



March 17, 2020

**VIA ONLINE PORTAL**

Douglas Hibbard  
Chief, Initial Request Staff  
Office of Information Policy  
U.S. Department of Justice  
441 G St NW, 6th Floor  
Washington, DC 20530  
Online Portal

**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 the Department of Justice (DOJ), 28 C.F.R. Part 16, American Oversight makes the following request for records.

On January 22, 2020, twenty-one Republican attorneys general sent a letter to the U.S. Senate urging the Senate to acquit President Trump after his impeachment by the House of Representatives.<sup>1</sup>

American Oversight seeks records to shed light on whether and to what extent DOJ officials were communicating or coordinating with state attorneys general regarding their anti-impeachment letter.

**Requested Records**

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

1. All email communications (including emails, email attachments, complete email chains, text messages, calendar invitations, and attachments thereto) between the DOJ officials listed in Column A and the state attorneys general listed in Column B below:

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<sup>1</sup> Jeff Mordock, *State AGs Blast Trump Impeachment*, WASH. TIMES, Jan. 22, 2020, <https://www.washingtontimes.com/news/2020/jan/22/state-attorneys-general-blast-trump-impeachment/>.



Column A: DOJ Officials	Column B: State Attorneys General
<ul style="list-style-type: none"> <li>i. Attorney General William Barr, or anyone communicating on his behalf such as an assistant or scheduler</li> <li>ii. Chief of Staff Brian Rabbitt</li> <li>iii. Counselor to the Attorney General Will Levi</li> <li>iv. Anyone serving in the role of White House Liaison</li> <li>v. Deputy Attorney General Jeffrey Rosen</li> <li>vi. Anyone serving as Chief of Staff to the Deputy Attorney General</li> <li>vii. Principal Associate Deputy Attorney General Seth DuCharme</li> <li>viii. Principal Deputy Associate Attorney General Claire McCusker Murray</li> <li>ix. Solicitor General Noel Francisco</li> <li>x. Principal Deputy Solicitor General Jeff Wall</li> <li>xi. Any other DOJ employee who coordinated on impeachment issues, including, but not limited to, members of DOJ's communications team</li> </ul>	<ul style="list-style-type: none"> <li>i. Alan Wilson, Attorney General of South Carolina, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>ii. Jeff Landry, Attorney General of Louisiana, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>iii. Sean Reyes, Attorney General of Utah, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>iv. Steve Marshall, Attorney General of Alabama, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>v. Curtis Hill, Attorney General of Indiana, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>vi. Kevin Clarkson, Attorney General of Alaska, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>vii. Derek Schmidt, Attorney General of Kansas, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>viii. Leslie Rutledge, Attorney General of Arkansas, or anyone communicating on her behalf, such as a scheduler or assistant</li> <li>ix. Daniel Cameron, Attorney General of Kentucky, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>x. Ashley Moody, Attorney General of Florida, or anyone communicating on her behalf, such as a scheduler or assistant</li> <li>xi. Douglas Peterson, Attorney General of Nebraska, or anyone communicating on his behalf, such as a scheduler or assistant</li> </ul>

	<ul style="list-style-type: none"> <li>xii. Christopher Carr, Attorney General of Georgia, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xiii. Lynn Fitch, Attorney General of Mississippi, or anyone communicating on her behalf, such as a scheduler or assistant</li> <li>xiv. Eric Schmitt, Attorney General of Missouri, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xv. Jason Ravensborg, Attorney General of South Dakota, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xvi. Tim Fox, Attorney General of Montana, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xvii. Herbert H. Slattery, III, Attorney General of Tennessee, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xviii. Dave Yost, Attorney General of Ohio, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xix. Ken Paxton, Attorney General of Texas, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xx. Mike Hunter, Attorney General of Oklahoma, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xxi. Patrick Morrisey, Attorney General of West Virginia, or anyone communicating on his behalf, such as a scheduler or assistant</li> <li>xxii. Any employee or representative of the Republican Attorney's General Association, including any communications with an email address ending in republicanags.com</li> </ul>
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Please provide all responsive records from December 1, 2019, through February 10, 2020.

### 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."<sup>2</sup> The public has a significant interest in whether and to what extent federal officials communicated or coordinated with state officials regarding public support for the president. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether officials at the Department of Justice played a role in coordinating or supporting an effort by state legal officials to influence the impeachment process. 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.<sup>3</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 its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>3</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>4</sup> American Oversight currently has approximately 15,400 page likes on Facebook and 101,800 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 27, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 27, 2020).

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>5</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>6</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>7</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>8</sup> posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;<sup>9</sup> and 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.<sup>10</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:

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

<sup>6</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>7</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>8</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>9</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>.

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

- 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>11</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>12</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>13</sup> 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.

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<sup>11</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>12</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>13</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 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>.

- 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 Emma Lewis at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.919.6303. 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,



Austin R. Evers  
Executive Director  
American Oversight