



May 21, 2020

VIA ELECTRONIC MAIL

Office of General Counsel
Office of Inspector General
U.S. Department of State
1700 North Moore Street
Suite 1400
Arlington, VA 22209
FOIA@stateoig.gov

Re: Expedited 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, 22 C.F.R. Part 171, American Oversight makes the following request for records.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that the U.S. Department of State (State) produce the following records as soon as practicable, and at least within twenty business days:

Records sufficient to identify how many whistleblower complaints were submitted to the State Inspector General containing allegations that concern the conduct of Secretary Mike Pompeo.

Please note that on September 30, 2019, American Oversight submitted a nearly identical request to your agency for records from an earlier time period, which was assigned FOIA tracking number 2019-110. For this request, please provide all responsive records post-dating the search date your agency employed for FOIA Case 2019-110, through the date the search is conducted.

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.”¹ The public has a significant interest in understanding whether a senior administration official has been the subject of whistleblower complaints and the number and subject matter of such complaints. Records with the potential to shed light on this question would contribute significantly to public understanding of operations of the federal government, including whether government officials have raised, or even repeatedly raised, concerns regarding the actions, leadership, or ethical compliance of one of the Trump administration’s most senior and influential figures. 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.² 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.³

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.⁴ 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;⁵ posting records received as part of American Oversight’s “Audit the Wall” project

¹ 5 U.S.C. § 552(a)(4)(A)(iii).

² See 5 U.S.C. § 552(a)(4)(A)(iii).

³ 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 May 18, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 18, 2020).

⁴ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁵ *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

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;⁶ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁷ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁸ 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.⁹

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 22 C.F.R. § 171.11(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 there is a compelling need for expedited processing of the above requests because 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.¹⁰

In light of recent reports that President Trump has notified Congress of his intention to remove State Inspector General Steve Linick at Secretary Pompeo's urging due to Mr. Linick's investigations into the Secretary's conduct, the public urgently needs additional information about complaints submitted to the Office of the Inspector General that

OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

⁶ 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>.

⁷ *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>.

⁸ *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>.

⁹ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

¹⁰ See 22 C.F.R. § 171.11(f)(2).

concern the Secretary’s conduct.¹¹ Reports indicate that the Secretary may have been under investigation for both the misuse of State resources for personal errands and for a potentially improper certification related to a multi-billion dollar arms sale to Saudi Arabia and the United Arab Emirates.¹² Secretary Pompeo has made public statements indicating that he was involved in the president’s decision to remove Mr. Linick because Mr. Linick was “undermining” the department’s mission—in potential violation of the Inspector General Act’s prohibition on agency head obstruction of Inspector General investigations¹³—but has not provided details on what actions prompted the decision to remove him.¹⁴ The public urgently needs the requested information before Mr. Linick is permanently removed or before a permanent replacement is selected so that members of the public may petition their representatives in an informed manner to ensure that the inspector general role at State remains a source of independent oversight and that ongoing investigations are not subject to interference.

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,¹⁵ 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.”¹⁶ 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

¹¹ Catie Edmondson & Michael D. Shear, *Trump Ousted State Dept. Watchdog at Pompeo’s Urging; Democrats Open Inquiry*, N.Y. TIMES, May 17, 2020, <https://www.nytimes.com/2020/05/16/us/politics/linick-investigation-pompeo.html>.

¹² Edward Wong & David E. Sanger, *State Dept. Investigator Fired by Trump Had Examined Weapons Sales to Saudis and Emiratis*, N.Y. TIMES (May 18, 2020, 1:47 PM), <https://www.nytimes.com/2020/05/18/us/politics/pompeo-trump-linick-inspector-general-firing.html>; Edward Wong, *Inspector General’s Firing Puts Pompeo’s Use of Taxpayer Funds Under Scrutiny*, N.Y. TIMES, May 17, 2020, <https://www.nytimes.com/2020/05/17/us/politics/pompeo-inspector-general-steve-linick.html?action=click&module=Top%20Stories&pgtype=Homepage>.

¹³ See 5a U.S.C. § 3(a) (“Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.”).

¹⁴ Carol Morello, *Pompeo Says He Didn’t Know Fired Inspector General Was Investigating Him*, WASH. POST (May 18, 2020, 2:45 PM), https://www.washingtonpost.com/national-security/pompeo-says-he-didnt-know-fired-inspector-general-was-investigating-him/2020/05/18/3ab08dca-9923-11ea-b60c-3be060a4f8e1_story.html.

¹⁵ 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).

¹⁶ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁷ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.¹⁸

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.
- 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.

¹⁷ See *supra*, note 3.

¹⁸ 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, <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>.

- 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.¹⁹ 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.²⁰
- 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,²¹ 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

¹⁹ 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).

²⁰ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²¹ 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 Mehreen Rasheed at foia@americanoversight.org or (202) 848-1320. 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,



Melanie Sloan
Senior Advisor
American Oversight