



April 25, 2017

VIA FACSIMILE

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208
(202) 261-8579

Re: Expedited 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 the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

On April 4, ShareAmerica¹ posted an article titled “Mar-a-Lago: The Winter White House.”² The post referred to the property as President Donald Trump’s “Florida estate,” noted that Mr. Trump “opened the estate to dues-paying members of the public,” and described Mr. Trump as “a real-estate magnate.”³ On April 5, the story was reposted by several other components within State.⁴ Moreover, it appears that the U.S. Mission to the United Kingdom even uses “Mar-a-Lago” as a blog “tag.”⁵ On April 24, public attention was drawn to the State materials as Twitter posts began to publicize the links.⁶ The State Department removed the ShareAmerica article a few hours after the

¹ “ShareAmerica is the U.S. Department of State’s platform for sharing compelling stories and images that spark discussion and debate on important topics like democracy, freedom of expression, innovation, entrepreneurship, education, and the role of civil society.” *About Us*, SHAREAMERICA, <https://share.america.gov/about-us/> (last visited Apr. 24, 2017).

² Leigh Hartman, *Mar-a-Lago: The Winter White House*, SHAREAMERICA, Apr. 4, 2017, <https://share.america.gov/mar-a-lago-winter-white-house/> (last visited Apr. 24, 2017).

³ *Id.*

⁴ U.S. Department of State: Economic & Business Affairs (@EconAtState), FACEBOOK (Apr. 5, 2017, 1:30 PM), <https://www.facebook.com/EconAtState/posts/1386160144810068>; U.S. Embassy-Tirana, (@usembassytirana), FACEBOOK (Apr. 5, 2017, 1:00 PM), <https://www.facebook.com/usembassytirana/posts/10154547231765838>; U.S. Mission to the United Kingdom, *Mar-a-Lago: The Winter White House*, U.S. EMBASSY & CONSULATES IN THE UNITED KINGDOM, Apr. 5, 2017, <https://uk.usembassy.gov/mar-lago-winter-white-house/>.

⁵ <https://uk.usembassy.gov/tag/mar-a-lago/>.

⁶ See Eric Lipton (@EricLiptonNYT), TWITTER (Apr. 24, 2017, 2:57 PM), <https://twitter.com/EricLiptonNYT/status/856582802560749568>; Josh Schwerin, (@JoshSchwerin), TWITTER (Apr. 24, 2017, 2:03 PM),



outrage began.⁷ Questions remain, however, as to the origin of the initial ShareAmerica story regarding Mar-a-Lago.

Requested Records

American Oversight requests that State produce the following within twenty business days and seeks expedited review of this request for the reasons identified below:

1. All communications related to the development of the story idea and decision to draft and to post the April 4, 2017 article to ShareAmerica. (A copy of the article as initially posted is attached here as Attachment A.)
2. Records sufficient to indicate all editorials standards or protocols in place at ShareAmerica since January 20, 2017, regarding whether and how to discuss Trump properties, both in the United States and abroad.
3. All communications related to the decision to repost the April 4, 2017 ShareAmerica article by the Bureau of Economic and Business Affairs, the U.S. Embassy in Albania, and the U.S. Embassy & Consulates in the United Kingdom. (Copies of these posts are attached here in Attachment B.)
4. All communications related to the decision to create and employ a “Mar-a-Lago” tag on the blog of the U.S. Embassy & Consulates in the United Kingdom.⁸
5. All communications related to the decision to pull down the April 4, 2017 ShareAmerica article, as well as the decision to pull down repostings of the article by other State components.
6. All communications related to the development of messaging on how to respond to public inquires regarding the April 4, 2017 ShareAmerica article—including, specifically, the statement reading: “The intention of the article was to inform the public about where the

<https://twitter.com/JoshSchwerin/status/856569274529435648>; Ron Wyden (@RonWyden), TWITTER (Apr. 24, 2017, 2:46 PM), <https://twitter.com/RonWyden/status/856580066389708801>.

⁷ Marilyn Geewax & Jackie Northam, *State Department Removes Webpage Featuring Trump’s For-Profit Club, Mar-a-Lago*, NPR (Apr. 24, 2017, 7:30 PM), <http://www.npr.org/2017/04/24/525444099/state-department-website-features-trumps-for-profit-club-mar-a-lago>; John Hudson, *The Trump Administration Just Deleted Its Webpage Promoting Trump’s Private Club*, BUZZFEED NEWS (Apr. 24, 2017, 6:50 PM), https://www.buzzfeed.com/johnhudson/the-trump-administration-just-deleted-its-webpage-promoting?utm_term=.ngzKXdzge#.kd6AqdavV.

⁸ As of April 25, although the April 4 ShareAmerica article has been removed, the embassy still uses the tag for the April 7, 2017 post titled “Statement by President Trump on Syria.” See <https://uk.usembassy.gov/tag/mar-a-lago/>.

president has been hosting world leaders. We regret any misperception and have removed the post.”⁹

The search for responsive records should include individuals and locations where records are likely to exist, including but not limited to: the Office of the Secretary, the Office of Public Affairs, the Bureau of International Information Programs, Leigh Hartman, the Bureau of Economic and Business Affairs, the U.S. Embassy in Albania, and the U.S. Embassy & Consulates in the United Kingdom.

Please provide all responsive 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 State 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.¹⁰ **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.**¹¹

⁹ ShareAmerica, *Mar-a-Lago: The Winter White House*, SHAREAMERICA, Apr. 4, 2017, <https://share.america.gov/mar-a-lago-winter-white-house/> (last visited Apr. 25, 2017).

¹⁰ 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).

¹¹ 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

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 State’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.**¹² 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 State’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that State 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.”¹³ 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.”¹⁴ 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.”¹⁵ 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.’”¹⁶

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)).

¹² 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>.

¹³ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹⁴ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹⁵ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹⁶ *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.¹⁷ 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, State 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 State 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 22 C.F.R. § 171.16(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.¹⁸ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁹

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 activities.²⁰ Records revealing the reasons why tax dollars are being used to promote the financial interests of the president and his family are quintessentially in the public interest. The records American Oversight seeks would reveal how State came to decide and to believe it was

¹⁷ *Mead Data Central*, 566 F.2d at 261.

¹⁸ 22 C.F.R. § 171.16(a)(1).

¹⁹ 22 C.F.R. § 171.16(a)(2).

²⁰ 22 C.F.R. § 171.16(a)(1)(i)-(iv).

acceptable to publish a publicity article about the president's for-profit club—a subject for which there is already a broadly established audience.²¹

This request is primarily and fundamentally for non-commercial purposes.²² 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 the availability on social media platforms, such as Facebook and Twitter.²³ 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.²⁴

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 22 C.F.R. § 171.11(f)(2), American Oversight requests that State expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity. The requested records would inform the public of the origin of the initial ShareAmerica story regarding Mar-a-Lago. The public outcry has raised real questions as to the propriety of the posting. Why was the article posted at all in light of obvious financial conflicts?²⁵

²¹ Allison, *infra* note 25; Atwood, *infra* note 28; Geewax & Jackie, *supra* note 7; Greenwood, *infra* note 25; Gardiner Harris, *U.S. Embassies Post Article Extolling Trump's Mar-a-Lago*, N.Y. TIMES, Apr. 24, 2017, <https://www.nytimes.com/2017/04/24/us/politics/mar-a-lago-winter-white-house-state-department.html>; Hudson, *supra* note 7; Weissman, *infra* note 25.

²² 22 C.F.R. § 171.16(a)(2)(i)-(iii).

²³ American Oversight currently has over 10,700 page likes on Facebook, and over 28,200 on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 25, 2017); American Oversight (@weareoversight), TWITTER (last visited Apr. 25, 2017).

²⁴ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²⁵ Bill Allison, *Trump's 'Winter White House' Mar-a-Lago Showcased on State Department Site*, BLOOMBERG (Apr. 24, 2017, 9:14 PM), <https://www.bloomberg.com/news/articles/2017-04-24/trump-s-winter-white-house-mar-a-lago-showcased-on-u-s-site>; Max Greenwood, *GOP Rep: Mar-a-Lago Promotion on Government Site 'Shouldn't Have Happened'*, THE HILL, Apr. 25, 2017, <http://thehill.com/blogs/blog-briefing-room/news/330377-gop-rep-mar-a-lago-promotion-on-government-site-shouldnt-have>; Cale Guthrie Weissman, *Ethics Expert Cries Foul at State Department's Promotion of Mar-a-Lago*, FAST COMPANY (Apr. 24, 2017, 5:50 PM),

Why were tax dollars used to promote Mr. Trump's for-profit commercial resort?²⁶ In what way was the posting tied to ShareAmerica's mission?²⁷ In light of ShareAmerica's targeting of stories to international readers, is this a solicitation of foreign funds to Trump properties in violation of the Emoluments Clause?²⁸ The records American Oversight requests would inform the public of the origins of the ShareAmerica article and provide answers to the questions that have been raised. Moreover, given the overwhelming number and value of Trump properties in the United States and around the world²⁹ and the threat of another incident promoting Trump enterprises, it is necessary for the public to know immediately State's reasoning in using taxpayer dollars to promote Mar-a-Lago.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,³⁰ American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."³¹ American Oversight will use the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.³² 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.³³

Accordingly, American Oversight's request satisfies the criteria for expedition.

<https://www.fastcompany.com/40411876/ethics-expert-cries-foul-at-state-departments-promotion-of-mar-a-lago>.

²⁶ Ron Wyden, *supra* note 6.

²⁷ See Geewax & Northam, *supra* note 7.

²⁸ Kylie Atwood, *State Department Removes Mar-a-Lago Post Amid Outcry*, CBS NEWS (Apr. 25, 2017, 10:42 AM), <http://www.cbsnews.com/news/state-department-removes-mar-a-lago-post-amid-outcry/>.

²⁹ Thomas Burr, *Chaffetz Wants to Know: What Will Happen with Money Trump's Businesses Earn from Foreign Governments?*, SALT LAKE TRIB., Apr. 22, 2017, <http://www.sltrib.com/news/5204345-155/chaffetz-requests-trump-lawyer-explain-plan>; Nick Penzenstadler et al., *Trump Condos Worth \$250 Million Pose Potential Conflict*, USA TODAY (Apr. 20, 2017, 11:20 PM), <https://www.usatoday.com/story/news/2017/04/20/trump-owns-250m-condos-and-you-could-buy-one/100566302/>

³⁰ See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30-31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

³¹ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³² See *supra* note 23.

³³ See *supra* note 24.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with State 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 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,

A handwritten signature in blue ink, appearing to read 'MS', is centered below the word 'Sincerely,'.

Melanie Sloan
Senior Advisor
American Oversight

Attachments