



February 10, 2020

VIA EMAIL

U.S. Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

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 initially reported that Iran's missile strikes on bases housing U.S. troops in Iraq had not harmed any Americans.¹ Since that initial statement, however, the Department of Defense (DOD) has released a series of statements indicating that increasing numbers of U.S. troops suffered traumatic brain injuries in the missile strikes.² President Trump then dismissed these injuries as mere "headaches."³

Requested Records

American Oversight requests that the Department of Defense (DOD) produce the following records within twenty business days:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) between DOD leadership and specified members of Congress and Committee staff regarding injuries sustained by servicemembers or personnel in the January 7-8, 2020 missile strikes on military bases housing U.S. troops in Iraq.

¹ Colin Dwyer, *Pentagon Increases U.S. Injury Toll from Iranian Attack Yet Again – To 64*, NPR (Jan. 31, 2020, 11:51 AM), <https://www.npr.org/2020/01/31/801535693/pentagon-increases-u-s-injury-toll-from-iranian-attack-yet-again-to-64>.

² Dwyer, *supra* note 1.

³ Helene Cooper & Eric Schmitt, *Trump Dismisses Troops' Possible Brain Injuries as 'Headaches'*, N.Y. TIMES, Jan. 29, 2020, <https://www.nytimes.com/2020/01/22/world/middleeast/trump-iraq-brain-injuries.html>.



Specified Members of Congress and Committee staff:

- i. Any Staff member of Senate Armed Services Committee (including anyone with an email address ending armed-services.senate.gov)
- ii. Senator Mitch McConnell or any member of his staff (including anyone with an email address ending in mcconnell.senate.gov)
- iii. Senator James Inhofe or any member of his staff (including anyone with an email address ending in inhofe.senate.gov)
- iv. Senator Tom Cotton or any member of his staff (including anyone with an email address ending in cotton.senate.gov)
- v. Senator Joni Ernst or any member of her staff (including anyone with an email address ending in ernst.senate.gov)
- vi. Senator Kevin Cramer or any member of his staff (including anyone with an email address ending in cramer.senate.gov)
- vii. Senator Martha McSally or any member of her staff (including anyone with an email address ending in mcsally.senate.gov)
- viii. Senator Rick Scott or any member of his staff (including anyone with an email address ending in rickscott.senate.gov)
- ix. Senator Marsha Blackburn or any member of her staff (including anyone with an email address ending in blackburn.senate.gov)
- x. Senator Josh Hawley or any member of his staff (including anyone with an email address ending in hawley.senate.gov)
- xi. Rep. Mac Thornberry or any member of his staff (including Chief of Staff Michael Seeds at michael.seeds@mail.house.gov; Scheduler Jessica Sunday at Jessica.Sunday@mail.house.gov; Legislative Assistant Alex Navia at alex.navia@mail.house.gov)
- xii. Rep. Elise Stefanik or any member of his staff (including Chief of Staff Patrick Hester at Patrick.hester@mail.house.gov; Scheduler Hannah Scheenstra at Hannah.scheenstra@mail.house.gov; Legislative Director at Marek Laco at marek.laco@mail.house.gov; Press Secretary Madison Anderson at Madison.anderson@mail.house.gov)
- xiii. Rep. Liz Cheney or any member of her staff (including Chief of Staff Kara Ahern at kara.ahern@mail.house.gov; Scheduler Elizabeth Pearce at Elizabeth.pearce@mail.house.gov; Legislative Director John Drzewicki at john.drzewicki@mail.house.gov; Press Secretary Jeremy Adler at Jeremy.adler@mail.house.gov)
- xiv. Rep. Devin Nunes or any member of his staff (including Chief of Staff Jilian Plank at jilian.plank@mail.house.gov; Scheduler Jennifer Morrow at Jennifer.morrow@mail.house.gov; Derek Harvey at derek.harvey@mail.house.gov; Press Secretary Jack Langer at jack.langer@mail.house.gov; Legislative Director Ian Foley at ian.foley@mail.house.gov; Legislative Aide Mattheus Wagner at mattheus.wagner@mail.house.gov; Legislative Aide Katherine Lewis at

Katherine.lewis@mail.house.gov; Press Assistant Rebecca Kugler at Rebecca.kugler@mail.house.gov)

At a minimum, American Oversight requests that a search for responsive records include the office of the Secretary of Defense and the office of Assistant Secretary of Defense for Legislative Affairs.

Please provide all responsive records from January 7, 2020, to 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."⁴ The public has a significant interest in understanding whether high-ranking officials have been adequately informed about the serious injuries sustained by U.S. troops following a significant attack by another nation. Records with the potential to shed light on this matter would contribute significantly to public understanding of whether the federal government has taken appropriate action following the injuries sustained by these troops. 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.⁵ 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

⁴ 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ See 5 U.S.C. § 552(a)(4)(A)(iii).

materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

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.⁷ 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;⁸ 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;⁹ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁰ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹¹ 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.¹²

⁶ American Oversight currently has approximately 15,000 page likes on Facebook and 92,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Jan. 15, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Jan. 15, 2020).

⁷ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁸ *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>.

⁹ *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>.

¹⁰ *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>.

¹¹ *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>.

¹² *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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 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

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>.

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 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