



October 3, 2018

VIA ELECTRONIC MAIL & FAX

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, DC 20220
treasfoia@treasury.gov

Internal Revenue Service
Central Processing Unit
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations for the Department of the Treasury (Treasury), 31 C.F.R. Part 1, American Oversight makes the following request for records.

On October 2, 2018, *The New York Times* published a special investigation, *Trump Engaged in Suspect Tax Schemes as He Reaped Riches from His Father*.¹ The investigation, based on thousands of documents regarding the finances of President Trump's father, Fred Trump, reveals that President Trump helped his parents and family evade or avoid paying millions of dollars in taxes through a variety of mechanisms over the course of decades. American Oversight seeks records with the potential to shed light on whether and to what extent high-ranking Treasury officials have taken action in light of this report or communicated with members of the Trump family or Trump Organization representatives in the wake of this report.

Requested Records

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

All email communications—including emails, email attachments, calendar entries/invitations—of the custodians specified below that contain the following search terms:

¹ David Barstow, et al., *Trump Engaged in Suspect Tax Schemes as He Reaped Riches from His Father*, N.Y. TIMES, Oct. 2, 2018, <https://www.nytimes.com/interactive/2018/10/02/us/politics/donald-trump-tax-schemes-fred-trump.html>.



- 1) <https://www.nytimes.com/interactive/2018/10/02/us/politics/donald-trump-tax-schemes-fred-trump.html>
- 2) <https://www.nytimes.com/interactive/2018/10/02/us/politics/trump-family-wealth.html>
- 3) <https://www.nytimes.com/2018/10/02/us/politics/donald-trump-wealth-fred-trump.html>
- 4) Barstow
- 5) “Susanne Craig”
- 6) Buettner
- 7) NYT
- 8) Times

American Oversight requests that Treasury search records of the following officials:

Treasury

- i. Secretary of the Treasury
- ii. Deputy Secretary of the Treasury
- iii. White House Liaison and Deputy White House Liaison
- iv. Any Chiefs of Staff or Deputy Chiefs of Staff to the Secretary or Deputy Secretary
- v. Assistant Secretary for Public Affairs
- vi. Deputy Assistant Secretary for Public Affairs

IRS

- i. The Commissioner of Internal Revenue
- ii. Any Chiefs of Staff or Deputy Chiefs of Staff to the Commissioner
- iii. Chief Counsel, Internal Revenue Service
- iv. Chief, Communications and Liaison, Internal Revenue Service

Please provide all responsive records from October 2, 2018, through October 3, 2018.

In addition to the records requested above, American Oversight also requests records describing the processing of this request, including records sufficient to identify locations and custodians searched and any tracking sheets used to track the processing of this request. If Treasury 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 are subject to the Federal Records Act and FOIA.² **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.**³

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.”⁴ 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.”⁵ 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.”⁶ 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.’”⁷

² 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).

³ 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)).

⁴ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

⁵ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁶ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

⁷ *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)).

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, Treasury 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 Treasury 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 31 C.F.R. § 1.7(d)(1), 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.⁸ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁹

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 operations or activities of the government.”¹⁰ The disclosure of the information sought under this request will document and reveal the operations of the federal government. The White House has used officials to counter allegations of President Trump and his family’s potential tax avoidance or evasion, and the American public deserves to know if high-ranking Treasury officials are also using their positions to respond to *The New York Times* reporting concerning Trump family tax and inheritance practices.¹¹ The requested records will help American Oversight and the general public understand whether, how, and to what extent Treasury officials have engaged in official actions and communications regarding reporting on controversial Trump family practices. Disclosure of the requested information will contribute to public understanding of this issue because, as discussed

⁸ 31 C.F.R. § 1.7(d)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Quint Forgy & Aaron Lorenzo, *White House Slams NYT Report on Trump Tax Schemes*, POLITICO (Oct. 2, 2018, 9:35 PM), <https://www.politico.com/story/2018/10/02/nyt-report-trump-taxes-863145>.

below, American Oversight has both the ability and the intention to effectively convey the information it receives to the public.

This request is primarily and fundamentally not for commercial purposes.¹² 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.¹³ 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,¹⁴ 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.¹⁵ 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.¹⁶

Accordingly, American Oversight qualifies for a fee waiver.

Notwithstanding its fee waiver request, pursuant to 31 C.F.R. § 1.5(b)(7), American Oversight hereby states that it is willing to pay fees in an amount not more than \$25.00.

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 request, have any questions, or foresee any problems in fully releasing the requested records,

¹² 31 C.F.R. § 1.7(d)(1).

¹³ American Oversight currently has approximately 11,900 page likes on Facebook and 45,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Oct. 3, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Oct. 3, 2018).

¹⁴ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

¹⁵ *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>.

¹⁶ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

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,

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