



September 23, 2019

VIA ONLINE PORTAL

Vernon Curry
FOIA Officer
U.S. Census Bureau, Room 3J235
4600 Silver Road
Washington, DC 20233-3700

Re: Freedom of Information Act Request

Dear Freedom of Information Act Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and Department of Commerce implementing regulations, 15 C.F.R. Part 4, American Oversight makes the following request for records from the U.S. Census Bureau.

American Oversight promotes accountability in government through transparency, informing the public's right to know what the government is up to. Since the president took office in January 2017, the administration has experienced a revolving door of senior personnel.¹ With scores of new individuals continuing to join the government in key, senior positions, it is essential to understand who they are and the backgrounds they bring to their work. Without such transparency, the public cannot have confidence that government decisions are shaped by the interests of the American people, not personal or professional allegiances.

Requested Records

American Oversight requests that the Census Bureau produce the following within twenty business days:

1. Records sufficient to identify all employees who entered into a position at the Census Bureau as "political appointees" since January 20, 2017, and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position). For purposes of this request, please consider any employee in a PAS position, a presidentially-appointed position, a non-career SES position, or a Schedule C position a "political appointee."
2. Records sufficient to identify all career employees who have been detailed into the Office of the Director since January 20, 2017; the title or position of each employee while on detail

¹ See, e.g., Politico Staff, *The Revolving Door of Trump's Cabinet*, POLITICO (Nov. 16, 2018, 4:00PM), https://www.politico.com/interactives/2018/interactive_trump-cabinet-departures/.



(to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position); and each employee's originating agency or component, and title. This request includes anyone serving in an acting role as well as any staff that are or were on detail.

3. Records sufficient to identify the members of any "beachhead teams" who joined the agency at the beginning of the Trump administration, and the title or position of each employee (to the extent that such individuals have held multiple titles or positions since January 20, 2017, identify each title or position).
4. For each individual identified in response to requests 1 to 3:
 - a. The resume provided by the individual to the agency in connection with determining the appropriate salary for the individual, or, if that is not available, a recent resume contained within the agency's records. We have no objection to the redaction of contact information (addresses, telephone numbers, e-mail addresses) for the employee or references, or to the redaction of past salary information. Employment, education, and professional association information is not exempt, and we object to any redactions of such information.
 - b. Any conflicts or ethics waivers or authorizations issued for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
 - c. Records sufficient to identify the members of the "landing teams" or "transition teams" who were embedded with the agency for transition purposes by the Trump transition organization between the November 2016 election and the Trump administration.
5. All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant):
 - a. Dr. Steven Dillingham, Director
 - b. Dr. Ron Jarmin, Deputy Director
 - c. Kevin Quinley, Special Advisor
 - d. Christa Jones, Chief of Staff

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments.

Please provide all responsive records from January 20, 2017, through the date the search is conducted.

Please do not limit your search to Outlook calendars. We request the production of any document—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time on agency business.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l), 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,² as it concerns the operations of the federal government as they directly involve the qualifications and day-to-day activities and operations of individuals occupying leadership positions.³ Moreover, the requested records will shed light on how political appointees are spending their time and taxpayer resources conducting the operations of the Census Bureau, as well as identifying all political appointees within the Census Bureau’s leadership.⁴ Moreover, the request is primarily and fundamentally for non-commercial purposes.⁵

Disclosure of the requested information is in the public interest because it is “likely to contribute to public understanding” of “the operations or activities of the Federal government.”⁶ The requested records directly concern identifiable operations or activities of the government—namely, the background and qualifications of appointed and career employees working for the agency. Since January 20, 2017, the Trump administration has been appointing or assigning individuals to play significant roles in shaping the agenda of every federal agency, with frequent changes along the way.⁷ Identifying who these people are, and the background and perspectives that they bring to their jobs as federal employees, is essential to informing the public regarding the operations and decisionmaking of the federal government. In particular, only with clarity regarding the identity and background of these appointees can the public make informed assessments regarding whether decisions might have been influenced by conflicts of interest among the decisionmakers and whether those employees have personal or private interests affected by their policy actions. 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.⁸ 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

² 15 C.F.R. § 4.11(l)(1)(i).

³ 15 C.F.R. § 4.11(l)(2)(i).

⁴ 15 C.F.R. § 4.11(l)(2)(ii).

⁵ 15 C.F.R. § 4.11(l)(1)(ii).

⁶ 15 C.F.R. § 4.11(l)(1)(i), (2)(i)-(iv).

⁷ See, e.g., Politico Staff, *supra* note 1.

⁸ 15 C.F.R. § 4.11(l)(1)(ii).

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.⁹

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.¹⁰ 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;¹¹ 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;¹² posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁴ and 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 opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁵

Accordingly, American Oversight qualifies for a fee waiver.

⁹ American Oversight currently has approximately 12,200 page likes on Facebook and 54,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Aug. 27, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Aug. 27, 2019).

¹⁰ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹¹ *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>.

¹² *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>.

¹³ *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>.

¹⁴ *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>.

¹⁵ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- 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.¹⁶ 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.¹⁷
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,¹⁸ and many agencies have adopted the National

¹⁶ 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).

¹⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁸ 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

Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

- 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 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 Hart Wood at foia@americanoversight.org or 202.873.1743. Also, if

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>.

American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

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

Austin R. Evers
Executive Director
American Oversight