



March 29, 2018

**VIA ELECTRONIC MAIL AND ONLINE PORTALS**

Alexis Graves  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 428-W, Whitten Building  
Washington, DC 20250-0706  
[USDAFOIA@ocio.usda.gov](mailto:USDAFOIA@ocio.usda.gov)

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
U.S. Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, D.C. 20230  
Via FOIAOnline

Council on Environmental Quality  
Freedom of Information Officer  
722 Jackson Place NW  
Washington, DC 20503  
[efoia@ceq.eop.gov](mailto:efoia@ceq.eop.gov)

U.S. Citizenship and Immigration Services  
National Records Center  
FOIA/PA Office  
P.O. Box 648010  
Lee's Summit, MO 64064-8010  
[uscis.foia@uscis.dhs.gov](mailto:uscis.foia@uscis.dhs.gov)

OSD/JS FOIA Requester Service Center  
Chief, Ms. Stephanie Carr  
Office of Freedom of Information  
U.S. Department of Defense  
1155 Defense Pentagon  
Washington, DC 20301-1155  
[whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil](mailto:whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil)

U.S. Department of Education  
ATTN: FOIA Public Liaison  
Office of Management  
Office of the Chief Privacy Officer  
400 Maryland Avenue SW, LBJ 2E320  
Washington, DC 20202-4536  
[EDFOIAManager@ed.gov](mailto:EDFOIAManager@ed.gov)

FOIA Requester Service Center  
U.S. Department of Energy  
1000 Independence Avenue SW  
Mail Stop MA-46  
Washington, DC 20585  
[foia-central@hq.doe.gov](mailto:foia-central@hq.doe.gov)

Records, FOIA, and Privacy Branch  
Office of Environmental Information  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2822T)  
Washington, DC 20460  
Via FOIAOnline

FEMA Information Management Division  
FOIA Request  
500 C Street SW, Mailstop 3172  
Washington, DC 20472  
[fema-foia@fema.dhs.gov](mailto:fema-foia@fema.dhs.gov)

U.S. General Services Administration  
FOIA Requester Service Center (H1F)  
1800 F Street NW, Room 7308  
Washington, DC 20405-0001  
Via FOIAOnline



Michael Marquis  
Freedom of Information Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue SW  
Washington, DC 20201  
[FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

The Privacy Office  
U.S. Department of Homeland Security  
245 Murray Lane SW  
STOP-0655  
Washington, D.C. 20528-0655  
[foia@hq.dhs.gov](mailto:foia@hq.dhs.gov)

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

U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12<sup>th</sup> Street SW, Stop 5009  
Washington, DC 20536-5009  
[ICE-FOIA@dhs.gov](mailto:ICE-FOIA@dhs.gov)

Clarice Julka  
Office of the Secretary  
U.S. Department of the Interior  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240  
[os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov)

FOIA/PA Mail Referral Unit  
U.S. Department of Justice  
Room 115  
LOC Building  
Washington, DC 20530-0001  
[MRUFOIA.Requests@usdoj.gov](mailto:MRUFOIA.Requests@usdoj.gov)

Office of the Solicitor  
Division of Management and Administrative  
Legal Services  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room N-2420  
Washington, DC 20210  
[foiarequests@dol.gov](mailto:foiarequests@dol.gov)

Kathy Ray  
U.S. Department of Transportation  
1200 New Jersey Avenue SE  
W94-122  
Washington, DC 20590  
[ost.foia@dot.gov](mailto:ost.foia@dot.gov)

FOIA Request  
Department of the Treasury  
Washington, DC 20220  
[treasfoia@treasury.gov](mailto:treasfoia@treasury.gov)

U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
(005R1C) VACO  
Washington, DC 20420  
[vacofoiaservice@va.gov](mailto:vacofoiaservice@va.gov)

FOIA Officer  
Office of Management and Budget  
1800 G Street NW  
Washington, DC 20503  
[OMBFOIA@omb.eop.gov](mailto:OMBFOIA@omb.eop.gov)

FOIA Officer  
Office of Science and Technology Policy  
1650 Pennsylvania Avenue NW  
Washington, DC 20504  
[ostpfoia@ostp.eop.gov](mailto:ostpfoia@ostp.eop.gov)

USTR FOIA Office, GSD/RDF  
Attn: Chief FOIA Officer, Janice Kaye  
Office of the U.S. Trade Representative  
Anacostia Naval Annex, Bldg. 410/Door 123,  
250 Murray Lane SW  
Washington, DC 20509  
[FOIA@ustr.eop.gov](mailto:FOIA@ustr.eop.gov)

Office of FOIA Services  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-2736  
Via Online form

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

Chief, FOIA/Privacy Act Office  
U.S. Small Business Administration  
409 3rd Street SW, 8th Floor  
Washington, DC 20416  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records. The records requested herein may reside in multiple components or offices within your agency. We ask that you coordinate this request across your agency in your role as the agency's FOIA contact.

Politico recently reported that conservative activists and high-level Trump administration officials expressed concern about the "loyalty" of career civil servants at the State Department, and even explored ways to "purge" some of those career employees from their positions.<sup>1</sup> American Oversight seeks to determine whether similar conversations occurred at other agencies.

**Requested Records**

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

All communications by political appointees containing any of the following terms:

- 1) Holdover(s)
- 2) Turncoat(s)
- 3) Leak\*
- 4) Troublemaker(s)
- 5) "Deep state"
- 6) Embed\*
- 7) Burrow\*
- 8) "Clean\* house"
- 9) Cleans\*

---

<sup>1</sup> Nahal Toosi, *Emails Reveal Conservative Alarm Over 'Obama Holdovers' in Trump Administration*, POLITICO (Mar. 15, 2018, 12:28 PM), <https://www.politico.com/story/2018/03/15/emails-trump-administration-alarm-over-obama-holdovers-465528>.

- 10) Cleaning
- 11) Loyal \*
- 12) Purge \*
- 13) Cheerleader(s)
- 14) Sabotage
- 15) “Obama person”
- 16) “Obama people”
- 17) Anti-Trump
- 18) Undermin \*
- 19) Plant \*
- 20) Mole \*

The use of the \* symbol is intended to indicate that the agency will search for variations on that word containing any subsequent combination of letters, such that the search for “leak\*” would return instances of leak, leaks, leaker, leaked, leaking, etc.

American Oversight seeks all records from January 20, 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>2</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;**

---

<sup>2</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).

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>3</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 your agency’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>4</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 your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency 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.”<sup>5</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

---

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

<sup>5</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

actually exempt under FOIA.”<sup>6</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>7</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>8</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>9</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, you are 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 hopes to 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 your agency’s implementing regulations, 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.

---

<sup>6</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>7</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>8</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>9</sup> *Mead Data Central*, 566 F.2d at 261.

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 activities of the government. The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public's business. An independent civil service is vital to the functioning of our democratic system, in which leadership changes hands as often as every four years, but the work of the people must continue unabated throughout those transitions of power. The prospect of politically motivated firings of career employees is very troubling. Indeed, the recent reporting by Politico described above resulted in an inquiry by Elijah Cummings, the Ranking Member of the House Committee on Oversight and Government Reform, to evaluate the scope of this problem.<sup>10</sup> The public deserves to know the extent to which the Trump administration is politicizing even career civil service jobs.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. 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>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,<sup>12</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>13</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and

---

<sup>10</sup> See Letter from Elijah E. Cummings, Ranking Member, Comm. on Oversight and Gov't Reform et al., to John F. Kelly, Chief of Staff, White House, et al. (Mar. 15, 2018), <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-03-15.EEC%20Engel%20to%20WH%20%26%20State.pdf>.

<sup>11</sup> American Oversight currently has approximately 11,800 page likes on Facebook and 41,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 27, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 27, 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>.

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 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 me at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5245. 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,



Sara Kaiser Creighton  
Counsel  
American Oversight

---

<sup>14</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.