



May 14, 2020

VIA EMAIL

FOIA Requester Service Center
U.S. Department of Energy
1000 Independence Avenue SW
Mail Stop MA-46
Washington, DC 20585
foia-central@hq.doe.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, 10 C.F.R. Part 1004, American Oversight makes the following request for records.

In March 2019 at an energy conference in Houston, Texas, Lev Parnas and Igor Fruman—associates of the president’s personal attorney Rudy Giuliani—and energy magnate and frequent Republican donor, Harry Sargeant III, met with Andrew Favorov, an executive of state-owned Ukrainian oil and gas company, Naftogaz.¹ During this meeting, the Associated Press reports that the three proposed a plan to Favorov which would, among other provisions, have him replace Andriy Kobolyev as CEO of Naftogaz and include Favorov in a project to export large amounts of liquefied natural gas (LNG) from the US to Ukraine, where Naftogaz is the largest distributor.²

On May 2, 2019, then-Secretary of Energy Rick Perry announced an agreement authorizing exports of LNG from facilities under construction in Hackberry, LA, and Port Arthur, TX, respectively owned by Tellurian Inc. and Sempra Energy.³ This agreement came only weeks after these companies received authorization to construct LNG terminals at the

¹ Desmond Butler, et al., “Profit, Not politics: Trump Allies Sought Ukraine Gas Deal,” AP, Oct. 7, 2019, <https://apnews.com/d7440cffba4940f5b85cd3dfa3500fb2>.

² *Id.*

³ Department of Energy Authorizes LNG Exports from the Driftwood and Port Arthur LNG Projects, May 2, 2019, <https://www.energy.gov/articles/departement-energy-authorizes-lng-exports-driftwood-and-port-arthur-lng-projects-0>.



aforementioned locations,⁴ and only weeks before Secretary Perry embarked on a delegation to Ukraine, accompanied by EU Ambassador, Gordon Sondland, and special envoy to Ukraine, Kurt Volker.⁵

During this delegation, Secretary Perry reportedly pressured Ukrainian President Volodymyr Zelensky to replace members of Naftogaz’s international advisory board.⁶ In their first in-person meeting Secretary Perry reportedly pressured President Zelensky to remove Amos Hochstein, then Senior Vice President of Marketing at Tellurian LNG, former Special Envoy and former Coordinator of International Energy Affairs under the Obama administration. In his capacity as Coordinator of International Energy Affairs, Hochstein traveled and collaborated extensively with Vice President Joe Biden.⁷ According to AP sources, Secretary Perry indicated that Hochstein should be replaced with someone “reputable in Republican circles.”⁸

American Oversight seeks records with the potential to shed light on whether and to what extent Secretary Perry attempted to exert his power as a government official to effect domestic policies favorable to his personal interests or influence foreign policy to benefit those of President Trump, including persuading the Ukrainian government to conduct an investigation connected to a potential political opponent of the president.

Requested Records

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

All email communications (including emails, email attachments, complete email chains, calendar invitations, and attachments thereto) sent by the following Department of Energy Employees to the specified representatives of Sempra Energy and Sempra LNG.

Department of Energy Officials	Representatives of Sempra Energy and Sempra LNG
i. Former Secretary Rick Perry ii. Then-Deputy Secretary Dan Brouillette	i. Chairman and CEO of Sempra Energy, Jeffrey Martin (jmartin@sempra.com)

⁴ *FERC Approves Two New LNG Export Projects*, April 18, 2019, <https://www.ferc.gov/media/news-releases/2019/2019-2/04-18-19-C-2.asp#.Xmj43ZNKjBI>.

⁵ See Butler et al., *supra* note 1.

⁶ *Id.*

⁷ Kenneth P. Vogel and Iuliia Mendel, *Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies*, N.Y. TIMES, May 1, 2019, <https://www.nytimes.com/2019/05/01/us/politics/biden-son-ukraine.html>.

⁸ See Butler et al., *supra* note 1.

<ul style="list-style-type: none"> iii. Former Chief of Staff Brian McCormack iv. Anyone serving as Special Assistant for the Secretary, including Hunter Faseler v. Under Secretary Mark Menezes vi. Assistant Secretary for International Affairs Ted Garrish vii. Special Adviser Samuel Buchan viii. General Counsel William Cooper ix. Senior Advisor, Office of Russian and Eurasian Affairs, Paul Tumminia x. Director of Public Affairs Dirk Vande Beek xi. Deputy Press Secretary Jessica Szymanski xii. Anyone serving in the capacity of White House Advisor or Liaison 	<ul style="list-style-type: none"> ii. President and Chief Legal Officer of Sempra Energy, George Bilcic (gbilcic@sempra.com) iii. Executive Vice President and Group President of Sempra Energy, Dennis Arriola (darriola@sempra.com) iv. Deputy General Counsel of Sempra Energy, Robert Borthwick (rborthwick@sempra.com) v. Deputy General Counsel of Sempra Energy, Erbin Keith (ekeith@sempra.com) vi. Former Vice President for Federal Affairs of Sempra Energy, Maryam Brown (mbrown@sempra.com) vii. Vice President of Federal Government Affairs of Sempra Energy, Brian Kelly (bkelly@sempra.com) viii. President of Sempra LNG, Justin Bird (jbird@sempralng.com) ix. Chief Marketing Officer for Sempra LNG, Emily Shults (eshults@sempralng.com) x. Chief Commercial Officer and General Counsel for Sempra LNG, Martin Hupka (mhupka@sempralng.com) xi. Vice President of Sempra LNG for Business Origination, Michael Sliwowski (msliwowski@sempralng.com) xii. Regional Vice President of Sempra LNG for External Affairs, Brian Lloyd (blloyd@sempralng.com)
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Please produce all responsive records from April 1, 2019, through May 31, 2019.

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.”⁹ The subject matter of the requested records specifically relates to the operations or activities of the government, including communications with individuals potentially associated with the Trump administration’s effort to persuade the Ukrainian government to investigate a family member of one of the president’s political opponents. There is significant public interest in understanding whether and to what extent the perceived political interests of the president are influencing U.S. foreign policy toward Ukraine, where former Secretary Perry led a delegation to Ukrainian President Zelensky’s inauguration. 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.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

⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

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 March 31, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited March 31, 2020).

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

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 & 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.

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.
- 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

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, <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-busines3/ks>.

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>.

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 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

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>.

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 Hart Wood at foia@americanoversight.org or 202.873.1743.. 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