



February 22, 2019

VIA ELECTRONIC MAIL

Chief, Special Access and FOIA Staff (RD-F)
8601 Adelphi Road, Room 5500
College Park, MD 20740
E-mail: specialaccess_foia@nara.gov

George W. Bush Presidential Library and
Museum
c/o FOIA Coordinator
2943 SMU Blvd.
Dallas, TX 75205
gwbush.library@nara.gov

Re: Expedited Freedom of Information Act Request

Dear Chief and FOIA Coordinator:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, the Presidential Records Act (PRA), 44 U.S.C. § 2201 *et seq.*, 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 of NARA and the George W. Bush Presidential Library and Museum (GWB Library).

Requested Records

American Oversight requests that the GWB Library provide access to the following records within twenty business days:

Any records of Neomi Rao, former Associate Counsel and Special Assistant to President George W. Bush, not already available on the GWB Library website,¹ including:

- Correspondence (including memoranda, letters, or emails) to or from Ms. Rao, or on which she was carbon copied or blind carbon copied, and attachments to such correspondence; and
- Records maintained by Ms. Rao in the course of her work for the White House Counsel's Office and/or as Special Assistant to the President, including memoranda

¹ Specifically, we note that records from Ms. Rao's staff files related to Brett Kavanaugh are available on the GWB Library's website. *See Records on Brett M. Kavanaugh*, George W. Bush Presidential Library and Museum, <https://www.georgewbushlibrary.smu.edu/Research/Digital-Library/BrettMKavanaughRecords>. American Oversight does not seek these records through this FOIA request.



to file, notes, meeting agendas, meeting summaries, or materials distributed in connection with meetings.

Please provide all records from March 1, 2005, through July 31, 2006.

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.”² 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.”³ 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.”⁴ 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.’”⁵

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.⁶ 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.

Fees

American Oversight recognizes that NARA does not grant fee waivers for reproduction of archival records or Presidential records subject to FOIA regulations⁷ under the authority of 44 U.S.C. §

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

³ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁴ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphases in original).

⁵ *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)).

⁶ *Mead Data Central*, 566 F.2d at 261.

⁷ 36 C.F.R. § 1250.51(a); *see also* 36 C.F.R. § 1250.6(d) (“FOIA applies to [Presidential] records five years after the President and Vice President leave office.”).

2116, which allows the Archivist to “charge a fee set to recover the costs for making or authenticating copies or reproductions” of such records. However, NARA regulations state that no search fees will be charged for such records.⁸ **Consequently, American Oversight expects that only reproduction fees will be incurred by this request. If NARA believes reproduction fees may exceed \$250, 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 Katherine Anthony at foia@americanoversight.org or 202.897.3918.

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

⁸ 36 C.F.R. § 1250.51(b).