



July 14, 2017

**VIA ONLINE PORTAL**

U.S. Department of Housing and Urban Development  
Freedom of Information Act Office  
451 7<sup>th</sup> Street SW, Room 10139  
Washington, DC 20410-3000  
Submitted via Online Portal

**Re: Freedom of Information Act Request**

Dear FOIA Public Liaison:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Department of Housing and Urban Development (HUD), 24 C.F.R. Part 15, 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. This accountability is essential at agencies such as HUD, which administers tens of billions of dollars in federal funds on programs that invest in community development across the country and help millions of low-income Americans afford housing.<sup>1</sup> Many of President Trump's family members, including his nephew, Fred Trump III, work in the real estate industry and so have financial interests that can be affected by HUD decisions.<sup>2</sup> American Oversight seeks documents that will shed light on the influence that the Trump family and its interests exert on HUD's programs, policies, and activities.

**Requested Records**

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

1. All communications between (a) Ben Carson, Chief of Staff Sheila Greenwood, Deputy Chief of Staff Deana Bass, Deputy Chief of Staff Hunter Kurtz, any other political

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<sup>1</sup> See, e.g., Yamiche Alcindor, *Ben Carson Is Confirmed as HUD Secretary*, N.Y. TIMES, Mar. 2, 2017, [https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?\\_r=0](https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?_r=0); U.S. DEPT. OF HOUSING AND URBAN DEV., PROGRAMS OF HUD: MAJOR MORTGAGE, GRANT, ASSISTANCE, AND REGULATORY PROGRAMS (2016), <https://portal.hud.gov/hudportal/documents/huddoc?id=HUDPrograms2016.pdf>.

<sup>2</sup> Press Release, Colliers International, Colliers International Taps Industry Leader Fred Trump as Executive Director in New York City (Dec. 5, 2016), <http://www.colliers.com/en-us/newyorkcity/about/media/2016/colliers-international-taps-industry-leader-fred-trump-as-executive-director-in-new-york-city>.



appointees or SES staff in the Office of the Secretary, or Lynne Patton, Regional Administrator, Region II and (b) Fred Trump III, any person acting on behalf of Fred Trump III, or any employee, representative, or agent of Colliers International.

2. All calendar entries for Ben Carson, Chief of Staff Sheila Greenwood, Deputy Chief of Staff Deana Bass, Deputy Chief of Staff Hunter Kurtz, any other political appointees or SES staff in the Office of the Secretary, or Lynne Patton, Regional Administrator, Region II reflecting (a) meetings attended by Fred Trump III, any person acting on behalf of Fred Trump III, or any employee, representative, or agent of Colliers International, or (b) meeting invitations sent to or received from Fred Trump III, any person acting on behalf of Fred Trump III, or any employee, representative, or agent of Colliers International. For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars—we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.
3. Any communications involving Ben Carson, Chief of Staff Sheila Greenwood, Deputy Chief of Staff Deana Bass, Deputy Chief of Staff Hunter Kurtz, any other political appointees or SES staff in the Office of the Secretary, or Lynne Patton, Regional Administrator, Region II relating to the application of any ethics statute, rule, regulation, policy, or procedure to communications or meetings with Fred Trump III, any person acting on behalf of Fred Trump III, or any employee, representative, or agent of Colliers International.

Please provide all responsive records from March 2, 2017, to the date the search is conducted.

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 your agency 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>3</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>4</sup>

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 HUD’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.**<sup>5</sup> 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 HUD’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that HUD 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”

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<sup>3</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>4</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>5</sup> 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>.

or “disclosure is prohibited by law.”<sup>6</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>7</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>8</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>9</sup>

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>10</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, HUD 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 HUD 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.

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<sup>6</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>7</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>8</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>9</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)).

<sup>10</sup> *Mead Data Central*, 566 F.2d at 261.

## Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 24 C.F.R. § 15.106(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 operations and activities by the general public in a significant way.<sup>11</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>12</sup>

Disclosure of the requested records is “likely to contribute significantly to public understanding” of government operations and activities.<sup>13</sup> Housing and community development policies affect millions of Americans across the country.<sup>14</sup> The records American Oversight seeks reflect communications and meetings between government officials and individuals or firms with a vested interest in the policies and programs those officials oversee, which have “a direct and clear” connection to “identifiable operations or activities of the Federal Government” within the purview of those officials.<sup>15</sup> These records relate to non-public operations or activities of senior agency officials with substantial decision-making responsibility within HUD and will be “meaningfully informative about” those operations or activities.<sup>16</sup> As described in more detail below, American Oversight will use its public website and social media accounts to ensure the disclosed records “contribute to the understanding of a reasonably broad audience of persons interested in” or affected by the activities these records memorialize.<sup>17</sup> In sum, the requested records would provide significant new understanding of the influence of outside interests—in particular, those of the family of the President of the United States—on operations and decision-making at the most senior level of an agency responsible for assisting millions of American households and investing in communities across the country.<sup>18</sup>

This request is primarily and fundamentally for non-commercial purposes.<sup>19</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

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<sup>11</sup> 24 C.F.R. § 15.106(k)(1)-(2).

<sup>12</sup> 24 C.F.R. § 15.106(k)(1), (3).

<sup>13</sup> 24 C.F.R. § 15.106(k)(1)(i).

<sup>14</sup> See, e.g., Yamiche Alcindor, *Ben Carson Is Confirmed as HUD Secretary*, N.Y. TIMES, Mar. 2, 2017, [https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?\\_r=0](https://www.nytimes.com/2017/03/02/us/politics/ben-carson-housing-urban-development.html?_r=0); U.S. DEPT. OF HOUSING AND URBAN DEV., PROGRAMS OF HUD: MAJOR MORTGAGE, GRANT, ASSISTANCE, AND REGULATORY PROGRAMS (2016), <https://portal.hud.gov/hudportal/documents/huddoc?id=HUDPrograms2016.pdf>.

<sup>15</sup> 24 C.F.R. § 15.106(k)(2)(i).

<sup>16</sup> 24 C.F.R. § 15.106(k)(2)(ii).

<sup>17</sup> 24 C.F.R. § 15.106(k)(2)(iii).

<sup>18</sup> 24 C.F.R. § 15.106(k)(2)(iv).

<sup>19</sup> 24 C.F.R. § 15.106(k)(1)(ii), (3)(i)-(ii).

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>20</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,<sup>21</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>22</sup> 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.<sup>23</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 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 Beth France at [foia@americanoversight.org](mailto: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

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<sup>20</sup> 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).

<sup>21</sup> *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

<sup>22</sup> *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

<sup>23</sup> *Audit the Wall*, AMERICAN OVERSIGHT, [www.auditthewall.org](http://www.auditthewall.org).