



September 17, 2018

**VIA ONLINE PORTAL & ELECTRONIC MAIL**

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**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

On July 30, 2018, the U.S. Department of Justice (DOJ) held a Religious Liberty Summit at which Attorney General Jeff Sessions announced the formation of a Religious Liberty Task Force, chaired by himself and co-chaired by the Acting Associate Attorney General Jesse Panuccio and the Assistant Attorney General for the Office of Legal Policy, Beth Williams.<sup>1</sup>

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<sup>1</sup> Attorney General Jeff Sessions, Remarks at Department of Justice's Religious Liberty Summit, (July 30, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit>.



As a letter from Jerrold Nadler, Ranking Member of the House Committee on the Judiciary, and Bobby Scott, Ranking Member of the House Committee on Education and the Workforce, notes, “the Task Force is being established in the wake of the Trump Administration’s various efforts to roll back important legal and civil rights for women, the LGBTQ community, and religious minorities.”<sup>2</sup> This troubling context is accompanied by the Attorney General’s remarks that suggest religious—implicitly Christian—groups in America face a serious threat from secularists: “A dangerous movement, undetected by many, is now challenging and eroding our great tradition of religious freedom....It must be confronted and defeated.”<sup>3,4</sup> American Oversight seeks records to shed light on Attorney General Sessions’s “religious liberty” agenda.

American Oversight seeks the following records in an effort to understand the context in which the DOJ’s Religious Liberty Task Force was established, including details about the DOJ’s Religious Liberty Summit held on July 30, 2018, information on how the decision to create a Task Force was made and communicated, as well as which outside groups were consulted.

### **Requested Records**

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

- 1) All records (including emails, email attachments, internal announcements, decision memos, or other correspondence) regarding the creation of the Religious Liberty Task Force.

In conducting this portion of the request, DOJ should search the following offices:

- a. The Office of the Attorney General
- b. The Office of the Associate Attorney General
- c. The Office of Legal Policy
- d. The Office of Public Affairs

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<sup>2</sup> Letter from Jerrold Nadler, Ranking Member, House Comm. on the Judiciary, and Bobby Scott, Ranking Member, House Comm. on Educ. & the Workforce, to Attorney General Jeff Sessions, U.S. Dep’t of Justice (Aug. 8, 2018), <https://democrats-judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/8.8%20JN%20BS%20Religious%20Liberty%20Letter%20%28002%29.pdf>.

<sup>3</sup> Attorney General Jeff Sessions, Remarks at Department of Justice’s Religious Liberty Summit, (July 30, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-department-justice-s-religious-liberty-summit>.

<sup>4</sup> Tara Isabella Burton, *Jeff Sessions Announces a Religious Liberty Task Force to Combat ‘Dangerous’ Secularism*, VOX (July 31, 2018, 12:10 PM), <https://www.vox.com/identities/2018/7/31/17631110/jeff-sessions-religious-liberty-task-force-memo-christian-nationalism>.

- 2) Records sufficient to identify the names and position titles of all individuals at DOJ who have served or are currently serving as members of the Religious Liberty Task Force.

In conducting this portion of the request, DOJ should search the following offices:

- a. The Office of the Deputy Attorney General
  - b. The front office of the Office of Public Affairs
  - c. The front office of the Civil Division
  - d. The front office of the Civil Rights Division
  - e. The front office of the Environment and National Resources Division
  - f. The front office of the Office of Legal Counsel
- 3) All records (including emails, email attachments, internal announcements, decision memos, or other correspondence) regarding the standards or guidance used for selecting members of the Religious Liberty Task Force.

In conducting this portion of the request, DOJ should search the following offices:

- a. The Office of the Deputy Attorney General
  - b. The front office of the Office of Public Affairs
  - c. The front office of the Civil Division
  - d. The front office of the Civil Rights Division
  - e. The front office of the Environment and National Resources Division
  - f. The front office of the Office of Legal Counsel
- 4) All records (including emails, internal announcements, or other correspondence) documenting past or planned engagement with the “public, religious communities, and religious liberty organizations to obtain feedback on compliance with the Religious Liberty Memorandum.”<sup>5</sup>

In conducting this portion of the request, DOJ should search the following offices:

- a. The Office of the Attorney General
- b. The Office of the Associate Attorney General
- c. The Office of Legal Policy
- d. The Office of Public Affairs

Please provide all records from October 6, 2017, through the date the search is conducted.

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

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<sup>5</sup> Memorandum from the Attorney General to the Heads of Department Components Regarding the Religious Liberty Task Force (July 30, 2018), <https://www.justice.gov/opa/speech/file/1083876/download>.

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>6</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; 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>7</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 DOJ’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>8</sup> Furthermore, agencies that have adopted the National Archives and Records Administration (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 DOJ’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that DOJ 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**

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<sup>6</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).

<sup>7</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>8</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>.

**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>9</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 actually exempt under FOIA.”<sup>10</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>11</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>12</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>13</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, DOJ 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 DOJ 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

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<sup>9</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>10</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>11</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>12</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>13</sup> *Mead Data Central*, 566 F.2d at 261.

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 28 C.F.R. § 16.10(k), 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.<sup>14</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>15</sup>

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 operations or activities of the government.”<sup>16</sup> The requested records are related to the operations or activities of the government because it concerns the allocation of DOJ resources to the promotion of religious interests, potentially elevating particular religious interests above others. There is significant interest in the subject of these records.<sup>17</sup> The requested records will help American Oversight and the general public understand specific government operations because of their potential to shed light on how DOJ intends to promote religious liberty and whether outside interests participated in shaping the DOJ Religious Liberty Task Force. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available. As noted, 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.

This request is primarily and fundamentally for non-commercial purposes.<sup>18</sup> 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>19</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

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<sup>14</sup> 28 C.F.R. § 16.10(k)(2).

<sup>15</sup> *Id.*

<sup>16</sup> 28 C.F.R. § 16.10(k)(2)(i), (ii)(A)–(B).

<sup>17</sup> See Burton, *supra* note 4.

<sup>18</sup> 28 C.F.R. § 16.10(k)(iii)(A)–(B).

<sup>19</sup> American Oversight currently has approximately 11,900 page likes on Facebook, and 45,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 17, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 17, 2018).

senior DOJ attorney,<sup>20</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>21</sup> 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.<sup>22</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 DOJ on this request. If you do not understand any part of this request, Cerissa Cafasso at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.869.5244. 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,



Austin R. Evers  
Executive Director  
American Oversight

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<sup>20</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>21</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>.

<sup>22</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.