



September 11, 2019

VIA ELECTRONIC MAIL

U.S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, DC 20522-0208  
[FOIArequest@state.gov](mailto:FOIArequest@state.gov)

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of State (State), 22 C.F.R. Part 171, American Oversight makes the following request for records.

On May 9, 2019, President Trump’s personal lawyer, Rudolph Giuliani, announced that he would travel to Ukraine to meet with the country’s president-elect to urge the Ukrainian government to pursue an investigation related to the son of former Vice President Biden—a potential electoral opponent of the president.<sup>1</sup> Mr. Giuliani, reportedly aided by the president’s former attorneys Victoria Toensing and Joseph E. diGenova, defended his planned trip by stating that “[w]e’re not meddling in an election, we’re meddling in an investigation.”<sup>2</sup> After facing widespread criticism for this effort to influence a foreign government’s law enforcement efforts for political gain, Mr. Giuliani canceled his trip to Ukraine.<sup>3</sup>

It is more troubling that, shortly before Mr. Giuliani announced his plan to attempt to “meddl[e]” in a Ukrainian investigation related to one of the president’s potential political opponents, State recalled U.S. Ambassador to Ukraine Marie Yovanovitch, a career foreign service officer who has served under Democratic and Republican presidents.<sup>4</sup> Ambassador Yovanovitch had faced criticism

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<sup>1</sup> Kenneth P. Vogel, *Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump*, N.Y. TIMES, May 9, 2019, <https://www.nytimes.com/2019/05/09/us/politics/giuliani-ukraine-trump.html>.

<sup>2</sup> *Id.*

<sup>3</sup> Kenneth P. Vogel, *Rudy Giuliani Cancels His Trip to Ukraine, Blaming Democrats’ ‘Spin,’* N.Y. TIMES, May 11, 2019, <https://www.nytimes.com/2019/05/11/us/politics/rudy-giuliani-ukraine.html>.

<sup>4</sup> Robbie Gramer & Amy MacKinnon, *U.S. Ambassador to Ukraine Recalled in ‘Political Hit Job,’* *Lawmakers Say*, FOREIGN POLICY (May 7, 2019, 12:09 PM), <https://foreignpolicy.com/2019/05/07/us-ambassador-to-ukraine-recalled-in-political-hit-job->



from conservative media for purportedly criticizing the president in private conversations.<sup>5</sup> Senator Chris Murphy has, further, expressed concern that Ambassador Yovanovitch’s recall may be related to Mr. Giuliani’s efforts to influence Ukrainian investigations.<sup>6</sup>

Recent reports suggest that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.<sup>7</sup> The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.<sup>8</sup> Reports also indicate that this meeting occurred shortly after the president’s July 25, 2019, call with Ukraine’s president, in which President Trump reportedly asked Ukraine’s government to prioritize “corruption” investigations.<sup>9</sup>

American Oversight seeks records with the potential to shed light on whether and to what extent the political interests of the president have influenced State Department policies and actions in Ukraine, including actions related to the efforts of the president’s personal attorney to persuade the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

### **Requested Records**

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

All calendars or calendar entries<sup>10</sup> for U.S. Special Representative for Ukraine Negotiations Kurt D. Volker, including any calendars maintained on his behalf (e.g., by an administrative assistant) for the date range provided below.

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[lawmakers-say-marie-yovanovitch-lutsenko-right-wing-media-accusations-congress-diplomats-diplomacy/](#).

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

<sup>6</sup> Letter from Sen. Chris Murphy to Sen. Jim Risch, Chairman, Comm. on Foreign Relations, May 10, 2019, <https://www.murphy.senate.gov/download/ukraine-giuliani-letter>.

<sup>7</sup> Kenneth P. Vogel & Andrew E. Kramer, *Giuliani Renews Push for Ukraine to Investigate Trump’s Political Opponents*, N.Y. TIMES, Aug. 21, 2019, <https://www.nytimes.com/2019/08/21/us/politics/giuliani-ukraine.html?smid=nytcore-ios-share>.

<sup>8</sup> Kenneth P. Vogel (@kenvogel), TWITTER (Aug. 22, 2019, 6:30 PM), <https://twitter.com/kenvogel/status/1164666081501470727?s=20>.

<sup>9</sup> Letter from Chairs Rep. Engel, Rep. Schiff, & Rep. Cummings, U.S. House of Representatives Committees on Foreign Affairs, Intelligence, and Oversight and Reform, to Michael Pompeo, Secretary, U.S. Dep’t of State, Sep. 9, 2019, <https://www.politico.com/f/?id=0000016d-16fe-d466-a36d-d6ff7a9c0000>.

<sup>10</sup> Though American Oversight has provided context related to Mr. Volker’s involvement in an important matter, American Oversight notes that there is no subject matter limitation in this request for Mr. Volker’s calendars and calendar entries.

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

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 Ambassador Volker allocates his time on agency business.

Please provide all responsive records from March 1, 2019, through the date the search is conducted.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16(a), American Oversight requests a waiver of fees associated with processing this request for records. First, 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.<sup>11</sup> Second, the request is primarily and fundamentally for non-commercial purposes.<sup>12</sup>

Under the public interest requirement, FOIA requesters must satisfy four factors.<sup>13</sup> American Oversight has met these four factors for the reasons set forth below. The subject matter of the requested records specifically relates to the operations or activities of the government, including communications surrounding an effort by the personal attorney to the president to persuade the Ukrainian government to investigate a family member of one of the president’s potential political opponents.<sup>14</sup> There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, including whether State Department officials are involved in an effort to use the president’s private attorney to lobby Ukrainian officials.<sup>15</sup> The subject of this request is a matter of public interest, and the public’s understanding of the government’s activities and use of resources would be enhanced through American Oversight’s analysis and publication of these records.

Increasing the likelihood that disclosure of these records will contribute significantly to public understanding, American Oversight’s objective is to reveal to the public at large any information it receives related to this FOIA request, and little information is currently available regarding the subject matter of this request—specifically, whether high-ranking State officials have coordinated

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<sup>11</sup> 22 C.F.R. § 171.16(a)(1).

<sup>12</sup> 22 C.F.R. § 171.16(a)(2).

<sup>13</sup> *D.C. Technical Assistance Org. Inc. v. U.S. Dep’t of Hous. and Urban Dev. (D.C. Technical Assistance)*, 85 F.Supp.2d 46, 48–49 (D.D.C. 2000) (requested documents will contribute to “greater understanding of government activities”).

<sup>14</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

<sup>15</sup> See Letter from Sen. Murphy, *supra* note 6, Vogel *supra* note 7.

with political allies of the president to displace a career diplomat in Ukraine for a perceived lack of political loyalty in conjunction with the efforts of the president's attorney to pressure the Ukrainian government to undertake investigations to benefit the president's perceived political interests.<sup>16</sup> American Oversight has the capacity to disseminate this information as it posts all records to its public websites and publishes analyses of its records. In the past, the organization has successfully informed the public of specific government activities and operations. As an example, American Oversight obtained Education Secretary DeVos's calendar entries, which revealed Secretary DeVos's frequent absences from office and the influence of charter schools and for-profit colleges on the Education Department.<sup>17</sup> The *New York Times* and CNN relied on American Oversight's analyses to report on Secretary DeVos's priorities within the Department of Education.<sup>18</sup>

American Oversight's request is also primarily and fundamentally for non-commercial purposes.<sup>19</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 other media. American Oversight also makes materials it gathers available on our public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>20</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>21</sup>

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<sup>16</sup> See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

<sup>17</sup> See *Influence & Access at the Department of Education*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/investigation/influence-access-at-the-department-of-education>; *Unexcused Absences: DeVos Calendars Show Frequent Days Off*, AMERICAN OVERSIGHT (Oct. 27, 2017), <https://www.americanoversight.org/unexcused-absences-devos>.

<sup>18</sup> Eric Lipton, *Betsy DeVos's School Schedule Shows Focus on Religious and Nontraditional Schools*, N.Y. TIMES, Oct. 27, 2017, <https://www.nytimes.com/2017/10/27/us/politics/betsy-devos-work-schedule-education.html>; Gregory Wallace et. al., *What Betsy DeVos's Schedule Tells Us About Her Agenda*, CNN (Oct. 29, 2017, 12:22 PM), <http://www.cnn.com/2017/10/28/politics/devos-schedules-education/index.html>.

<sup>19</sup> 22 C.F.R. § 171.16(a)(2)(i)-(iii).

<sup>20</sup> 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 Sept. 10, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 10, 2019).

<sup>21</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>.

and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>22</sup> As an additional 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>23</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Conclusion**

We share a common mission to promote transparency in government. American Oversight looks forward to working with State 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. 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,



Melanie Sloan  
Senior Advisor  
American Oversight

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<sup>22</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>23</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.