



November 16, 2018

**VIA ELECTRONIC MAIL**

Consumer Financial Protection Bureau  
Attention: Chief FOIA Officer  
1700 G Street NW  
Washington, DC 20552  
[CFPB\\_FOIA@cfpb.gov](mailto:CFPB_FOIA@cfpb.gov)

**Re: Freedom of Information Act Request**

Dear Chief FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and Consumer Financial Protection Bureau (CFPB) implementing regulations, 12 C.F.R. Part 1070, American Oversight makes the following request for records.

Media reports indicate that CFPB has been undergoing a shift from use of the name “Consumer Financial Protection Bureau” (or “CFPB”) to “Bureau of Consumer Financial Protection” (or “BCFP”).<sup>1</sup> Implementing this change is likely to require a substantial investment of time and energy, in addition to substantial waste of the time and money spent developing designs and material using the original name and waste of existing materials and designs using those names. These costs will be borne both by the agency and by regulated industries and entities.

American Oversight seeks records to shed light on CFPB’s decision to make this change, its approach to implementing it, and the costs associated with it.

**Requested Records**

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

1. Any decision memorandum, action memorandum, directive, or other record effecting, reflecting, or implementing the decision to use the name “Bureau of Consumer Financial Protection” or the abbreviation “BCFP” instead of “Consumer Financial Protection Bureau” or “CFPB” to refer to the agency.
2. All communications (including but not limited to memoranda, emails, email attachments, calendar invitations, attachments to calendar invitations, text messages, instant messages on

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<sup>1</sup> See, e.g., Emily Stewart, *Mick Mulvaney Changed the CFPB’s Sign to BCFP*, VOX (June 11, 2018, 7:00 pm), <https://www.vox.com/policy-and-politics/2018/6/11/17451292/mick-mulvaney-cfpb-bcfp>; Kelsey Ramirez, *Mick Mulvaney: Changing CFPB’s Name Sends a Message*, HOUSINGWIRE, June 13, 2018, <https://www.housingwire.com/articles/43668-mick-mulvaney-changing-cfpbs-name-sends-a-message>.



platforms such as Lync, Slack, or Google Hangouts, etc.) sent or received by any political appointee or Associate Director regarding implementation of the decision to use the name “Bureau of Consumer Financial Protection” or the abbreviation “BCFP” instead of “Consumer Financial Protection Bureau” or “CFPB” to refer to the agency.

3. All records reflecting projections, estimates, or assessments of costs to the agency related to revising or replacing agency assets (whether physical or digital) to reflect the use of use the name “Bureau of Consumer Financial Protection” or the abbreviation “BCFP” instead of “Consumer Financial Protection Bureau” or “CFPB” to refer to the agency. For purposes of this request, “assets” include but are not limited to signs, letterhead, document templates, official publications, labels, or internal- and external-facing agency websites). This request includes records reflecting costs to create new assets using the terms “Bureau of Consumer Financial Protection” as well the value of existing physical assets (including but not limited to existing inventory of signs, business cards, letterhead or other stationery, and labels) that would no longer be used. The search for such records should include all locations likely to contain the requested records but should include, at a minimum, the Office of the Director, all political appointees, and the front offices of each division, including all Associate Directors.
4. All records reflecting projections, estimates, or assessments of costs or employee-hours or contractor-hours related to establishing intellectual property rights, including trademarks, related to use of the names “Bureau of Consumer Financial Protection” or “BCFP” or any logos or other designs incorporating either of those names.
5. All records directing or reflecting allocation of resources, including agency funds or employee or contractor time, for the purpose of revising or replacing agency assets using the “Consumer Financial Protection Bureau” or “CFPB” with “Bureau of Consumer Financial Protection” or “BCFP”. This request includes any direction or request for any Bureau division, office, or employee to make employee or contractor time available for this purpose or to assign one or more specific employees or contractors for this purpose. The search for such records should include all locations likely to contain the requested records but should include, at a minimum, the Office of the Director, all political appointees, and the front offices of each division, including all Associate Directors.
6. Any reports, analyses, assessments, projections, or similar records regarding potential costs private industry would incur in connection with a change of the name used for the agency from “Consumer Financial Protection Bureau” or “CFPB” to “Bureau of Consumer Financial Protection” or “BCFP.” The search for responsive records should include all locations likely to contain such records, but at a minimum should include the Office of the Director; the Research, Markets, and Regulations Division; the Legal Division; and the External Affairs Division.
7. All records discussing any obligations that the agency might have under the Small Business Regulatory Enforcement Fairness Act (SBREFA) in connection with changing the name used for the agency from “Consumer Financial Protection Bureau” or “CFPB” to “Bureau of Consumer Financial Protection” or “BCFP.” The search for such records should

include all locations likely to contain the requested records but should include, at a minimum, the Office of the Director; the Legal Division; and the Research, Markets, and Regulations Division.

8. Records sufficient to show costs paid by the agency in connection with establishing and promoting the name “Consumer Financial Protection Bureau” or the abbreviation “CFPB,” including logo design, website design, advertising, and surveys, studies, or outreach to measure, track, or increase public recognition of these names for the agency. This request includes awards of contracts (whether paid or not), obligations, work orders, or payments made to outside contractors for services in connection with designs incorporating the names “Consumer Financial Protection Bureau” or “CFPB” or with measuring or increasing public awareness of the existence or functions of “Consumer Financial Protection Bureau” or “CFPB”.
9. Records sufficient to show all costs and employee-hours or contractor-hours associated with establishing or protecting intellectual property rights related to the names “Consumer Financial Protection Bureau” or “CFPB” or logos or designs incorporating either of those names.

For Items 1-7, American Oversight requests all records from November 25, 2017, to the date a search is conducted. For Items 8-9, American Oversight requests all records from July 21, 2011, to the date a 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 CFPB 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.<sup>2</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>3</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 CFPB’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>4</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 CFPB’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that CFPB 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.”<sup>5</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

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<sup>2</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>3</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>4</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>.

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

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>6</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>7</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>8</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>9</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, CFPB 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 CFPB 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 12 C.F.R. § 1070.22(e)(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

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

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

<sup>8</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>9</sup> *Mead Data Central*, 566 F.2d at 261.

significant way.<sup>10</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees as 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>11</sup> The request relates to identifiable operations and activities of the federal government, namely the use of government funds and the implementation of government decisions likely to impose financial costs of private industry.<sup>12</sup> Disclosure of the requested records will be “meaningfully informative” about these matters, because there is not currently significant public information available about how the name change decision was made, how it is being implemented, or the scale of costs and potential waste associated with the decision.<sup>13</sup> For similar reasons, the requested disclosures will enhance the public’s understanding to a significant extent.<sup>14</sup> Because CFPB has jurisdiction over a wide range of financial services essential to the typical American’s financial well-being—such as bank accounts, credit and debit cards, mortgage loans, and other common products—and news coverage shows sustained public interest in the activities of the agency, information about allocation and use of public funds—including diversion of these funds from mission-related consumer protection activities—will enhance the “understanding of a reasonably broad audience of persons interested in the subject” of the requested records.<sup>15</sup> And (as described further below) American Oversight will convey information obtained through this request to the general public via its website and social media accounts.<sup>16</sup>

This request is primarily and fundamentally not for commercial purposes.<sup>17</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 commercial 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 will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight will also make materials it gathers available on its website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>18</sup> 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

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<sup>10</sup> 12 C.F.R. § 1070.22(e).

<sup>11</sup> 12 C.F.R. § 1070.22(e)(1)(iii)(A), (2)(i)-(iv).

<sup>12</sup> 12 C.F.R. § 1070.22(e)(2)(i).

<sup>13</sup> 12 C.F.R. § 1070.22(e)(2)(ii).

<sup>14</sup> 12 C.F.R. § 1070.22(e)(2)(iv).

<sup>15</sup> 12 C.F.R. § 1070.22(e)(2)(iii).

<sup>16</sup> *Id.*

<sup>17</sup> 12 C.F.R. § 1070.22(e)(1)(iii)(B), (3)(i)-(ii).

<sup>18</sup> American Oversight currently has over 11,800 page likes on Facebook, and over 45,800 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited November 16, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited November 16, 2018).

administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>19</sup> As another example, American Oversight has received records relating to expenditures for office renovations at numerous agencies and has worked with media outlets to publicize its findings.<sup>20</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 CFPB 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 Beth France at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202-897-2465. 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>19</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

<sup>20</sup> See, e.g., Brady Dennis & Juliet Eilperin, *Scott Pruitt's \$25,000 Soundproof Phone Booth? It Actually Cost More Like \$43,000*, WASH. POST, Mar. 14, 2018, [https://www.washingtonpost.com/news/energy-environment/wp/2018/03/14/scott-pruitts-25000-soundproof-phone-booth-it-actually-cost-more-like-43000/?utm\\_term=.c5479a61c62d](https://www.washingtonpost.com/news/energy-environment/wp/2018/03/14/scott-pruitts-25000-soundproof-phone-booth-it-actually-cost-more-like-43000/?utm_term=.c5479a61c62d); Glenn Thrush, *Emails Contradict Ben Carson's Claims About \$31,000 Dining Set for Office*, N.Y. TIMES, Mar. 14, 2018, <https://www.nytimes.com/2018/03/14/us/ben-carson-dining-table.html>.