *Trump Criticizes Federal Judge Blocking Him on Immigration*, ASSOCIATED PRESS (Jan. 10, 2018, 11:35 AM), <http://www.chicagotribune.com/news/nationworld/politics/ct-trump-immigration-dreamers-20180110-story.html>; Kristine Phillips, *All the times Trump Personally Attacked Judges – and Why His Tirades Are ‘Worse than Wrong’*, WASH. POST, Apr. 26, 2017, [https://www.washingtonpost.com/news/the-fix/wp/2017/04/26/all-the-times-trump-personally-attacked-judges-and-why-his-tirades-are-worse-than-wrong/?utm\\_term=.7a7682fb380c](https://www.washingtonpost.com/news/the-fix/wp/2017/04/26/all-the-times-trump-personally-attacked-judges-and-why-his-tirades-are-worse-than-wrong/?utm_term=.7a7682fb380c).

<sup>10</sup> *In His Own Words: The President’s Attacks on the Courts*, BRENNAN CTR. FOR JUSTICE, June 5, 2017, <https://www.brennancenter.org/analysis/his-own-words-presidents-attacks-courts>.

<sup>11</sup> Brent D. Griffiths, *Sessions Criticizes Federal Judges for Slowing Trump’s National Agenda*, POLITICO (Mar. 10, 2018, 9:21 AM), <https://www.politico.com/story/2018/03/10/jeff-sessions-federal-judges-trump-agenda-453116>.

<sup>12</sup> 28 C.F.R. § 16.10(k)(iii)(A)–(B).

<sup>13</sup> American Oversight currently has approximately 11,800 page likes on Facebook and 41,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 14, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 14, 2018).

editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,<sup>14</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>15</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>16</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 DOJ 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 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

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<sup>14</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>15</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>16</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).