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VIA EMAIL & FOIA ONLINE

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Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Justice (DOJ), 28 C.F.R. Pt. 16, American Oversight makes the following request for records.

Attorney General William Barr has repeatedly stated with confidence that none of the actions President Trump has undertaken—including specifically those described in Special Counsel Robert Mueller’s report—constituted criminal obstruction of justice.¹ Attorney General Barr has also repeatedly stated that he disagreed with the legal analysis applied by Special Counsel Mueller on the question of whether the president obstructed justice. Specifically, Attorney General Barr recently stated that he rejected “a lot of the legal analysis” in Mr. Mueller’s report because it “did not reflect the views of the [Department of Justice.” The Attorney General said that DOJ “applied the right law,” in contrast to the supposedly incorrect legal analysis employed by Special Counsel Mueller.²

The Attorney General’s legal analysis, which he has articulated only in bits and pieces throughout public interviews, departs from the conclusions of over 1,000 former federal prosecutors in determining that the president’s actions did not constitute obstruction of

¹ See, e.g., Mark Mazetti & Charlie Savage, *Standing Where Barr Cleared Trump on Obstruction, Mueller Makes a Different Case*, N.Y. TIMES, May 29, 2019,

<https://www.nytimes.com/2019/05/29/us/politics/mueller-barr.html>.

² David R. Lurie, *The Missing Bill Barr Obstruction Analysis*, JUST SECURITY, June 3, 2019,

<https://www.justsecurity.org/64391/the-missing-bill-barr-obstruction-analysis/>.



justice.³ The Attorney General has not, however, made his comprehensive legal analysis on this extremely weighty issue public. This has raised serious concerns that Attorney General Barr may in fact be relying on the legal theories he articulated in the 19-page memorandum he drafted as a private attorney in 2018—which Mr. Barr sent to DOJ and the president’s personal attorneys—rather than the formal, well-developed views of the Department of Justice.

Given the enormous significance of the Attorney General’s legal analysis leading to his conclusion that the facts uncovered by Special Counsel Mueller’s investigation do not constitute obstruction of justice, American Oversight seeks the written legal analysis on which the Attorney General relied for this weighty decision.

Requested Records

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

The written legal analysis or analyses on which Attorney General Barr has relied in making the final determination that the facts presented in Special Counsel Robert Mueller’s “Report On The Investigation Into Russian Interference In The 2016 Presidential Election” do not show that the president obstructed justice and that the Report’s legal analysis did not reflect the Department’s views or “the right law.”⁴

³ Alexandra Hutzler, *Former Federal Prosecutors Renew Statement that Trump Would Have Been Indicted If He Weren’t President*, NEWSWEEK (May 30, 2019, 12:57 PM), <https://www.newsweek.com/former-federal-prosecutors-trump-indicted-wasnt-president-1439716>.

⁴ See *William Barr Interview: Read the Full Transcript*, CBS News (May 31, 2019, 8:11 AM), <https://www.cbsnews.com/news/william-barr-interview-full-transcript-cbs-this-morning-jan-crawford-exclusive-2019-05-31/> (“**JAN CRAWFORD:** What is the fundamental difference? Why...I mean, [Special Counsel Mueller] said he couldn't exonerate the president. That he had looked at the evil there - these 11 instances of possible obstruction. He couldn't exonerate the president, if he could he would've stated so. You looked at that evidence and you did. I mean, what is the fundamental difference between your view and his?

WILLIAM BARR: Well, I think Bob said that he was not going to engage in the analysis. He was, he was not going to make a determination one way or the other. And he also said that he could not say that the president was clearly did not violate the law, which of course is not the standard we use at the department. We have to determine whether there is clear violation of the law and so we applied the standards we would normally apply. We analyzed the law and the facts and a group of us spent a lot of time doing that and determined that both as a matter of law, many of the instances would not amount to obstruction.

JAN CRAWFORD: As a matter of law?

Please provide all responsive records from January 1, 2018, through the date of the search.

Given the importance and high-profile nature of the final determination that this request concerns, the requested legal analysis or analyses may be identified by DOJ officials with knowledge of the subject matter with relative ease. In light of these search considerations, it is likely appropriate that this request be assigned to the Simple processing track.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, 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 significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests 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 operations or activities of the government."⁵ The public has a significant interest in the Attorney General's analysis of a legal decision of extraordinary consequence, specifically why the obstruction of justice statute does not reach the president's conduct as described in the Special Counsel's Report. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether the Attorney General applied a rigorous legal analysis in coming to the important determination that the president has not obstructed justice and that the Special Counsel has incorrectly analyzed the law. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁶ 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

WILLIAM BARR: As a matter of law. In other words, we didn't agree with the legal analysis- a lot of the legal analysis in the report. It did not reflect the views of the department. It was the views of a particular lawyer or lawyers and so we applied what we thought was the right law but then we didn't rely on that. We also looked at all the facts, tried to determine whether the government could establish all the elements and as to each of those episodes we felt that the evidence was deficient.").

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ See 5 U.S.C. § 552(a)(4)(A)(iii).

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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁹ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹¹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹² posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political

⁷ American Oversight currently has approximately 12,300 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 17, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 17, 2019).

⁸ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁹ DOJ Records Relating to Solicitor General Noel Francisco's Recusal, 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>.

¹⁰ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹¹ Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

¹² Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹³

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- 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 for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.¹⁴ 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, by intent or through negligence, failed to meet their obligations.¹⁵
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

¹³ *Sessions’ Letter Shows DOJ Acted On Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹⁴ *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).

¹⁵ *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. 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 your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF 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.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Dan McGrath at foia@americanoversight.org or 202.897.4213. 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