



January 8, 2020

VIA EMAIL

USTR FOIA Office, GSD/RDF
Attn: Chief FOIA Officer Janice Kaye
Office of the U.S. Trade Representative
Anacostia Naval Annex, Building 410/Door 123,
250 Murray Lane SW
Washington, DC 20509
FOIA@ustr.eop.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

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

President Trump recently nominated Deputy U.S. Trade Representative C.J. Mahoney to be the State Department's Legal Advisor, as the State Department navigates critical legal issues related to the impeachment inquiry and rising tensions with Iran.¹

American Oversight seeks records to shed light on Ambassador Mahoney's influences and priorities during his time at the Office of the U.S. Trade Representative (USTR).

Requested Records

American Oversight requests that the USTR produce the following records as soon as practicable, and at least within twenty business days:

1. All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) between Deputy USTR C.J. Mahoney and the individuals or entities specified below:
 - i. Anyone communicating on behalf of Dobson Family Institute (JDFI), including Jenna Ellis and anyone with an email address ending in dobsonfamilyinstitute.com

¹ Mike Scarcella, *Trump Picks Ex-Williams & Connolly Partner for Top State Dept. Legal Post*, LAW.COM (Jan. 3, 2020, 3:26 PM), <https://www.law.com/nationallawjournal/2020/01/03/trump-picks-ex-williams-connolly-partner-for-top-state-dept-legal-post/?slreturn=20200005163657>.



- ii. Anyone communicating on behalf of Home School Legal Defense Association (HSLDA), including Michael Donnelly and anyone with an email address ending in hsllda.org
 - iii. Emilie Kao, including from an email address ending in heritage.org
 - iv. Anyone communicating on behalf of Family Research Council (FRC), including Mary Beth Waddell and anyone with an email address ending in frc.org
 - v. Anyone communicating on behalf of Alliance Defending Freedom (ADF), including Kellie Fiedorek and anyone with an email address ending in adflegal.org
 - vi. Anyone communicating on behalf of First Liberty, including Ken Klukowski and anyone with an email address ending in firstliberty.org
 - vii. Anyone communicating on behalf of Family Watch International, including Sharon Slater (including at her email address ending in gmail.com) and anyone with an email address ending in familywatch.org
 - viii. Anyone communicating on behalf of Patrick Henry College, including Stephen Baskerville and anyone with an email address ending in phc.edu
2. All records reflecting the content of any meetings (e.g., meeting agendas, attendee lists, notes from meetings, handwritten or electronic summaries, and any materials exchanged during meetings) between Deputy USTR C.J. Mahoney and any of the individuals or entities specified above.

Please provide all responsive records from March 18, 2018, through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, 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."² In light of Ambassador Mahoney's nomination to be State Legal Advisor during an especially controversial time for the Department, it is important for the public to be informed of his prior record in a leadership position at USTR, including his official activities and

² 5 U.S.C. § 552(a)(4)(A)(iii).

communications with individuals who may be attempting to influence USTR policy. 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.

This request is primarily and fundamentally for non-commercial purposes.³ 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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

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.⁵ 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;⁶ 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;⁷ posting records regarding potential self-dealing at the Department of Housing & Urban

³ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ American Oversight currently has approximately 14,800 page likes on Facebook and 88,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 4, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 4, 2020).

⁵ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁶ 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>.

⁷ 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>.

Development and related analysis;⁸ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁹ 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.¹⁰

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:

- 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.¹¹ 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

⁸ *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>.

⁹ *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>.

¹⁰ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹¹ 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).

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.¹²

- 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,¹³ and many agencies 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

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

¹³ 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>.

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 American Oversight's request for expedition is not granted or its 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 line extending to the left.

Austin R. Evers
Executive Director
American Oversight