



March 13, 2018

VIA ELECTRONIC MAIL

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

Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

The U.S. intelligence community has concluded that the Russian government carried out a campaign to influence the 2016 U.S. election.¹ The Russian campaign is reported to have included hacking of political party networks,² using fraudulent accounts on social media sites,³ and attempted hacking of 21 states' voter registration files or public election sites.⁴ Highlighting the urgency required to address the threat of Russian election interference, Director of National Intelligence Daniel Coats recently testified that Russia will likely attempt to influence the 2018 U.S. midterm elections.⁵

¹ See OFFICE OF THE DIR. OF NAT'L INTELLIGENCE, BACKGROUND TO "ASSESSING RUSSIAN ACTIVITIES AND INTENTIONS IN RECENT US ELECTIONS": THE ANALYTIC PROCESS AND CYBER INCIDENT ATTRIBUTION (Jan. 6, 2017), https://www.dni.gov/files/documents/ICA_2017_01.pdf.

² David E. Sanger & Scott Shane, *Russian Hackers Acted to Aid Trump in Election, U.S. Says*, N.Y. TIMES, Dec. 9, 2016, <https://www.nytimes.com/2016/12/09/us/obama-russia-election-hack.html>.

³ Scott Shane, *The Fake Americans Russia Created to Influence the Election*, N.Y. TIMES, Sep. 7, 2017, <https://www.nytimes.com/2017/09/07/us/politics/russia-facebook-twitter-election.html>.

⁴ Sari Horowitz et al., *DHS Tells States About Russian Hacking During 2016 Election*, WASH. POST, Sep. 22, 2017, https://www.washingtonpost.com/world/national-security/dhs-tells-states-about-russian-hacking-during-2016-election/2017/09/22/fd263a2c-9fe2-11e7-8ea1-ed975285475e_story.html?utm_term=.258dbed762fa.

⁵ Patricia Zengerle, *Top U.S. Intel Official Insists White House Engaged on Election Security*, REUTERS, Mar. 6, 2018, <https://www.reuters.com/article/us-usa-security/top-u-s-intel-official-insists-white-house-engaged-on-election-security-idUSKCN1GI287?il=0>.



Despite this pressing threat, public reports suggest that the Trump administration is not taking sufficient action to protect the integrity of U.S. elections. National Security Agency Director Admiral Michael Rogers has testified that President Trump has not ordered his agency to counter Russian hacking attacks at their origin.⁶ And, State has not expended any of the \$120 million Congress allocated for the agency's use in countering Russian influence efforts, despite Secretary Tillerson's recent acknowledgment that Russia is already working to meddle in the 2018 midterm elections.⁷

American Oversight seeks to determine whether the administration is taking action to protect the integrity of U.S. elections, particularly in light of the impending threat of interference in the 2018 midterm elections.

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:

All records reflecting communications (including but not limited to emails, email attachments, text messages, chat or Slack messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any responsive communications, summaries of any responsive communications, or other materials) between State and any member of Congress or congressional staff concerning (1) election security or integrity; (2) actual or potential foreign attempts to influence, affect, or hack U.S. elections or election systems; or (3) efforts to prevent future attempts to influence, affect or hack U.S. elections or election systems.

Please provide all responsive records from November 8, 2016, to the date of the search.

State is in the best position to determine the State components and offices that have records responsive to this request. However, public reporting indicates that, at a minimum, the following offices likely possess responsive records: (a) the Office of the Secretary, (b) the Office of the Deputy Secretary, (c) the Bureau of Legislative Affairs, (d) the Office of the Under Secretary for Public Diplomacy and Public Affairs and (e) the Global

⁶ David Welna, *NSA Chief: U.S. Response 'Hasn't Changed the Calculus' of Russian Interference*, NPR, Feb. 27, 2018, <https://www.npr.org/sections/thetwo-way/2018/02/27/589143771/nsa-chief-u-s-response-hasn-t-changed-the-calculus-of-russian-interference>.

⁷ Gardiner Harris, *State Dept. Was Granted \$120 Million to Fight Russian Meddling. It Has Spent \$0.*, N.Y. TIMES, Mar. 4, 2018, <https://www.nytimes.com/2018/03/04/world/europe/state-department-russia-global-engagement-center.html>; Doug Stanglin, *Russia Already Meddling in U.S. Midterm Elections, Tillerson Says*, USA TODAY (Feb. 7, 2018, 5:53 PM), <https://www.usatoday.com/story/news/world/2018/02/07/tillerson-russians-already-meddling-u-s-midterm-elections/314560002/>.

Engagement Center. American Oversight therefore requests that State search those five offices and components and any other offices and components that State determines are likely to contain responsive records.

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.⁸ **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.**⁹

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

⁸ 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).

⁹ 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)).

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.**¹⁰ 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."¹¹ 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."¹² 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."¹³ 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.'"¹⁴

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

¹⁰ 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>.

¹¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹³ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

¹⁴ *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)).

document.¹⁵ 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 a 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. First, 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.¹⁶ Second, the request is primarily and fundamentally for non-commercial purposes.¹⁷

Under the public interest requirement, FOIA requesters must satisfy four factors in sequence.¹⁸ American Oversight believes it has met these four factors for reasons set forth below.

The subject matter of the requested records specifically relates to the operations or activities of the government because State's efforts, or refusal to undertake efforts, to counter foreign interference in U.S. elections are clearly operations or activities of the federal government. State's communications with Congress are particularly relevant to State's reported failure to spend any of

¹⁵ *Mead Data Central*, 566 F.2d at 261.

¹⁶ 22 C.F.R. § 171.16(a)(1).

¹⁷ 22 C.F.R. § 171.16(a)(2).

¹⁸ *D.C. Technical Assistance Org. Inc., v. U.S. Dep't of Hous. and Urban Dev. (D.C. Technical Assistance)*, 85 F.Supp.2d 46, 48-49 (D.D.C. 2000) (requested documents will contribute to "greater understanding of government activities").

the \$120 million Congress directed to the department, particularly for use in its Global Engagement Center, to counter foreign election interference.¹⁹

The requested documents will be “likely to contribute” to an understanding of specific government operations because of their potential to shed light on State’s efforts to counter foreign interference in U.S. elections.²⁰

Additionally, American Oversight’s objective is to reveal to the public at large any information it receives related to its FOIA request for communications related to efforts to prevent or counter foreign interference or meddling in U.S. elections. American Oversight has the capacity to disseminate this information as it posts all records to its public websites and publishes analyses of its records. In the past, the organization has successfully informed the public of specific government activities and operations. As an example, American Oversight obtained Education Secretary DeVos’s calendar entries, which revealed Secretary DeVos’s frequent absences from office, staffing choices, and the influence of charter schools and for-profit colleges on the Education Department.²¹ The *New York Times* and CNN relied on American Oversight’s analyses to report on Secretary DeVos’s priorities within the Education Department.²²

Disclosure will contribute to a greater understanding on the part of the public at large on the adequacy of State’s efforts to protect the integrity of U.S. elections, an issue inarguably significant to American voters. Having such information would either instill public confidence in the electoral process or allow the American public to more effectively petition their government to improve efforts to safeguard U.S. elections.

Disclosure will “significantly” contribute to the public’s understanding of government activities or operations related to State’s efforts to counter foreign attempts to interfere in U.S. elections. 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.

¹⁹ Harris, *supra* note 7.

²⁰ *D.C. Technical Assistance*, 85 F.Supp.2d at 49. This second factor has two subparts: the requester’s objective to disseminate information to a large segment of the public, and the requester’s capacity to disseminate the requested information. *Id.*

²¹ *See Influence & Access at the Department of Education*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/unexcused-absences-devos>.

²² Eric Lipton, *Betsy DeVos’s School Schedule Shows Focus on Religious and Nontraditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; Gregory Wallace et. al., *What Betsy DeVos’s Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017 12:22 PM), <https://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

American Oversight's request is also primarily and fundamentally for non-commercial purposes.²³ 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 our public website and promote their availability on social media platforms, such as Facebook and Twitter.²⁴ 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, American Oversight promptly posted the records to its website²⁵ and published an analysis of what the records reflected about DOJ's process for ethics waivers.²⁶ As an additional 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.²⁷

Accordingly, American Oversight qualifies for a fee waiver.

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 because there is an urgency to inform the public concerning actual or alleged government activity, and American Oversight disseminates information to the public.

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.²⁸ The information American Oversight seeks concerns "a matter of a current

²³ 22 C.F.R. § 171.16(a)(2)(i)-(iii).

²⁴ American Oversight currently has approximately 11,800 page likes on Facebook and 41,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Mar. 13, 2018); American Oversight (@weareoversight), TWITTER (last visited Mar. 13, 2018).

²⁵ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

²⁶ *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>.

²⁷ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

²⁸ 22 C.F.R. § 171.11(f)(2).

exigency to the American public.”²⁹ As described above, U.S. national intelligence agencies have concluded that the Russian government used various methods to interfere the 2016 U.S. election.³⁰ Top national security officials have recently stated publicly that the Russian government will likely meddle in the fast-approaching 2018 midterm elections, and current U.S. efforts to protect against such meddling are inadequate.³¹ And Secretary Tillerson has stated that Russia is already attempting to interfere in the 2018 midterm elections.³²

The requested records concern the federal government’s efforts to address a threat to a cornerstone of American democracy: the integrity of U.S. elections. Congress viewed State as positioned to effectively participate in responding to foreign attempts to meddle in U.S. elections and directed \$120 million to the department for such efforts, and State appears to have decided not to undertake such efforts.³³ The American people urgently need to know—well in advance of the 2018 midterm elections—whether their government is adequately addressing threats to the integrity of those elections.

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.³⁴ Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,³⁵ 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.”³⁶ 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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.³⁷ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.³⁸

²⁹ *Al-Fayed v. Cent. Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001) (quoting H.R. Rep. No. 104-795, at 26 (1996), reprinted in 1996 U.S.C.C.A.N. 3448, 3469).

³⁰ See e.g., Sanger & Shane, *supra* note 2; Sanger, *supra* note 3.

³¹ Zengerle, *supra* note 5; Welna, *supra* note 6.

³² Stanglin, *supra* note 7.

³³ Harris, *supra* note 7.

³⁴ 28 C.F.R. § 16.5(e)(1)(ii).

³⁵ 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).

³⁶ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

³⁷ American Oversight currently has approximately 11,800 page likes on Facebook and 41,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Mar. 13, 2018); American Oversight (@weareoversight), TWITTER (last visited Mar. 13, 2018).

³⁸ See *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco>

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 Dan McGrath at foia@americanoversight.org or 202.897.4213. 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,



Melanie Sloan
Senior Advisor
American Oversight

[compliance](#); *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>; *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.