



November 21, 2018

VIA ELECTRONIC MAIL

Department of Attorney General
Attn. FOIA Coordinator
P.O. Box 30213
Lansing, MI 48909
AG-FOIA@michigan.gov

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

Pursuant to Michigan's Freedom of Information Act (FOIA), as codified at Mich. Comp. Laws Ann. § 15.231 *et seq.*, American Oversight makes the following request for records.

On November 7, 2018, President Trump announced that Jeff Sessions was stepping down as Attorney General to be replaced on an acting basis by Mr. Sessions's Chief of Staff, Matthew Whitaker.¹ Speculation concerning Mr. Sessions's permanent replacement has been the subject of close public and media attention.² American Oversight seeks records to shed light on the relationships between potential candidates and key federal officials.

Requested Records

American Oversight requests that the Department of the Attorney General produce the following within five business days:

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices,

¹ Donald J. Trump (@realdonaldtrump), TWITTER (Nov. 7, 2018, 2:44 PM), <https://twitter.com/realdonaldtrump/status/1060256619383193601>.

² *See, e.g.*, Peter Nicholas & Rebecca Ballhaus, *Leading Candidates to Replace Jeff Sessions as Attorney General*, WALL ST. J. (Nov. 7, 2018, 7:23 PM), <https://www.wsj.com/articles/leading-candidates-to-replace-jeff-sessions-as-attorney-general-1541636592>; Jeremy Diamond & Sarah Westwood, *Trump Considering Christie, Bondi for Attorney General*, CNN (Nov. 8, 2018, 3:17 PM), <https://www.cnn.com/2018/11/08/politics/chris-christie-pam-bondi-trump-attorney-general/index.html>; Eli Watkins, *Who Will Replace Jeff Sessions?*, CNN (Nov. 7, 2018, 9:35 PM), <https://www.cnn.com/2018/11/07/politics/jeff-sessions-potential-replacements/index.html>; *see also* Brett Samuels, *Trump Considering Several Candidates to Replace Sessions: Report*, THE HILL (Oct. 11, 2018, 5:24 PM), <https://thehill.com/homenews/administration/411058-trump-considering-several-candidates-to-replace-sessions-report>.



meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) the immediate office of the Attorney General and (b) anyone with an email address ending in any of the following extensions:

- a) doe.gov
- b) ed.gov
- c) hhs.gov
- d) epa.gov

Please provide all responsive records from January 20, 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 term “record” in its 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.**

In addition, American Oversight insists that the Department of the Attorney General 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.**

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. 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 Michigan’s public records laws, including litigation if necessary. Accordingly, the Department of the Attorney General 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 the Department of

the Attorney General 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 Mich. Comp. Laws Ann. § 15.234(2), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records “is in the public interest because searching for or furnishing copies of the public record[s] can be considered as primarily benefiting the general public.”³ The requested records are directly related to the work of the highest levels of government leadership in both Michigan and the nation. There is significant interest in the subject of these records.⁴ The requested records will help American Oversight and the general public understand whether and to what extent candidates for administration leadership positions can be expected to serve the public’s interest or the personal interests of certain members of the executive branch.

American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available. As noted, the subject of this request is a matter of public interest, and the public would benefit from an enhanced understanding of the government’s activities through American Oversight’s analysis and publication of these records. 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.⁵ 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,⁶ American Oversight promptly posted the records to its website

³ Mich. Comp. Laws Ann. § 15.234(2).

⁴ See, e.g., supra note 2.

⁵ American Oversight currently has approximately 12,000 page likes on Facebook and 48,700 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Nov. 21, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Nov. 21, 2018).

⁶ *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

and published an analysis of what the records reflected about DOJ's process for ethics waivers.⁷ 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.⁸

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 the Department of the Attorney General 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 Katherine Anthony at foia@americanoversight.org or 202.897.3918. 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 that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight

⁷ *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>.

⁸ *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.