



May 31, 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
FAX: (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.

President Donald Trump nominated Rex Tillerson, former CEO of ExxonMobil, to be Secretary of State in December 2016. On January 3, 2017, Mr. Tillerson wrote a letter to the State Department's Office of the Legal Adviser in which he stated: "For a period of one year after my resignation from ExxonMobil, I will not participate personally and substantially in any particular matter involving specific parties in which I know that ExxonMobil is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."¹

Between May 19 and May 25, 2017, Secretary Tillerson accompanied President Trump on his trip to several Middle Eastern countries, including Saudi Arabia. During that trip, ExxonMobil and the Saudi state-owned Saudi Basic Industries Corporation (SABIC) signed a deal relating to a proposed co-owned natural gas refinery in the Gulf of Mexico, known as Gulf Coast Growth Ventures.² The agreement was signed at a ceremony at the Al-Yamamah Palace with ExxonMobil

¹ See Letter from Rex W. Tillerson to Katherine D. McManus, Designated Agency Ethics Official, Department of State (Jan. 3, 2017),

<https://assets.documentcloud.org/documents/3254118/Tillerson-Ethics-Undertakings-and-Financial.pdf>.

² See Steve Horn, *Tillerson Present as Exxon Signed Major Deal with Saudi Arabia During Trump Visit*, DESMOG (May 30, 2017, 4:58PM), <https://www.desmogblog.com/2017/05/30/rex-tillerson-exxon-saudi-arabia-trump-visit-deal>; News Release, *ExxonMobil and SABIC Sign Agreement for Next Phase of Proposed U.S. Petrochemical Project*, EXXONMOBIL (May 20, 2017, 8:00AM), <http://news.exxonmobil.com/press-release/exxonmobil-and-sabic-sign-agreement-next-phase-proposed-us-petrochemical-project>.



CEO Darren Woods and SABIC CEO Yousef Al-Benyani in attendance.³ Recent reports have revealed that Mr. Tillerson also attended that ceremony.⁴

American Oversight seeks information to shed light on how Mr. Tillerson is comporting himself during his tenure as Secretary of State, including whether and to what extent he is abiding by his recusal into matters involving his former employer, ExxonMobil.

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. Any conflicts or ethics waivers or authorizations issued for Rex Tillerson, including authorizations pursuant to 5 C.F.R. § 2635.502.

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

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.”⁵ 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.”⁶ 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.”⁷ 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.’”⁸

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.⁹ Claims of nonsegregability must be made with the same degree of detail as required for

³ See Horn, *supra* note 2.

⁴ See Horn, *supra* note 2.

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

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

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

⁸ *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)).

⁹ *Mead Data Central*, 566 F.2d at 261.

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.¹⁰ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹¹

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.¹² The recent revelations that ExxonMobil signed a new deal with a Saudi-owned company during Mr. Tillerson’s visit to that country and that Mr. Tillerson attended a signing ceremony potentially related to that deal,¹³ raise questions about Mr. Tillerson’s conduct. The American public deserves to know whether Mr. Tillerson has complied with his recusal obligations, including whether and to what extent he has sought and/or received authorization to participate in matters involving ExxonMobil.

This request is primarily and fundamentally for non-commercial purposes.¹⁴ 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

¹⁰ 22 C.F.R. § 171.16(a)(1).

¹¹ 22 C.F.R. § 171.16(a)(2).

¹² 22 C.F.R. § 171.16(a)(1)(i)-(iv).

¹³ See Horn, *supra* note 2.

¹⁴ 22 C.F.R. § 171.16(a)(2)(i)-(iii).

activities, and to ensure the accountability of government officials. American Oversight uses the information it gathers, 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 our public website and promotes the availability on social media platforms, such as Facebook and Twitter.¹⁵ 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.¹⁶

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 recent revelations that ExxonMobil signed a new deal with a Saudi-owned company during Mr. Tillerson's visit to that country, and that Mr. Tillerson attended a signing ceremony potentially related to that deal,¹⁷ raise questions about whether and to what extent the nation's top diplomat is complying with his ethical obligations. It is imperative that the public get answers to those questions as soon as possible, either so that any outstanding ethical concerns may be addressed, or to reassure the public that Mr. Tillerson has taken the steps necessary to ensure that he has comported with his ethical obligations on this issue.

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,¹⁸ 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."¹⁹ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on our public website and promotes their availability on social

¹⁵ American Oversight currently has over 10,900 page likes on Facebook, and over 32,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 31, 2017); American Oversight (@weareoversight), TWITTER (last visited May 31, 2017).

¹⁶ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

¹⁷ See Horn, *supra* note 2.

¹⁸ 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).

¹⁹ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

media platforms, such as Facebook and Twitter.²⁰ 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.²¹

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

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 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,



Sara Kaiser Creighton
Counsel
American Oversight

²⁰ American Oversight currently has over 10,900 page likes on Facebook, and over 32,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 31, 2017); American Oversight (@weareoversight), TWITTER (last visited May 31, 2017).

²¹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.