



July 23, 2019

**VIA ONLINE PORTAL**

Federal Communications Commission  
445 12th Street SW, Room 1-A836  
Washington, DC 20554  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officer(s):

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight and Worth Rises make the following request for records.

Reports indicate that private prison operators and other companies that stand to benefit financially from federal detention and incarceration have exercised powerful influence over federal policymakers in recent years.<sup>1</sup>

The influence of these private companies can lead to inhumane treatment of people held in federal custody. In September 2018, for example, the Department of Homeland Security (DHS) Inspector General conducted an unannounced inspection of GEO Group operated Adelanto Immigration and Customs Enforcement (ICE) Processing Center.<sup>2</sup> At Adelanto, GEO Group, a private for-profit company, had subcontracted medical care to Correct Care Solutions, another private for-profit entity.<sup>3</sup> The Inspector General's report detailed how detained people at Adelanto were forced to live in appalling conditions without access to appropriate medical care. The report

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<sup>1</sup> Amy Brittain & Drew Harwell, *Private-Prison Giant, Resurgent in Trump Era, Gathers at President's Resort*, WASH. POST, Oct. 25, 2017, [https://www.washingtonpost.com/politics/with-business-booming-under-trump-private-prison-giant-gathers-at-presidents-resort/2017/10/25/b281d32c-adee-11e7-a908-a3470754bbb9\\_story.html?utm\\_term=.cba859a0d3db](https://www.washingtonpost.com/politics/with-business-booming-under-trump-private-prison-giant-gathers-at-presidents-resort/2017/10/25/b281d32c-adee-11e7-a908-a3470754bbb9_story.html?utm_term=.cba859a0d3db);

Alex Kotch, *GEO Group Federal Contracts Rise as Former Sessions Aide Lobbies DOJ*, TYT, Aug. 2, 2018, <https://tyt.com/stories/4vZLCHuQrYE4uKagy0oyMA/4UAoZQsT5meGcMmUmW2w6>.

<sup>2</sup> DEPT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL, *Management Alert - Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, (Sept. 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>.

<sup>3</sup> *Leading For-Profit Prison and Immigration Detention Medical Company Sued At Least 1,395 Times*, PROJECT ON GOVERNMENT OVERSIGHT, <https://www.pogo.org/investigation/2018/10/leading-for-profit-prison-and-immigration-detention-medical-company-sued-at-least-1-395-times/>.

found that even after three people died at the facility over the course of three years, medical care remained “delayed and inadequate.”<sup>4</sup> Adelanto’s dentist does not provide cleanings or fillings and recommended that people use strings from their socks as dental floss if they could not get floss from the commissary.<sup>5</sup> Investigators also found widespread nooses hanging in cells, even though suicide had been a reoccurring problem at the facility. One detainee told investigators, “I’ve seen a few attempted suicides using the braided sheets by the vents and then the guards laugh at them and call them ‘suicide failures’ once they are back from medical.”<sup>6</sup>

Failures in providing humane treatment and appropriate medical care to detainees are not limited to Adelanto, GEO Group, nor Correct Care Solutions, and are reportedly widespread in instances where for-profit entities have been charged with detaining or incarcerating people. Detention centers across the country—and across presidential administrations—have repeatedly failed to provide adequate care.<sup>7</sup>

American Oversight and Worth Rises are requesting records with the potential to shed light on the influence of the companies that profit off federal policies that lead to the employment of private entities to detain or incarcerate individuals, to care for those who are detained or incarcerated, or to provide other services within detention or incarceration facilities. The request below specifically seeks records that will shed light on the influence of some of the most significant private sector entities that benefit from the detention and incarceration of individuals by the federal government.<sup>8</sup>

### **Requested Records**

American Oversight and Worth Rises request that the Federal Communications Commission (FCC) produce the following within twenty business days:

All email communications (emails, email attachments, and calendar invitations) between (1) Securus Technologies (@securustechnologies.com), or Arent Fox LLP (@arentfox.com), and (2) any of the following employees or officials below:

- a. Chairman Ajit Pai,

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> AMERICAN CIVIL LIBERTIES UNION, DETENTION WATCH NETWORK, AND NATIONAL IMMIGRANT JUSTICE CENTER, *Fatal Neglect: How ICE Ignores Deaths in Detention*, February 2016, <https://www.acLU.org/report/fatal-neglect-how-ice-ignores-death-detention>; AMERICAN CIVIL LIBERTIES UNION, DETENTION WATCH NETWORK, HUMAN RIGHTS WATCH, AND THE NATIONAL IMMIGRANT JUSTICE CENTER, *Code Red*, June 2018, <https://www.acLU.org/report/code-red-fatal-consequences-dangerously-substandard-medical-care-immigration-detention>.

<sup>8</sup> WORTH RISES, *The Prison Industrial Complex: Mapping Private Sector Players*, April 2018, <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5ade0281f950b7ab293c86a6/1524499083424/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+%28April+2018%29.pdf>.

- b. All political appointees\* in the office of Chairman Pai, or
- c. Commissioner Michael O'Rielly.

Please provide all responsive records from November 1, 2016, to the date the search is conducted.

\*“Political appointee” should be understood as any person who is a Presidential Appointee with Senate Confirmation (PAS), a Presidential Appointee (PA), a non-career SES, any Schedule C employees, or any persons hired under Temporary Non-Career SES Appointments, Limited Term SES Appointments, or Temporary Transitional Schedule C Appointments.

American Oversight and Worth Rises seek all responsive records regardless of format, medium, or physical characteristics. 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>9</sup> **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, through negligence or willfulness, failed to meet their obligations.**<sup>10</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to**

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<sup>9</sup> 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).

<sup>10</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>11</sup> Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools would capture that email under Capstone. Accordingly, American Oversight and Worth Rises insist that your agency 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 and Worth Rises are 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.**

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.”<sup>12</sup> If it is your position that any portion of the requested records is exempt from disclosure, American Oversight and Worth Rises request 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.”<sup>13</sup> 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.”<sup>14</sup> 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.’”<sup>15</sup>

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.<sup>16</sup> Claims of nonsegregability must be made with the same degree of detail as required

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<sup>11</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>12</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>13</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>14</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphases in original).

<sup>15</sup> *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)).

<sup>16</sup> *Mead Data Central*, 566 F.2d at 261.

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 and Worth Rises welcome 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, we 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, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, American Oversight and Worth Rises 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 public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight and Worth Rises request 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 the operations or activities of the government.<sup>17</sup> This request relates directly to the work of some of the most important responsibilities of the federal government and its components. Specifically, this request seeks communications that have the potential to shed light on the influence that private sector companies hold over some of the most solemn government activities—those that involve detaining or incarcerating individuals and depriving them of liberty. It is a matter of utmost public concern if private sector entities that stand to benefit from individuals' detention or incarceration have influence over federal agency policies that determine whether and how people will be detained or incarcerated. These are matters of significant public concern, and the requested records will provide the public with information necessary to hold the federal government accountable for its actions and policies. As discussed below, American Oversight and Worth Rises have the capacity and intention to inform a broad audience about government activities that are the subject of these records.

This request is primarily and fundamentally for non-commercial purposes.<sup>18</sup> 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 uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or

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<sup>17</sup> 5 U.S.C. § 552 (a)(4)(A)(iii).

<sup>18</sup> 6 C.F.R. § 5.11(k)(1)(ii), (3)(i)-(ii).

other media. American Oversight also makes materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.<sup>19</sup> 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, American Oversight promptly posted the records to its website<sup>20</sup> and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>21</sup> 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.<sup>22</sup>

Worth Rises is also a non-profit organization without any commercial interest. Worth Rises is dedicated to dismantling the prison industrial complex and ending the exploitation of those it touches. Worth Rises has used its research and information it has gathered to create detailed reports that educate the public regarding businesses and corporate interests that profit from the incarceration and detention of people from marginalized communities.<sup>23</sup>

Accordingly, American Oversight and Worth Rises qualify for a fee waiver.

## Conclusion

We share a common mission to promote transparency in government. American Oversight and Worth Rises look forward to working with your agency 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](mailto:foia@americanoversight.org) or (202) 897-4213.

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<sup>19</sup> 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 20, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 20, 2019).

<sup>20</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>21</sup> *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>.

<sup>22</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

<sup>23</sup> See WORTH RISES, *The Prison Industrial Complex: Mapping Private Sector Players*, April 2019, <https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/5cc7c27b9e3a8d00018649c5/1556595324791/The+Prison+Industrial+Complex+-+Mapping+Private+Sector+Players+-+2019.pdf>; WORTH RISES, *Immigration Detention: An American Business*, June 2018, <https://worthrises.org/immigration>.

Also, if the request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Bianca Tylek  
Bianca Tylek  
Executive Director  
Worth Rises

A handwritten signature in blue ink, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight