



April 7, 2020

VIA EMAIL

FOIA/PA Request
FOIA and Transparency
Department of the Treasury
Washington, D.C. 20220
treasfoia@treasury.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, 31 C.F.R. Part 1, Subpart A, American Oversight makes the following request for records.

For some Americans, the closest or best equipped hospital is operated by the Department of Defense (DOD).¹ Those civilians undergo complex surgeries, receive emergency care, and are provided other medical treatment by DOD professionals. Unfortunately, paying for that treatment can be complicated and costly.² Unlike most healthcare facilities, some DOD facilities bill civilian patients directly, rather than billing their insurance companies, Medicare, Medicaid, or other public insurance providers.³ Additionally, DOD is “required to take ‘prompt and aggressive action’ to settle all debts,” according to public reporting on DOD’s regulations and practices.⁴ This requires sending overdue debts to the Department of Treasury (Treasury), which has broad power to pursue debts including garnishing wages, tax returns, or social security payments.⁵

¹ See Jared Bennett & Olga Khazan, *America’s Most Powerful Medical-Debt Collector*, PUBLIC INTEGRITY, Jan. 21, 2020, <https://publicintegrity.org/inequality-poverty-opportunity/medical-debt-army-hospital/> (“At one point, when he called the Treasury Department again, he said someone told him the hospital had sent his account to a collections agency called Coast Professional.”).

² *Ltr. from Senator Elizabeth Warren to Steven T. Mnuchin, Secretary of the Treasury*, Jan. 29, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.01.29%20Letter%20to%20Treasur%20re%20military%20hospital%20debt%20collection.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*



American Oversight submits this request for records with the potential to shed light on how Treasury chooses to pursue medical-debts, including actions taken against veterans, low-income individuals, and individuals without insurance.

Requested Records

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

1. Any scripts, instruction manuals, and guidance related to debt collection that are provided to Treasury Department employees responsible for collecting unpaid medical debts.

Please provide all responsive records from January 1, 2016, through the date of the search.

2. Any documents from Treasury's office of the General Counsel informing Treasury Department employees of whether and to what extent they must comply with the Fair Debt Collection Practices Act when working to collect medical debt.

Please provide all responsive records from January 1, 2016, through the date of the search.

3. Records sufficient to show any and all contracts with private debt collectors to pursue individuals with unpaid medical debt from services provided by a federal health care provider. For example, records of contracts with Coast Professional would be responsive to this request.⁶

Please provide all responsive records from January 1, 2017, through the date of the search.

4. Any (a) guidance from the Secretary of the Treasury instructing or giving permission to Treasury employees to exempt medical debt from the application of the [mandatory transfer] requirement⁷ or (b) any memoranda or other communications (including but not limited to email communications) from Treasury employees to the Secretary, recommending that he exempt medical debt from the application of the mandatory transfer requirement.

⁶ Bennett & Khazan, *supra* note 1 (“At one point, when he called the Treasury Department again, he said someone told him the hospital had sent his account to a collections agency called Coast Professional.”).

⁷ 31 C.F.R. § 285.12.

American Oversight believes that your agency is in the best position to determine where these records would be located. At minimum, a reasonable search should include the offices of the Secretary of Treasury and Commissioner Timothy Gribben, in the Bureau of the Fiscal Service. American Oversight believes a reasonable search would include searching agency record systems for the following terms: “mandatory transfer”, “31 C.F.R. § 285.12”, and “medical debt collection.”

Please provide all responsive records from January 1, 2017, through the date of the search.

To be clear, American Oversight is not requesting details about individual cases and does not object to the redaction of such details, e.g. names or other identifying information, for records responsive to this request.

To the extent your agency maintains this data in aggregated form, such as in a spreadsheet or within a database or other format that can be readily exported to a spreadsheet, American Oversight requests responsive data in such a format. In addition to records in the form of spreadsheets and tables, this request encompasses records in the form of final memoranda, reports, and talking points.

We understand that your office may maintain requested data in different forms than we requested. Should that be the case, we would be happy to discuss streamlining of our request in order to align more closely with the data and statistics already maintained by Treasury, and thereby minimize the processing burden to your agency. Please feel free to contact us at the telephone number listed in the final paragraph of this letter.

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.”⁸ The public has a significant interest in understanding Treasury’s policies toward medical-debt collection.⁹

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ Bennett & Khazan, *supra* note 1.

Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether the Secretary has considered exempt at-risk populations from debt collection and whether Treasury is contracting with for-profit debt collectors to recover debts. 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.¹⁰ 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.¹¹

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.¹² 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;¹³ 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;¹⁴ posting records regarding potential self-dealing at the Department of Housing &

¹⁰ See 5 U.S.C. § 552(a)(4)(A)(iii).

¹¹ American Oversight currently has approximately 15,400 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 30, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 30, 2020).

¹² News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹³ 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>.

¹⁴ 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,

Urban Development and related analysis;¹⁵ posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;¹⁶ 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.¹⁷

Accordingly, American Oversight qualifies for a fee waiver.

Notwithstanding its fee waiver request, pursuant to 31 C.F.R. § 1.5(b)(7), American Oversight hereby states that it is willing to pay fees in an amount not more than \$25.00.

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, 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 electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.

<https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

¹⁵ *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>.

¹⁶ *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>.

¹⁷ *Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- 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.¹⁸ 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.¹⁹
- 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,²⁰ 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

¹⁸ 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).

¹⁹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁰ 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>.

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 Megan Field at 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,



Austin R. Evers
Executive Director
American Oversight