



October 17, 2019

VIA ELECTRONIC MAIL

Brent Clemmens<sup>1</sup>  
Baltimore City  
Mayor's Office  
250 City Hall  
Baltimore, MD 21202  
[brent.clemmens@baltimorecity.gov](mailto:brent.clemmens@baltimorecity.gov)

**Re: Public Information Act Request**

Dear Mr. Clemmens:

Pursuant to the Maryland Public Information Act ("MPIA"), codified at Title 4 of the General Provisions Article, American Oversight makes the following request for records.

On July 27, 2019, President Trump tweeted that Maryland's 7<sup>th</sup> Congressional District, which encompasses over half of Baltimore County, was a "disgusting, rat and rodent infested mess" and a "very dangerous[,] filthy place."<sup>2</sup> The tweets followed Representative Elijah Cummings' criticism of the conditions at Department of Homeland Security detention centers.<sup>3</sup> Four days later, Housing and Urban Development (HUD) Secretary Ben Carson visited Baltimore and defended the President's remarks.<sup>4</sup> HUD emails and

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<sup>1</sup> According to the Baltimore City Mayor's Office, Mr. Clemmens is the office's MPIA representative. (Telephone Conversation, Baltimore City Mayor's Office, Oct. 17, 2019, 4:10 PM).

<sup>2</sup> Donald J. Trump (@realDonaldTrump), TWITTER (July 27, 2019, 7:14 AM and 7:24 AM), [https://twitter.com/realDonaldTrump/status/1155073965880172544?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1155073965880172544&ref\\_url=https%3A%2F%2Fwww.baltimoresun.com%2Fpolitics%2Fbs-md-pol-cummings-trump-20190727-ghty2yovtvfzfcjkeui7wm5zi-story.html](https://twitter.com/realDonaldTrump/status/1155073965880172544?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1155073965880172544&ref_url=https%3A%2F%2Fwww.baltimoresun.com%2Fpolitics%2Fbs-md-pol-cummings-trump-20190727-ghty2yovtvfzfcjkeui7wm5zi-story.html); [https://twitter.com/realDonaldTrump/status/1155076476930338816?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1155076476930338816&ref\\_url=https%3A%2F%2Fwww.baltimoresun.com%2Fpolitics%2Fbs-md-pol-cummings-trump-20190727-ghty2yovtvfzfcjkeui7wm5zi-story.html](https://twitter.com/realDonaldTrump/status/1155076476930338816?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1155076476930338816&ref_url=https%3A%2F%2Fwww.baltimoresun.com%2Fpolitics%2Fbs-md-pol-cummings-trump-20190727-ghty2yovtvfzfcjkeui7wm5zi-story.html).

<sup>3</sup> Wilbourn P. Nobles III, *Trump Calls Baltimore 'Disgusting ... Rodent Infested Mess,' Rips Rep. Elijah Cummings Over Border Criticism*, BALTIMORE SUN (July 27, 2019: 10:21 PM), <https://www.baltimoresun.com/politics/bs-md-pol-cummings-trump-20190727-ghty2yovtvfzfcjkeui7wm5zi-story.html>.

<sup>4</sup> Ovetta Wiggins, *HUD Secretary Ben Carson: 'A Lot of Good Things in Baltimore, But There Are a Lot of Bad Things, Too'*, WASH. POST (July 31, 2019: 9:22 PM),



calendars obtained by American Oversight and by the press have revealed that members of the Carson family have played expansive roles at HUD.<sup>5</sup> Specifically, Ben “BJ” Carson, Jr., helped plan Secretary Carson’s 2017 Baltimore tour.<sup>6</sup>

American Oversight seeks records to shed light on whether and to what extent Secretary Carson’s son has further influenced or orchestrated the Secretary’s trips to Baltimore.

### **Requested Records**

American Oversight requests that the Baltimore City Mayor’s Office (“the Mayor’s Office”) produce the following records as soon as reasonably possible upon approval, and in no more than thirty days of receipt of this request<sup>7</sup>:

All records reflecting communications (including emails, email attachments, text messages, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) concerning the July 31, 2019 visit by HUD Secretary Ben Carson exchanged between (a) the Mayor’s Office and (b) any of the individuals listed below:

- a. HUD Secretary Ben Carson
- b. Anyone communicating on behalf of Secretary Carson, such as a Chief of Staff, Scheduler, or Assistant
- c. Secretary Carson’s spouse Candy Carson

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[https://www.washingtonpost.com/local/md-politics/in-baltimore-ben-carson-defends-president-trumps-harsh-depiction-of-the-city/2019/07/31/a8741f78-b37f-11e9-951e-de024209545d\\_story.html](https://www.washingtonpost.com/local/md-politics/in-baltimore-ben-carson-defends-president-trumps-harsh-depiction-of-the-city/2019/07/31/a8741f78-b37f-11e9-951e-de024209545d_story.html).

<sup>5</sup> *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>; *HUD Records Relating to Ben Carson Jr.*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/hud-records-relating-ben-carson-jr>.

<sup>6</sup> Alec MacGillis, *Is Anybody Home at HUD*, N.Y. MAG. (Aug. 22, 2017, 8:00 am), <http://nymag.com/daily/intelligencer/2017/08/ben-carson-hud-secretary.html>; Juana Summers *et al.*, *Emails Show Carson Family Fingerprints at HUD Despite Warnings*, CNN (Feb. 5, 2018, 12:44 PM) <https://www.cnn.com/2018/02/02/politics/ben-carson-family-hud/index.html>; Juliet Eilperin & Jack Gillum, *‘Using His Position for Private Gain’: Ben Carson Was Warned He Might Run Afoul of Ethics Rules by Enlisting His Son*, WASH. POST, Jan. 31, 2018, [https://www.washingtonpost.com/politics/using-his-position-for-private-gain-hud-lawyers-warned-ben-carson-risked-running-afoul-of-ethics-rules-by-enlisting-son/2018/01/31/bb20c48e-0532-11e8-8777-2a059f168dd2\\_story.html?utm\\_term=.0f7a4a2533fb](https://www.washingtonpost.com/politics/using-his-position-for-private-gain-hud-lawyers-warned-ben-carson-risked-running-afoul-of-ethics-rules-by-enlisting-son/2018/01/31/bb20c48e-0532-11e8-8777-2a059f168dd2_story.html?utm_term=.0f7a4a2533fb).

<sup>7</sup> Md. Gen. Provis. § 4-203(b)(1).

- d. Secretary Carson's son, Benjamin Carson Jr. (including, but not limited to email addresses ending in [interprisepartners.com](http://interprisepartners.com))
- e. Secretary Carson's daughter-in-law, Dr. Merlynn Carson (including, but not limited to the email addresses [Merlynnj21@hotmail.com](mailto:Merlynnj21@hotmail.com), [Merlynnj1386@gmail.com](mailto:Merlynnj1386@gmail.com), [Merlynnj@hotmail.com](mailto:Merlynnj@hotmail.com), [mcarson@myrriidian.com](mailto:mcarson@myrriidian.com), and any other email address ending in [myrriidian.com](http://myrriidian.com)).

Please provide all responsive records from July 6, 2019, through August 2, 2019.

In addition, American Oversight requests that the Mayor's Office produce a copy of all regulations it has adopted that implement the Public Information Act, including but not limited to those "govern[ing] timely production and inspection of a public record."<sup>8</sup>

Pursuant to the MPIA, American Oversight is entitled to a prompt grant or denial of its request, to be issued no more than thirty days after receipt of the request.<sup>9</sup> Failure to provide a timely response will be considered a denial, and American Oversight will seek appropriate judicial relief in that event.<sup>10</sup> American Oversight intends to pursue all legal avenues to enforce its right of access under the MPIA, including litigation if necessary. Accordingly, the Mayor's Office is on notice that litigation is reasonably foreseeable.

If all or any part of this request is denied, American Oversight requests that you provide, with the denial itself or within ten business days following the denial, a written statement of the grounds for each denial, including citation to the law(s) or regulation(s) supporting your decision, and the available remedies for review of a denial.<sup>11</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.<sup>12</sup> 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

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<sup>8</sup> See Md. Gen. Provis. § 4-201(b).

<sup>9</sup> Md. Gen. Provis. § 4-203(a).

<sup>10</sup> See Md. Gen. Provis. § 4-203(b)(3) (failure to produce the record or provide written notice within ten business days of the amount of time needed to comply with the request and reason for the delay); § 4-362(a)(1) (allowing for filing of complaint with the circuit court upon denial of a Public Records Act request).

<sup>11</sup> Md. Gen. Provis. § 4-203(c)(1).

<sup>12</sup> See *Blythe v. State*, 161 Md. App. 492, 519, cert. granted, 388 Md. 97 (2005); see also Md. Gen. Provis. § 4-203(c)(1)(ii).

throughout the document.<sup>13</sup> If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.<sup>14</sup>

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 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 the Mayor's Office can decrease the likelihood of costly and time-consuming litigation in the future.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 43 CFR § 2.45(a), 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."<sup>15</sup> The President's remarks about Baltimore were widely criticized, and Secretary Carson's subsequent visit was widely publicized.<sup>16</sup> The public deserves to know whether and to what extent a high-ranking Cabinet official relied on family contacts to plan a highly-politicized trip. The public deserves to have confidence that HUD's decisions and the Secretary's visits have been made without undue outside influence and that members of the Carson family are not serving as de facto liaisons between HUD and local governments. 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.<sup>17</sup> As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the

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<sup>13</sup> Md. Gen. Provis. § 4-203(c)(1)(ii).

<sup>14</sup> Md. Gen. Provis. § 4-203(c)(1)(i)(2).

<sup>15</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>16</sup> *Supra* note 4; see also Peter Nicholas, *Ben Carson's Appearance in Baltimore Didn't Go as Planned*, THE ATLANTIC, July 31, 2019, <https://www.theatlantic.com/politics/archive/2019/07/baltimore-ben-carson-trump/595207/>; see also Katy O'Donnell, *Ben Carson Defends Trump, Compares Baltimore to Cancer Patient*, POLITICO (July 31, 2019: 2:40 PM), <https://www.politico.com/story/2019/07/31/carson-defends-trump-baltimore-1629618>.

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

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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>18</sup>

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.<sup>19</sup> 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;<sup>20</sup> 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;<sup>21</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>22</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>23</sup> 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

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<sup>18</sup> American Oversight currently has approximately 12,260 page likes on Facebook and 54,900 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Oct. 11, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Oct. 11, 2019).

<sup>19</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<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>; *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>21</sup> 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>.

<sup>22</sup> *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>.

<sup>23</sup> *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>.

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.<sup>24</sup>

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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- 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.<sup>25</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, by intent or through negligence, failed to meet their obligations.<sup>26</sup>
- 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,<sup>27</sup> and many agencies

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<sup>24</sup> *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

<sup>25</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>26</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).

<sup>27</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

have adopted the National 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 Khahilia Shaw at [foia@americanoversight.org](mailto:foia@americanoversight.org) or

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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>.

202.549.6507. 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,

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