



July 14, 2017

VIA ELECTRONIC MAIL

Janice Kaye
Chief FOIA Officer
Office of the U.S. Trade Representative
Anacostia Naval Annex, Building 410/Door 123
250 Murray Lane SW
Washington, DC 20509
FOIA@ustr.eop.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations for the Office of the U.S. Trade Representative (USTR), 15 C.F.R. Part 2004, American Oversight makes the following request for records.

In April 2016, Ford Motor Co. announced that it was planning to build a \$1.6 billion plant in Mexico to build small cars.¹ Shortly after the 2016 presidential election, Ford announced that it had cancelled those plans, and would instead expand its plant in Flat Rock, Michigan.² Then-President-Elect Donald Trump was quick to take credit for Ford's decision.³ Despite that reversal, Ford later announced that it plans to manufacture its next-generation Ford Focus model in China, rather than in the United States or Mexico.⁴ American Oversight seeks to understand what role—if

¹ Brent Snively, *Ford to Invest \$1.6 Billion for New Plant in Mexico*, DETROIT FREE PRESS (Apr. 5, 2016, 9:02 PM), <http://www.freep.com/story/money/cars/ford/2016/04/05/ford-invest-16-billion-new-plant-mexico/82645712/>; Christina Rogers & In-Soo Nam, *Ford to Build Plant in Mexico for Small Car Production in 2018*, WALL ST. J., Apr. 5, 2016, <https://www.wsj.com/articles/ford-to-build-plant-in-mexico-for-small-car-production-in-2018-1459872299>.

² See *Ford Cancels a \$1.6 Billion Mexico Plant and Adds 700 Jobs in Michigan*, FORTUNE, Jan. 3, 2017, <http://fortune.com/2017/01/03/ford-cancels-mexico-plant-trump/>; *Ford to Scrap Mexico Plant, Invest in Michigan; CEO Cites Trump Policies*, FOX NEWS POLITICS (Jan. 3, 2017), <http://www.foxnews.com/politics/2017/01/03/ford-to-scrap-mexico-plant-invest-in-michigan-due-to-trump-policies.html>.

³ See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 3, 2017, 8:44 AM), <https://twitter.com/realdonaldtrump/status/816324295781740544> (“@DanScavino: Ford to scrap Mexico plant, invest in Michigan due to Trump policies”).

⁴ Bill Vlasic, *Ford Chooses China, Not Mexico, to Build Its New Focus*, N.Y. TIMES, June 20, 2017, <https://www.nytimes.com/2017/06/20/business/ford-focus-china-production.html>; Chris Isidore, *Ford to Build the Focus in China Instead of Mexico*, CNN MONEY (June 20, 2017, 4:10 PM), <http://money.cnn.com/2017/06/20/news/companies/ford-focus-china/index.html>.



any—the Trump administration played in Ford’s series of decisions regarding the location for production of its Focus.

Requested Records

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

- 1) All communications with any member of the Trump presidential campaign, the Trump transition team, or employees of the Trump White House regarding (a) Ford’s plan—and subsequent cancellation of the plan—to build a new production plant in San Luis Potosi, Mexico; (b) Ford’s consideration of where to manufacture its next-generation Ford Focus; (c) Ford’s eventual decision to shift production of its small cars (including the Focus) from the United States to China; or (d) the potential impact of any of the above decisions on U.S. jobs.

Please provide all responsive records from November 8, 2016, 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.⁵ 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**

⁵ 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).

official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁶

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.⁷ 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.”⁸ 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.”⁹ Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing

⁶ 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)).

⁷ 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>.

⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

the sought-after information.”¹⁰ 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.’”¹¹

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.¹² 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, your agency 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, we 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 15 C.F.R. § 2004.9(h), 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. Moreover, the request is primarily and fundamentally for non-commercial purposes.

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 the

¹⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹¹ *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)).

¹² *Mead Data Central*, 566 F.2d at 261.

operations or activities of the government.¹³ The requested records would reveal what efforts the Trump administration has taken—if any—to keep Ford’s valuable manufacturing jobs in this country, rather than being shifted overseas. The creation and maintenance of jobs in the U.S. market is one of the central drivers of the U.S. economy and a metric on which every administration is judged;¹⁴ the American people deserve to know what steps the Trump administration is taking to achieve that goal and whether (or not) those efforts have been effective.

This request is primarily and fundamentally for non-commercial purposes.¹⁵ 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.¹⁶ 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,¹⁷ 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.¹⁸ As another 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.¹⁹

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

¹³ 15 C.F.R. § 2004.9(h)(1)(i)-(iii).

¹⁴ See, e.g., John W. Schoen, *FINAL REPORT CARD: Here’s How Many Jobs Were Created Under Obama*, CNBC (Jan. 6, 2017, 4:17 PM), <http://www.cnbc.com/2016/07/18/obamas-record-on-jobs-versus-five-other-presidents.html>.

¹⁵ 15 C.F.R. § 2004.9(h)(1)(iv).

¹⁶ 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 12, 2017); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 12, 2017).

¹⁷ *Vetting the Nominees: Solicitor General Nominee Noel Francisco*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/our-actions/vetting-nominees-solicitor-general-nominee-noel-francisco>.

¹⁸ *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/news/francisco-travel-ban-learned-doj-documents>.

¹⁹ *Audit the Wall*, AMERICAN OVERSIGHT, www.auditthewall.org.

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,

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight