



May 12, 2020

VIA EMAIL

FOIA Director (Legal)
US International Development Finance Corporation
1100 New York Avenue NW
Washington, DC 20527
foia@dfc.gov

Re: Expedited Freedom of Information Act Request

Dear FOIA Director:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 22 C.F.R. §§ 706.1–706.34, American Oversight makes the following request for records.

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.¹ Since late 2019, the virus has spread to dozens of countries, sickened millions of people, and resulted in more than 285,000 deaths.² Throughout the pandemic, American healthcare professionals, first responders, and other essential workers have struggled to obtain urgently needed supplies.³ Adam Boehler, CEO of the U.S. International Development Finance Corporation (DFC) and college roommate of White House senior

¹ *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

² *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (May 12, 2020, 8:21 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

³ See, e.g., JM Rieger, *The Trump Administration Says States Have the Testing Capacity They Need. Governors Say They Lack Testing Supplies*, WASH. POST (Apr. 22, 2020, 8:17 PM), <https://www.washingtonpost.com/politics/2020/04/22/trump-administration-says-states-have-testing-capacity-they-need-governors-say-they-lack-testing-supplies/>; Katherine Q. Seelye, et al., *Doctors and Governors Vie for Masks in Cloak-and-Dagger Deals*, N.Y. TIMES, Apr. 20, 2020, <https://www.nytimes.com/2020/04/20/us/coronavirus-states-masks.html>; Andrew W. Artenstein, *In Pursuit of PPE*, THE NEW ENGLAND JOURNAL OF MEDICINE, Apr. 17, 2020, <https://www.nejm.org/doi/full/10.1056/NEJMc2010025>; Aaron Rugar, *Trump says the federal coronavirus effort has been “incredible.” His own government disagrees*, VOX (Apr. 6, 2020, 1:16 PM), <https://www.vox.com/2020/4/6/21209526/coronavirus-inspector-general-report-health-and-human-services-trump>.



advisor Jared Kushner, has reportedly been central to Mr. Kushner's role in FEMA and other agencies' response to supply shortages.⁴

American Oversight seeks records with the potential to shed light on Mr. Boehler's role in obtaining and distributing COVID-19-related supplies.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that DFC produce the following records as soon as practicable, and at least within twenty business days:

All communications (including emails, email attachments, text messages, messages on messaging platforms (such as Jabber, Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), or calendar invitations) between (a) Adam Boehler and (b) any of the following individuals, including *but not limited to*, at the email addresses provided:

- a. Jared Kushner (jck@who.eop.gov)⁵

⁴ Nicholas Confessore, et al., *How Kushner's Volunteer Force Led a Fumbling Hunt for Medical Supplies*, N.Y. TIMES (May 5, 2020, 12:21 AM), <https://www.nytimes.com/2020/05/05/us/jared-kushner-fema-coronavirus.html?searchResultPosition=2>; Yasmeen Abutaleb & Ashley Parker, *Kushner Coronavirus Effort Said to be Hampered by Inexperienced Volunteers*, WASH. POST (May 5, 2020, 3:49 PM), https://www.washingtonpost.com/politics/kushner-coronavirus-effort-said-to-be-hampered-by-inexperienced-volunteers/2020/05/05/6166ef0c-8e1c-11ea-9e23-6914ee410a5f_story.html.

⁵ Given the reports establishing both that Mr. Kushner regularly uses WhatsApp messages for communications regarding official government business and Mr. Kushner's relationship with the relevant agency officials, the agency must conduct an adequate search for responsive WhatsApp messages "reasonably calculated to uncover all relevant documents." *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 325 (D.C. Cir. 1999) (citations omitted). An adequate search will likely require asking officials with knowledge to aid in identifying responsive records. Although many agencies have policies requiring that official text messages copy an agency employee's email address, an electronic search of email records would not be a sufficient search for this request because WhatsApp messaging applications do not have the technological capability to permit copying or forwarding to an email address. For reports describing Mr. Kushner's WhatsApp usage, please see Letter from Elijah E. Cummings, Chairman of House of Representatives Committee on Oversight and Reform to Pat Cipollone, White House Counsel, Mar. 21, 2019, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-03-21.EEC%20to%20Cipollone-WH.pdf>; Nicholas Fandos, *Jared Kushner and Ivanka Trump Use Private Accounts for Official Business, Their Lawyer Says*, N.Y. TIMES, Mar. 21, 2019, <https://www.nytimes.com/2019/03/21/us/politics/jared-kushner-whatsapp.html>.

- b. Cassidy Dumbauld (cassidy.m.dumbauld@who.eop.gov)
- c. Avi Berkowitz (avi@who.eop.gov)
- d. Ivanka Trump (imt@who.eop.gov)
- e. Julie Radford (julie.t.radford@who.eop.gov)
- f. Rachael Baitel (rachael.baitel@who.eop.gov, or any usaid.gov address associated with Ms. Baitel)
- g. Anyone communicating from an email address ending in ijkfamily.com, trumporg.com, trump.com, kushner.com, or kushnercompanies.com

Please provide all responsive records from February 1, 2020, through the date of the search.

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."⁶ The public has a significant interest in understanding what actions federal officials, including Mr. Boehler, have taken to address shortages of supplies needed to respond to the COVID-19 pandemic.⁷ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including helping to clarify which federal officials exercised what authority over supply-chain management. 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.⁸ 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

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ Confessore, *supra* note 4; Abutaleb, *supra* note 4.

⁸ 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.⁹

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.¹⁰ 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;¹¹ 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;¹² posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁴ 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.¹⁵

⁹ 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 May 7, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 7, 2020).

¹⁰ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹¹ *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>.

¹² *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>.

¹³ *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>.

¹⁴ *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>.

¹⁵ *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.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and DFC's regulations, 22 C.F.R. § 706.31(f), American Oversight requests that your agency expedite the processing of this request.

I certify to be true and correct to the best of my knowledge and belief that the information requested is urgently needed in order to inform the public concerning actual or alleged government activity, and American Oversight is primarily engaged in disseminating the information it received from public records requests to the public.

Recent reporting demonstrates that there is clearly an urgent need to inform the public about the subject of American Oversight's FOIA request: how federal officials, including Mr. Boehler,¹⁶ are managing the federal government's response to supply chain concerns created by the COVID-19 pandemic. American Oversight has requested records with the potential to shed light on the steps federal officials, including members of Jared Kushner's informal task force, have taken to respond to the novel coronavirus outbreak that has resulted in a major public health emergency. Because the virus has spread rapidly and has already killed tens of thousands of people in the United States,¹⁷ there is plainly an urgent need to inform the public about how federal agencies are responding to the virus. The widespread media interest on coronavirus demonstrates that the public urgently needs information about the federal government's efforts and policies concerning the subject matter of this request.¹⁸ While there is widespread reporting on the equipment shortages faced by healthcare providers, first responders, and essential workers,¹⁹ there remains considerable confusion—even amongst governors, congresspeople, and healthcare leaders—about how to obtain needed supplies.²⁰ This confusion stems, in part, from

¹⁶ Confessore, *supra* note 4; Abutaleb, *supra* note 4.

¹⁷ Coronavirus Map: Tracking the Global Outbreak, N.Y. TIMES (May 6, 2020, 9:56 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

¹⁸ Meg Wagner, et al., *Live Updates: No states meet all the criteria for reopening, health scholar says*, CNN (May 6, 2020, 3:28 PM), https://www.cnn.com/us/live-news/us-coronavirus-update-05-06-20/h_ed73f0f5aa5c0e04163d4c0da8b2c2b8; John Wagner, et al., *Live Updates: Live updates: Trump, reversing course, says coronavirus task force will continue 'indefinitely'*, WASH. POST (May 6, 2020, 3:22 PM EST), <https://www.washingtonpost.com/nation/2020/05/06/coronavirus-update-us/>; *Coronavirus Live Updates: California Breaks Grim Record: More Than 100 Deaths Reported in One Day*, L.A. TIMES (Apr. 16, 2020, 10:38 AM), <https://www.latimes.com/california/liveblog/coronavirus-live-updates-thursday-april-2>.

¹⁹ See, e.g., *supra* note 3.

²⁰ See, e.g., Anita Kumar & Gavin Bade, *States Still Baffled Over How to Get Coronavirus Supplies from Trump*, POLITICO (Apr. 13, 2020, 7:02 AM), <https://www.politico.com/states/florida/story/2020/04/13/states-still-baffled-over-how->

reports of competing governmental task forces and evolving procedures for managing equipment.²¹ The public urgently needs clarity as to which federal officials have the authority to make which decisions about supplies.

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about how Mr. Boehler and other federal officials are managing the nation's supply chain of equipment needed to respond to the pandemic.

I further certify that American Oversight is primarily engaged in disseminating information to the public. 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. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,²² American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."²³ American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and 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.²⁴ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.²⁵

[to-get-coronavirus-supplies-from-trump-1275083](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html); Toluse Olorunnipa, et al., *Governors Plead for Medical Equipment From Federal Stockpile Plagued by Shortages and Confusion*, WASH. POST (Mar. 31, 2020, 3:39 PM), https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html.

²⁰ See 5 U.S.C. § 552(a)(4)(A)(iii).

²¹ See, e.g., Rachael Levy, *Volunteers in Coronavirus Response Ruffle Some at FEMA*, WALL STREET JOURNAL (Apr. 21, 2020, 2:37 PM), <https://www.wsj.com/articles/volunteers-in-coronavirus-response-ruffle-some-at-fema-11587489141>.

²² See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²³ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

²⁴ American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 14, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 14, 2020).

²⁵ See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, 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>; *Audit the Wall*, AMERICAN OVERSIGHT,

Accordingly, American Oversight's request satisfies the criteria for expedition.

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 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.
- 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.

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

- 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.²⁶ 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.²⁷
- 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,²⁸ 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

²⁶ 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).

²⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁸ 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 Megan Field at foia@americanoversight.org or (202) 897-2465. 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, appearing to read "Austin R. Evers", with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight