



March 11, 2019

VIA ELECTRONIC MAIL

Jimmy Wolfrey
Acting Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, DC 20528-0655
foia@hq.dhs.gov

Re: Freedom of Information Act Request

Dear Mr. Wolfrey:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and your agency's implementing regulations, 6 C.F.R. Part 5, American Oversight and the American Civil Liberties Union of Massachusetts, Inc. ("ACLUM") (collectively, the "Requestors") request the records described below.

The Department of Homeland Security Appropriations Act for 2018, contained in Division F of the Consolidated Appropriations Act of 2018, provides in Section 231 of Title II that "[n]ot later than 180 days after the date of the enactment of this Act, the Secretary [of Homeland Security] shall submit to the Committees on Appropriations of the Senate and the House of Representatives a risk-based plan for improving security along the borders of the United States, including the use of personnel, fencing, other forms of tactical infrastructure, and technology" (the "Border Security Plan"), and further including certain enumerated categories of information.¹ We understand the Border Security Plan was in fact submitted to Congress on December 21, 2018.²

We request the following record:

1. The Border Security Plan described above.

¹ Consolidated Appropriations Act, 2018, H.R. 1625, 115th Cong., Div. F § 231 (2018).

² Ltr. from Cong. Hispanic Caucus to Dep't of Homeland Sec. Conference Comm. at 2, Feb. 5, 2019, <https://congressionalhispaniccaucus-castro.house.gov/sites/congressionalhispaniccaucus.house.gov/files/Letter%20to%20Conferees.pdf>.



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.”³ If it is your position that any portion of the requested record is exempt from disclosure, we request that you provide an index 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.”⁴ 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.”⁵ 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.’”⁶

In the event some portions of the requested record are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested record. If our request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

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.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k), we request 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.⁷ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁸

Requestors seek 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 government.⁹ The requested record will help Requestors and the general public understand the Trump administration’s plans and operations at the U.S.-Mexico border. Operations at the U.S.-Mexico border, and the issue of border security, have been a centerpiece of President Trump’s public

³ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

⁴ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁵ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphases in original).

⁶ *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)).

⁷ 6 C.F.R. § 5.11(k)(1)(i).

⁸ 6 C.F.R. § 5.11(k)(1)(ii).

⁹ 6 C.F.R. § 5.11(k)(1)(i); 6 C.F.R. § 5.11(k)(2)(i)-(iv).

policy agenda, and his plans in this regard are a subject of significant public and press interest.¹⁰ The requested record regarding this specific government activity would meaningfully inform the public as to the scope of this administration's planned activities at the U.S.-Mexico border, including the administration's view regarding how those operations and activities will promote border security. It will also significantly enhance the public's understanding of the priorities, constraints, costs, and challenges associated with such activities.

This request is primarily and fundamentally for non-commercial purposes.¹¹

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 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 our public website.¹²

Similarly, ACLUM is a not-for-profit, non-partisan organization dedicated to the principles of liberty and equality. As the Massachusetts affiliate of the national ACLU, a not-for-profit, non-partisan organization, ACLUM distributes information both within and outside of Massachusetts. Gathering and disseminating current information to the public is a critical and substantial component of ACLUM's mission and work. ACLUM publishes newsletters, news briefings,

¹⁰ See, e.g., Jonathan Easley & Alexis Simendinger, *Trump Budget Reignites Border Security Fight*, THE HILL (Mar. 11, 2019, 6:27 AM), <https://thehill.com/homenews/morning-report/433445-the-hills-morning-report>; Jacob Pramuk & Christina Wilkie, *Trump Declares National Emergency to Build Border Wall, Setting Up Massive Legal Fight*, CNBC (Feb. 15, 2019, 10:50 AM), <https://www.cnbc.com/2019/02/15/trump-national-emergency-declaration-border-wall-spending-bill.html>; Emily Cochrane et al., *Talks Over Border Security Break Down, Imperiling Effort to Prevent Shutdown*, N.Y. TIMES, Feb. 10, 2019, <https://www.nytimes.com/2019/02/10/us/politics/trump-border-wall.html>; Steve Holland & Richard Cowan, *Backing Down, Trump Agrees to End Shutdown Without Border Wall Money*, REUTERS (Jan. 25, 2019, 6:06 AM), <https://www.reuters.com/article/us-usa-shutdown/backing-down-trump-agrees-to-end-shutdown-without-border-wall-money-idUSKCN1PJ126>; Glenn Kessler, *Does President Trump's Border Wall Pay for Itself?*, WASH. POST, Mar. 16, 2018, https://www.washingtonpost.com/news/fact-checker/wp/2018/03/16/does-president-trumps-border-wall-pay-for-itself/?utm_term=.b78f3379019c; Julie Hirschfeld Davis, *Trump Orders Mexican Border Wall to Be Built and Plans to Block Syrian Refugees*, N.Y. TIMES, Jan. 25, 2017, <https://www.nytimes.com/2017/01/25/us/politics/refugees-immigrants-wall-trump.html>;

¹¹ 6 C.F.R. § 5.11(k)(1)(ii); 6 C.F.R. § 5.11(k)(3)(i)-(ii).

¹² American Oversight, www.americanoversight.org (last visited Mar. 11, 2019). American Oversight promotes the materials available on our public website on social media platforms, such as Facebook and Twitter. The organization currently has approximately 12,200 page likes on Facebook and 54,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 11, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 11, 2019).

reports and other materials that are disseminated to the public, including through ACLUM's website¹³ and regular posts on social media sites such as Facebook and Twitter. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students and faculty, at no cost.

Accordingly, Requestors qualify for a fee waiver.

Conclusion

Thank you for your attention to this request. We look forward to working with you. If you do not understand any part of this request, or have any question, please contact Katherine Anthony at (202) 897-3918 or by email at foia@americanoversight.org.

Sincerely,

/s/ Austin Evers
Austin R. Evers
Executive Director
American Oversight

/s/ Dan McFadden
Daniel L. McFadden
Staff Attorney
ACLU of Massachusetts

¹³ ACLU Massachusetts, www.aclum.org, (last visited Mar. 11, 2019).