



December 20, 2018

VIA ELECTRONIC MAIL

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Re: Expedited Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the National Archives and Records Administration (NARA), 36 C.F.R. Part 1250, American Oversight makes the following request for records.

On December 7, 2018, President Trump nominated former Attorney General William P. Barr to again serve as Attorney General of the United States.¹ Mr. Barr's past actions in government have raised concerns that Mr. Barr may interfere with, or simply end, the probe into foreign interference in the 2016 election by Special Counsel Robert Mueller. Mr. Barr's reported involvement in politically significant investigations and pardons during his previous service as Attorney General suggest that Mr. Barr may not support the Mueller investigation or may facilitate actions that undermine that investigation.² Specifically, reports indicate that Mr. Barr regularly considered firing Independent Counsel Lawrence Walsh who was investigating Reagan Administration officials' involvement in the Iran-Contra Scandal and then advised the president to pardon officials indicted as a result of that investigation.³

American Oversight seeks access to records that have the potential to shed light on Mr. Barr's actions in his prior service as Attorney General on matters of extraordinary public significance in light of his nomination to again assume the post of Attorney General in which he would oversee the ongoing Special Counsel investigation.

¹ Charlie Savage, *Trump Will Nominate William Barr as Attorney General*, N.Y. TIMES, Dec. 7, 2018, <https://www.nytimes.com/2018/12/07/us/politics/william-barr-attorney-general.html>.

² Jen Kirby, *William Barr, Trump's Pick for Attorney General Will Hold the Fate of the Mueller Probe*, VOX (Dec. 7, 2018, 5:20 PM), <https://www.vox.com/2018/12/7/18130659/william-barr-attorney-general-mueller-probe>.

³ Brendan Morrow, *How William Barr Handled Special Counsel Investigations the Last Time He Was Attorney General*, THE WEEK, Dec. 7, 2018, <https://theweek.com/speedreads/811552/how-william-barr-handled-special-counsel-investigations-last-time-attorney-general>.



Requested Records

American Oversight requests that NARA provide access to the following records within twenty business days and seeks expedited processing for the reasons specified below:

The Subject Files of the Attorney General (William P. Barr) located in Record Group 60, Entry P69, and in the containers enumerated below at the National Archives II, College Park, Maryland.

Subject, ARC Identifier Number, and Container Number of requested records:

1. Independent Counsel/ General 1992: 100377322, P69, Container 903
2. Independent Counsel/ Walsh, Lawrence E. 1992: 100377326, P69, Container 904
3. Pardons 1993: 100377928, P69, Container 969
4. White House Correspondence/General 1992: 100377800, P69, Container 964
5. Pardon Attorney (OPA) 1992: 100377547, P69, Container 924
6. Pardons 1992: 100377548, P69, Container 925
7. Presidential Correspondence 1992: 100377567, P69, Container 927
8. Presidential Correspondence/Former Presidents 1992: 100377568, P69, Container 927
9. Pardons 1991: 100376685, P69, Container 831
10. Presidential Correspondence 1991: 100376707, P69, Container 832

American Oversight expects that the requested records here on an expedited basis can be screened and made available quickly due to NARA's screening policies. American Oversight understands that NARA guidelines provide that screening for FOIA Exemption (b)(6) is "less sensitive if it concerns individuals who are well-known nationally, regionally or locally" and, in any case, only requires a "spot-check" of records between 30 years and 75 years old with a sample of "random containers or containers whose subjects appear to contain potentially exempted information."⁴ American Oversight further understands that the records requested, which are nearly all over 30 years old, are very unlikely to interfere with ongoing proceedings, deprive a person of a right to a fair trial, endanger the life or safety of any individual or otherwise meet the criteria for restriction in NARA's screening guidelines for records under Exemption (b)(7).⁵

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."⁶ 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

⁴ NARA Directive 1602, *Access to Records Requested Under the Freedom of Information Act (FOIA)*, National Archives and Records Administration, July 28, 2003
<https://www.archives.gov/files/foia/directives/nara1602.pdf>.

⁵ *Id.*

⁶ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

actually exempt under FOIA.”⁷ 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.”⁸ 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.’”⁹

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.¹⁰ 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.

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 NARA can decrease the likelihood of costly and time-consuming litigation in the future.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 36 C.F.R. § 1250.28(a)(3), (a)(4), American Oversight requests that NARA expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity. 36 C.F.R. § 1250.28(a)(3). The requested records concern actions taken by former-Attorney General William Barr while overseeing a politically sensitive, independent investigation, and pardons issued to the subjects of that investigation while he served as the nation’s chief law enforcement officer.¹¹ Mr. Barr’s nomination to again serve as the Attorney General is now pending, and Mr. Barr, if confirmed, will again oversee a politically significant independent investigation, where the president has confirmed he is considering pardoning at least one of the subjects of the investigation.¹²

⁷ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁸ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphases in original).

⁹ *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)).

¹⁰ *Mead Data Central*, 566 F.2d at 261.

¹¹ See Morrow, *supra* note 3.

¹² See Kirby, *supra* note 2; see also Sharon LaFraniere & Nicholas Fandos, *Trump Talks of Pardon for Manafort and Escalates Attacks on Russia Inquiry*, N.Y. TIMES, Nov. 28, 2018, <https://www.nytimes.com/2018/11/28/us/politics/trump-pardon-paul-manafort.html>.

There is an urgent need to inform the public about former Attorney General Barr’s previous actions in overseeing an independent investigation of great political significance and his involvement in the issuance of pardons to the subjects of that investigation *before* Mr. Barr is again confirmed to lead the Department of Justice and oversee the current Special Counsel’s investigation. The American people need access to this information with sufficient time to both consider the previous actions of former Attorney General Barr and to advocate to their elected representatives in the Senate to either vote to confirm or reject the president’s Attorney General nominee.

I further certify that American Oversight is primarily engaged in disseminating information to the public.¹³ 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. Similarly to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,¹⁴ American Oversight “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.”¹⁵ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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 And American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.¹⁷

I further certify to be true and correct to the best of my knowledge and belief, that this request concerns “a matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government’s integrity.” 36 C.F.R. § 1250.28(a)(4). The president’s nomination of Mr. Barr to again serve as Attorney General has received exceptional and widespread media coverage, and concerns raised about Mr. Barr’s potential oversight of the current Special Counsel investigation have been a prime topic of that coverage.¹⁸

¹³ 6 C.F.R. § 5.5(e)(1)(ii).

¹⁴ See *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

¹⁵ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

¹⁶ American Oversight currently has approximately 12,100 page likes on Facebook and 49,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight> (last visited Dec. 19, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight?lang=en> (last visited Dec. 19, 2018).

¹⁷ See *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *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>; *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

¹⁸ See Savage, *supra* note 1; Kirby, *supra* note 2; Morrow, *supra* note 3; Maegan Vazquez & Kaitlan Collins, *Trump Nominates William Barr to Be His Next Attorney General*, CNN (Dec. 7, 2018, 3:44 PM), <https://www.cnn.com/2018/12/07/politics/william-barr-attorney-general-nomination/index.html>; Darren Samuelsohn et al., *Trump to Nominate William Barr as Attorney*

Mr. Barr's prior actions in overseeing the Independent Counsel investigation, and his involvement in the issuance of pardons to its subjects, have been extensively noted and discussed in many of these reports.¹⁹ These reports have raised concerns that former Attorney General Barr acted to intervene in independent, politically sensitive investigations and to assist in the issuance of pardons for political purposes. The American public must have confidence that Mr. Barr has a track record of taking responsible action when he has been in the position to influence important, politically sensitive investigations as, if he is confirmed, Mr. Barr will oversee the ongoing Special Counsel investigation.

Accordingly, American Oversight's request satisfies the criteria for expedition.

Fees

American Oversight recognizes that NARA does not grant fee waivers for archival records²⁰ under the authority of 44 U.S.C. § 2116, which allows the Archivist to "charge a fee set to recover the costs for making or authenticating copies or reproductions" of archival records. American Oversight does not request that NARA copy or reproduce any of the requested records, only that

General, POLITICO (Dec. 7, 2018, 3:11 PM), <https://www.politico.com/story/2018/12/07/trump-to-nominate-william-barr-as-attorney-general-1049560>; Ranae Reints, *Everything You Need to Know About Donald Trump's Attorney General Nominee William Barr*, FORTUNE, Dec. 7, 2018, <http://fortune.com/2018/12/07/william-barr-attorney-general/>; *William Barr Nominated by Donald Trump to Be US Attorney General*, BBC (Dec. 7, 2018), <https://www.bbc.com/news/world-us-canada-46487122>; Matt Zapposky et al. *Trump Confirms He Will Nominate William Barr to Be Attorney General*, Dec. 7, 2018, https://www.washingtonpost.com/world/national-security/trump-confirms-he-will-pick-william-barr-as-his-next-attorney-general/2018/12/07/6e8d28ba-fa2d-11e8-863c-9e2f864d47e7_story.html?utm_term=.2a9b1d97f4cd; Daniel Barnes, *Trump to Nominate William Barr for Attorney General, Heather Nauert for U.N. Ambassador*, NBC NEWS (Dec. 7, 2018, 11:31 AM), <https://www.nbcnews.com/politics/white-house/trump-says-he-will-nominate-william-barr-attorney-general-n945201>.

¹⁹ See, e.g., Savage, *supra* note 1; Kirby, *supra* note 2; Morrow, *supra* note 3; Phil Shenon, *How Trump's Next Attorney General Could Derail the Mueller Probe*, POLITICO, Dec. 11, 2018, <https://www.politico.com/magazine/story/2018/12/11/william-barr-trump-attorney-general-mueller-iran-contra-222859>; Blake, *'I've Had an Itchy Finger': When William Barr Considered Firing a Special Counsel*, WASH. POST, Dec. 7, 2018, https://www.washingtonpost.com/politics/2018/12/07/ive-had-an-itchy-finger-when-william-barr-considered-firing-special-counsel/?utm_term=.700b718f0c89; Masood Farviar, *Trump's Justice Department Pick Has Criticized Special Counsel Probes*, VOA News (Dec. 8, 2018, 6:29 PM), <https://www.voanews.com/a/trump-s-justice-department-pick-has-criticized-special-counsel-probes-/4691725.html>; Ryan Lucas, *Trump Picks William Barr, Attorney General Under H.W. Bush, to Return to DOJ Helm*, NPR (Dec. 7, 2018), <https://wamu.org/story/18/12/07/trump-says-hell-nominate-william-barr-to-return-as-attorney-general/>; Steven T. Dennis & Chris Strohm, *In Barr, Trump Finds Traditional DOJ Pick Who Has Taken His Side*, Bloomberg (Dec. 7, 2018, 12:15 PM), <https://www.bloomberg.com/news/articles/2018-12-07/with-barr-trump-finds-traditional-doj-pick-who-s-taken-his-side>.

²⁰ 36 C.F.R. § 1250.51(a).

such records be made available at the Archives II facility in College Park, Maryland, where they are currently stored. Additionally, NARA regulations state that no search fees will be charged for archival records,²¹ and American Oversight has identified the containers of the requested records, dramatically reducing the resources needed to conduct a search. **Consequently, American Oversight expects that no fees will be incurred by this request.** If NARA believes fees will be incurred, please contact American Oversight immediately.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with NARA 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 Dan McGrath at foia@americanoversight.org or 202.897.4213.

Sincerely,

A handwritten signature in blue ink that reads "Austin Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin Evers
Executive Director
American Oversight

²¹ 36 C.F.R. § 1250.51(b).