



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

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.¹ 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.”² 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.³

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.⁴ Ambassador Yovanovitch had faced criticism

¹ 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>.

² *Id.*

³ 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>.

⁴ 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.⁵ Senator Chris Murphy has, further, expressed concern that Ambassador Yovanovitch’s recall may be related to Mr. Giuliani’s efforts to influence Ukrainian investigations.⁶

Recent reports suggest that Mr. Giuliani engaged a State Department official—U.S. Special Representative for Ukraine Negotiations Kurt D. Volker—in his efforts.⁷ The State Department has acknowledged that Mr. Volker helped arrange talks between Mr. Giuliani and a Ukrainian official.⁸ 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.⁹

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 email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the specified State officials below containing the following key terms:

- i. Rudy
- ii. Rudolph
- iii. Giuliani

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

⁵ *Id.*

⁶ 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>.

⁷ 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>.

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

⁹ 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>.

- iv. Toensing
- v. diGenova
- vi. Hunter
- vii. Biden
- viii. Parnas
- ix. Fruman
- x. Kolomoisky
- xi. Klitschko
- xii. Burisma
- xiii. Shokin
- xiv. Lutsenko
- xv. Zelensky
- xvi. Zelenskyy
- xvii. Yermak
- xviii. “Ukraine Security Assistance Initiative”
- xix. USAI

Specified State Officials:

- i. Secretary Mike Pompeo
- ii. White House Liaison Carrie Cabelka, or any other individuals serving in the role of White House Liaison
- iii. Senior Advisors (to Secretary Pompeo) P. Michael McKinley, Mary Kissel, and Toni Porter
- iv. Counselor to the Secretary Thomas Ulruich Brechbuhl
- v. Senior Policy Advisor and Special Representative for Iran, Brian Hook
- vi. U.S. Special Representative for Ukraine Negotiations, Kurt D. Volker
- vii. Chargé d’Affaires, a.i. of the United States Embassy in Kyiv, William B. Taylor
- viii. Deputy Chief of Mission of the United States Embassy in Kyiv, Kristina A. Kvien
- ix. Acting Assistant Secretary of European and Eurasian Affairs, Philip Reeker
- x. U.S. Ambassador to Spain, Richard Duke Buchan III

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from July 23, 2019, through August 21, 2019.

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.¹⁰ Second, the request is primarily and fundamentally for non-commercial purposes.¹¹

Under the public interest requirement, FOIA requesters must satisfy four factors.¹² 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.¹³ 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.¹⁴ 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 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.¹⁵ 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

¹⁰ 22 C.F.R. § 171.16(a)(1).

¹¹ 22 C.F.R. § 171.16(a)(2).

¹² *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”).

¹³ See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

¹⁴ See Letter from Sen. Murphy, *supra* note 6, Vogel *supra* note 7.

¹⁵ See Vogel *supra* note 1; Vogel *supra* note 3; Gramer & Mackinnon *supra* note 4.

Education Department.¹⁶ The *New York Times* and CNN relied on American Oversight's analyses to report on Secretary DeVos's priorities within the Department of Education.¹⁷

American Oversight's request is also primarily and fundamentally for non-commercial purposes.¹⁸ 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.¹⁹ 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 website²⁰ and published an analysis of what the records reflected about DOJ's process for ethics waivers.²¹ 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.²²

¹⁶ 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>.

¹⁷ 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>.

¹⁸ 22 C.F.R. § 171.16(a)(2)(i)-(iii).

¹⁹ 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).

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

²¹ *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>.

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

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 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