



March 31, 2020

VIA EMAIL

Alexis R. Graves  
Departmental FOIA Officer  
1400 Independence Avenue, SW  
South Building  
Room 4104  
Washington, DC 20250-0706  
[USDAFOIA@ocio.usda.gov](mailto:USDAFOIA@ocio.usda.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, 7 C.F.R. Part 1, American Oversight makes the following request for records.

Since 2018, the U.S. Department of Agriculture (USDA) has provided farmers \$28 billion to soften the impact of President Trump's trade war with China. Critics have raised concerns about the "farm bailout," including questioning USDA's legal authorization for the subsidies,<sup>1</sup> choice of how to apportion the aid,<sup>2</sup> and payments to foreign-owned corporations.<sup>3</sup> Economists have also raised concerns that the bailout has overcompensated commodities growers<sup>4</sup> and has gone primarily to industrial-scale, rather than family-

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<sup>1</sup> Jeff Stein, *As Billions Flow to Farmers, Trump Administration Faces Internal Concerns Over Unprecedented Bailout*, WASH. POST (Sept. 9, 2019, 10:28 AM), [https://www.washingtonpost.com/business/economy/as-billions-flow-to-farmers-trump-administration-faces-internal-concerns-over-unprecedented-bailout/2019/09/09/66ec9278-cfe6-11e9-b29b-a528dc82154a\\_story.html](https://www.washingtonpost.com/business/economy/as-billions-flow-to-farmers-trump-administration-faces-internal-concerns-over-unprecedented-bailout/2019/09/09/66ec9278-cfe6-11e9-b29b-a528dc82154a_story.html).

<sup>2</sup> *Ltr. to Gen. L. Dodaro, Comptroller General*. 9, 2020, [https://www.agriculture.senate.gov/imo/media/doc/GAO%20Request%20Letter%20to%20Dodaro%20re%20MFP\\_01%2009%2020.pdf](https://www.agriculture.senate.gov/imo/media/doc/GAO%20Request%20Letter%20to%20Dodaro%20re%20MFP_01%2009%2020.pdf).

<sup>3</sup> Maggie Haberman & Alan Rappaport, *Farm Bailout Paid to Brazilian Meat Processor Angers Lawmakers*, N.Y. TIMES, Feb. 7, 2020, <https://www.nytimes.com/2020/02/07/us/politics/farm-bailout-jbs.html>.

<sup>4</sup> Mike Dorning, *Trump's \$28 Billion Trade War Bailout Is Overpaying Farmers*, BLOOMBERG, (Dec. 4, 2019, 4:00 AM), <https://www.bloomberg.com/news/articles/2019-12-04/trump-s-28-billion-trade-war-bailout-is-overpaying-many-farmers>.



owned farms.<sup>5</sup> These concerns have led the Government Accountability Office (GAO) to open an investigation into the farm bailout.<sup>6</sup>

American Oversight submits this request to shine light on the extent of the White House's influence on the agency's implementation of the farm bailout.

### **Requested Records**

American Oversight requests that USDA produce the following records within twenty business days:

1. Any records reflecting communications providing guidance or directives from the White House to USDA officials, including Secretary Perdue, regarding the relief strategy for farmers impacted by unjustified retaliation and trade disruption.<sup>7</sup> At a minimum, this would include all communications with the following:
  - a. President Trump's 2018 directive to "Secretary Perdue to craft a short-term relief strategy to protect agricultural producers while the Administration works on free, fair, and reciprocal trade deals to open more markets in the long run to help American farmers compete globally;"<sup>8</sup>
  - b. the President's authorization for "USDA to provide up to \$16 billion in programs;"<sup>9</sup>
  - c. any other Presidential authorizations for funding.

Please provide all responsive records from March 1, 2018, through the date of the search.

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<sup>5</sup> Donald Carr, et al., *Trump's Hollow Promise of Trade-War Relief for Small Farms*, ENVIRO. WORKING GROUP, Nov. 21, 2019, <https://www.ewg.org/agmag/2019/11/trump-s-hollow-promise-trade-war-relief-small-farms>; Andrew Van Dam & Laris Karklis, *With Trump's Farm Bailout Came Surprising Profits, but Little Help for the Neediest*, WASH. POST, Dec. 30, 2019, <https://www.washingtonpost.com/business/2019/12/21/after-miserable-farm-sector-still-came-out-ahead-thanks-government-assistance/?arc404=true>.

<sup>6</sup> Alan Rappeport, *U.S. Watchdog to Investigate Trump's Farm Bailout Program*, N.Y. TIMES, Feb. 18, 2020, <https://www.nytimes.com/2020/02/14/us/politics/trump-farm-bailout-investigation.html>.

<sup>7</sup> *USDA Assists Farmers Impacted by Unjustified Retaliation*, USDA, July 24, 2018, <https://www.usda.gov/media/press-releases/2018/07/24/usda-assists-farmers-impacted-unjustified-retaliation>.

<sup>8</sup> *Id.*

<sup>9</sup> *USDA Announces Support for Farmers Impacted by Unjustified Retaliation and Trade Disruption*, USDA, May, 23, 2019, <https://www.usda.gov/media/press-releases/2019/05/23/usda-announces-support-farmers-impacted-unjustified-retaliation-and>.

American Oversight believes that your agency is in the best position to know where these directives are located. At a minimum, a reasonable search would include searching the records of Secretary Perdue and his staff, the Under Secretary for Farm Production and Conservation and his staff, the Under Secretary for Trade and Foreign Agricultural Affairs and his staff, and anyone serving in the role of White House Liaison. This request includes both executive orders and less formal directives.

2. All records (including preparatory briefings, materials shared during the meeting, notes take during the meeting, memoranda memorializing the meeting, read-outs of the meeting) reflecting the content of or regarding the following meetings:
  - a. April 12, 2018 “Meeting with POTUS/Members of Congress/Governors on Agriculture and Trade -- The Cabinet Room, White House;”<sup>10</sup>
  - b. June 13, 2018, 9:00 AM-10:00AM, “Trade Meeting,” with individuals outside of USDA, including Zippy Duvall, Chuck Conner, Chris Novak, Randy Russell, Randy Gordon, and Dale Moore;<sup>11</sup>
  - c. July 18, 2018, 3:30 PM-4:00PM, meeting with Todd Bastean, President of Bunge North America;<sup>12</sup>
  - d. July 25, 2018 “Meeting with POTUS & Members of Congress on Agriculture and Trade;”<sup>13</sup>
  - e. July 25, 2018, 5:30PM-5:45PM call with Newt Gingrich, “Topic: Trade;”<sup>14</sup>
  - f. September 5, 2018, 3:345PM-4:45PM, “Trade Mitigation Update” meeting;<sup>15</sup>
  - g. October 4, 2018, 4:0, “Trade Mitigation Update” meeting.<sup>16</sup>

American Oversight believes that your agency is in the best position to know where these records are located. At a minimum, a reasonable search would include searching the records of Secretary Perdue and his staff, the Under Secretary for Farm Production and Conservation and his staff, the Under

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<sup>10</sup> *Secretary Perdue Calendar*, at 207, [https://www.dm.usda.gov/foia/docs/xxx\\_Perdue%20Calendar\\_11.3.2017-10.25.2018\\_FINAL\\_Redacted.pdf](https://www.dm.usda.gov/foia/docs/xxx_Perdue%20Calendar_11.3.2017-10.25.2018_FINAL_Redacted.pdf).

<sup>11</sup> *Id.* at 319.

<sup>12</sup> *Id.* at 388.

<sup>13</sup> *Id.* at 409.

<sup>14</sup> *Id.* at 410.

<sup>15</sup> *Id.* at 488.

<sup>16</sup> *Id.* at 488.

Secretary for Trade and Foreign Agricultural Affairs and his staff, and anyone serving in the role of White House Liaison.

3. The “china retaliation documents,” “Rob 330 mitigation documents” and “Z” listed on 3:30–4:00 PM calendar entry of Secretary Perdue’s calendar from March 27, 2018.<sup>17</sup>

### **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>18</sup> The public has a significant interest in understanding the unprecedented farm bailouts.<sup>19</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including illuminating the White House’s influence on USDA’s subsidy policies. 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>20</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

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<sup>17</sup> *Id.* at 181.

<sup>18</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>19</sup> *See, e.g.,* Ryan McCrimmon, *Economists Flee Agriculture Dept. After Feeling Punished Under Trump*, POLITICO, (May 7, 2019, 5:03 AM), <https://www.politico.com/story/2019/05/07/agriculture-economists-leave-trump-1307146>; Jeff Stein, et al., *In All-caps Tweet, Trump Vows New Farm Bailouts as China Purchases Appear Weaker Than Promised*, WASH. POST, (Feb. 21, 2020, 5:37 PM), <https://www.washingtonpost.com/business/2020/02/21/all-caps-tweet-president-trump-vows-new-farm-bailouts-china-purchases-appear-weaker-than-promised/>.

<sup>20</sup> *See* 5 U.S.C. § 552(a)(4)(A)(iii).

also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>21</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>22</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>23</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>24</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>25</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>26</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>27</sup>

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<sup>21</sup> American Oversight currently has approximately 15,400 page likes on Facebook and 102,300 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 27, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 27, 2020).

<sup>22</sup> *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>23</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>24</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>25</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>26</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>27</sup> *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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, since the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- 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>28</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

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<sup>28</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).

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>29</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>30</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.
- 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

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<sup>29</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>30</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>.



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 Megan Field at [foia@americanoversight.org](mailto:foia@americanoversight.org) or 202.897.2465. 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