



May 7, 2020

VIA ONLINE PORTAL

Internal Revenue Service
Central Processing Unit
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
FOIA.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 the U.S. Department of the Treasury (Treasury), 31 C.F.R. Part 1, Subpart A, American Oversight makes the following request for records from the Internal Revenue Service (IRS).

In fall 2019, a career IRS official filed a formal whistleblower complaint, informing both the IRS's Inspector General and members of Congress' tax committees, that he or she had concerns that a political appointee at Treasury had tried to interfere with the IRS's annual audits of the President and Vice President.¹ Senate leaders have since opened an investigation into the allegations.²

American Oversight submits this request to shine light on potential political interference with the IRS's annual audits of the President and Vice President.

¹ Jeff Stein et al., *IRS Whistleblower Said to Report Treasury Political Appointee Might Have Tried to Interfere in Audit of Trump or Pence*, WASH. POST (Oct. 3, 2019, 4:25 PM), https://www.washingtonpost.com/business/economy/irs-whistleblower-said-to-report-treasury-political-appointee-might-have-tried-to-interfere-in-audit-of-trump-or-pence/2019/10/03/0c768b34-e52e-11e9-a331-2df12d56a80b_story.html.

² Jeff Stein & Erica Werner, *Senate Investigators Interview IRS Whistleblower About Alleged Interference with Trump or Pence Audit*, WASH. POST, Jan. 31, 2020, <https://www.washingtonpost.com/business/2020/01/31/irs-whistleblower-trump-pence-audit/>.



Requested Records

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

1. All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations, calendar entries, letters, memoranda, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) anyone serving in the White House (including anyone communicating from an email address ending in @who.eop.gov) and (b) any of the IRS officials named below, about an audit of Vice President Pence, Vice President Pence's family, President Trump's family, or President Trump.
 - a. Commissioner Charles P. Rettig
 - b. Former Acting Commissioner David Kautter
 - c. Anyone serving as Chief of Staff to the Commissioner, including Lia Colbert
 - d. Anyone serving as Deputy Chief of Staff to the Commissioner, including Michelle Haines
 - e. Anyone serving as Special Advisor to Commissioner Rettig
 - f. Anyone serving as White House Liaison or Advisor (or their deputies)
 - g. Chief Counsel Michael Desmond or anyone else serving as IRS Chief Counsel
 - h. Lee Martin or anyone else serving as Director, Whistleblower Office
 - i. Assistant Secretary for Tax Policy
 - j. Director of the Office of Tax Analysis
 - k. Any IRS official tasked with or responsible for the annual audits of President Trump*
 - l. Any IRS official tasked with or responsible for the annual audits of Vice President Pence*

Please provide all responsive records from January 20, 2017, through the date of the search.

*American Oversight believes your office is in the best position to know which IRS officials are involved in and responsible for the audits of President Trump and Vice President Pence. At a minimum, a reasonable search would include searching the records of the IRS examiner(s) appointed to the audits.³

³ Stein et al., *supra* note 1 (“The tax returns of the president and vice president must be kept ‘at all times’ in an orange folder and locked in a secure drawer or cabinet when the appointed IRS examiner is not with the documents, according to the IRS’s manual.”).

2. All records reflecting communications (including emails, complete email chains, email attachments, text messages, telephone call logs, calendar invitations, calendar entries, letters, memoranda, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent by any of the officials named below, to any IRS official responsible for or involved in the audits of President Trump or Vice President Pence.*
 - a. Commissioner Charles P. Rettig
 - b. Former Acting Commissioner David Kautter
 - c. Anyone serving as Chief of Staff to the Commissioner, including Lia Colbert
 - d. Anyone serving as Deputy Chief of Staff to the Commissioner, including Michelle Haines
 - e. Anyone serving as Special Advisor to Commissioner Rettig
 - f. Anyone Serving as White House Liaison or Advisor (or their deputies)
 - g. Chief Counsel Michael Desmond or anyone else serving as IRS Chief Counsel

Please provide all responsive records from January 20, 2017, through the date of the search.

*American Oversight believes your office is in the best position to know which IRS officials are involved in and responsible for the audits of President Trump and Vice President Pence. At a minimum, a reasonable search would include searching the communications of the IRS examiner(s) appointed to the audits.⁴

In an effort to accommodate the IRS and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited item 2 of its request to communications sent by or in the possession of the officials listed above. To be clear, however, with respect to any email communications responsive to this request, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Commissioner Rettig's response to an email from an IRS official involved in a relevant audit and the initial received message are responsive to this request and should be produced.

3. All records reflecting communications (including emails, email attachments, calendar invitations, calendar entries, letters, memoranda, meeting notices, meeting agendas, informational material, talking points, summaries of any oral

⁴ *Id.* (“The tax returns of the president and vice president must be kept ‘at all times’ in an orange folder and locked in a secure drawer or cabinet when the appointed IRS examiner is not with the documents, according to the IRS’s manual.”).

communications, or other materials) between (A) the IRS officials named below, and (A) anyone communicating with an email address ending in “treasury.gov,” that contain both a key term from Column I and a key term from Column II.

IRS Officials:

- i. Commissioner Charles P. Rettig
- ii. Former Acting Commissioner David Kautter
- iii. Anyone serving as Chief of Staff to the Commissioner, including Lia Colbert
- iv. Anyone serving as Deputy Chief of Staff to the Commissioner, including Michelle Haines
- v. Anyone serving as Special Advisor to Commissioner Rettig
- vi. Anyone Serving as White House Liaison or Advisor (or their deputies)
- vii. Chief Counsel Michael Desmond or anyone else serving as IRS Chief Counsel

Key Terms:*

Column I	Column II
i. President	i. Audit
ii. POTUS	ii. “Tax return”
iii. Trump	iii. Orange
iv. Vice President	iv. filing
v. VPOTUS	v. “ways and means”
vi. Pence	vi. Neal
	vii. McFadden
	viii. “19-1974”
	ix. “19-cv-1974”
	x. 6103

Please provide all responsive records from January 20, 2017, through the date of your search.

*To the extent that your agency has the capacity to run boolean searches, American Oversight believes that constructing a search string or strings from the terms listed above would be most effective in the search for responsive records—e.g.: (“president” OR “POTUS” OR “Trump” OR etc.” AND (“audit” OR “tax return” OR “orange” OR etc...)). American Oversight is available to work with you to construct an appropriate search, based on your search capabilities, to most efficiently identify responsive records.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such

emails are responsive to this request. In other words, for example, if Commissioner Rettig received a mass-distribution news clip email including a combination of the key terms listed above, that initial email would not be responsive to this request. However, if Commissioner Rettig forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

4. All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (b) any IRS officials named in Column A below, and (b) any Treasury officials named in Column B below, about an audit of Vice President Pence, Vice President Pence’s family, President Trump’s family, or President Trump.

Column A: IRS Officials	Column B: Treasury Officials
<ul style="list-style-type: none"> a. Commissioner Charles P. Rettig or anyone else serving as IRS Commissioner b. Former Acting Commissioner David Kautter c. Anyone serving as Chief of Staff to the Commissioner, including Lia Colbert d. Anyone serving as Deputy Chief of Staff to the Commissioner, including Michelle Haines e. Anyone serving as Special Advisor to Commissioner Rettig f. Anyone Serving as White House Liaison or Advisor (or their deputies) g. Chief Counsel Michael Desmond or anyone else serving as IRS Chief Counsel 	<ul style="list-style-type: none"> i. Steven Mnuchin, Secretary of Treasury ii. Anyone serving or acting as Deputy Secretary of Treasury, including Justin Muzinich iii. Anyone serving as General Counsel or Deputy General Counsel, including Brian Callanan, and anyone serving in an acting capacity iv. Anyone serving in the capacity of Chief of Staff, Deputy Chief of Staff, or Confidential Assistant to the Secretary of Treasury v. Anyone serving or acting as White House Liaison or Advisor (or their deputies) vi. Anyone serving or acting as a Senior Advisor or Counselor to the Secretary, including Dan Kowalski vii. Anyone serving or acting as Assistant Secretary for Legislative Affairs or their Deputy, including Brian McGuire, Assistant Secretary for Legislative Affairs viii. Anyone serving as Assistant Secretary for Public Affairs, including Tony Sayegh and Monica Crowley ix. David Kautter, Assistant Secretary for Tax Policy, and anyone serving as his chief of staff x. Director of the Office of Tax Analysis

Please provide all responsive records from January 20, 2017, through the date of the search.

To be clear, American Oversight is not seeking personal tax return information with respect to any item of this request. *C.f.* 26 U.S.C. § 6103. If any search for records responsive to this request does produce records that include personal tax return information, American Oversight insists that such information be segregated from nonexempt portions of the records, and all reasonably segregable nonexempt information be produced.

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."⁵ The public has a significant interest in the question of whether political actors have sought to influence the annual audits of Vice President Pence and President Trump.⁶ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including illuminating whether career public servants have faced inappropriate political pressure while carrying out their official duties. 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.⁷ 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

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ Stein, *supra* note 1; Stein & Werner, *supra* note 2.

⁷ 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.⁸

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.⁹ 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;¹⁰ 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;¹¹ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹³ 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.¹⁴

⁸ 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 7, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 7, 2020).

⁹ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹⁰ 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>.

¹¹ 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>.

¹² 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>.

¹³ 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>.

¹⁴ 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.

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, if 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.
- 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.¹⁵ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain

¹⁵ 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).

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.¹⁶

- 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,¹⁷ 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

¹⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁷ 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 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