



June 16, 2020

VIA EMAIL

U.S. Department of State
Office of Information Programs and Services
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522-0208
FOIArequest@state.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, 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 across the globe, sickened millions of people, and resulted in hundreds of thousands of deaths.²

Despite this ongoing health crisis, the Trump administration decided last month to halt funding to the World Health Organization (WHO) while it undertook global efforts to combat the disease, with the president claiming that the WHO had mismanaged and covered up the spread of the virus.³ The United States is the largest donor to the WHO, and, according to the U.N. Secretary General, U.S. funding for WHO is “absolutely critical to the world’s efforts” to fight coronavirus.⁴ Members of Congress have highlighted that the administration has provided little formal justification for cutting WHO funding, and that this funding pause may run afoul of the Impoundment Control Act.⁵ President Trump subsequently threatened to make the funding halt permanent, citing the results of his administration’s “investigation” into the WHO

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

² *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (June 15, 2020, 8:27 AM) <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

³ Alice Ollstein, *Trump Halts Funding to World Health Organization*, POLITICO (Apr. 14, 2020, 9:22 PM), <https://www.politico.com/news/2020/04/14/trump-world-health-organization-funding-186786>.

⁴ *Id.*

⁵ Letter from Chairman Rep. Engel, U.S. H. Comm. on Foreign Affairs to Mike Pompeo, Secretary, U.S. Dep’t of State, Apr. 27, 2020, https://foreignaffairs.house.gov/_cache/files/6/e/6ebd95bd-76ff-4eeb-afc8-56ff96206c04/8CD54BDD144026EDC5618B546B0C9054.4-27-2020-ele-letter-to-pompeo-who-doc-request.pdf; Caitlin Emma, *Trump Halt to WHO Funding Violates Same Law as Ukraine Aid Freeze, House Democrats Say*, POLITICO (Apr. 15, 2020, 12:38 PM), <https://www.politico.com/news/2020/04/15/house-democrats-trump-who-funding-188124>.



response,⁶ although few details of this investigation—or the changes the administration has requested of the WHO to restore U.S. funding—have been made public. Then, on May 29, President Trump announced the U.S. was “terminating our relationship with the World Health Organization.”⁷

American Oversight seeks records to shed light on the circumstances surrounding the decision to withhold aid to the WHO.

Requested Records

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

All records (including formal memoranda, email records, talking points, or cables) reflecting, summarizing, or otherwise memorializing discussions or negotiations between the State Department and the World Health Organization regarding “how to reform the organization.” (In a letter on May 18, 2020, Trump stated that such discussions were underway.⁸)

To be clear, records stating U.S. positions regarding requested reforms, as well as WHO correspondence regarding the U.S. positions or possible reforms, are considered responsive to this request. In addition, both communications between the State

⁶ Teo Armus, *Trump Threatens to Permanently Cut WHO Funding, Leave Body if Changes Aren't Made Within 30 Days*, WASH. POST (May 19, 2020, 8:46 AM) <https://www.washingtonpost.com/nation/2020/05/19/who-funding-trump/>.

⁷ Berkeley Lovelace Jr., *Trump Says the U.S. Will Cut Ties with World Health Organization*, CNBC (May 29, 2020, updated 4:36 PM), <https://www.cnbc.com/2020/05/29/trump-says-the-us-will-cut-ties-with-world-health-organization.html>.

⁸ Donald J. Trump (@realDonaldTrump), Twitter, May 18, 2020, <https://twitter.com/realDonaldTrump/status/1262577580718395393?s=20>, “This is the letter sent to Dr. Tedros of the World Health Organization. It is self-explanatory!”.

Department and WHO, as well as State Department records summarizing such communications, are considered responsive to this request.

American Oversight believes the State Department is best positioned to determine where responsive records may reside. At a minimum, American Oversight believes a search for responsive records must include:

- i. The office of U.S. Ambassador to the Mission to International Organizations in Geneva, Andrew Bremberg,
- ii. The office of the Acting Assistant Secretary for the Bureau of International Organization Affairs Pam Pryor,
- iii. The office of the United States Mission to the United Nations Kelly Craft,
- iv. The office of the U.S. Global AIDS Coordinator and Special Representative for Global Health Diplomacy Deborah Birx.

Please provide all responsive records from April 1, 2020, through June 1, 2020.

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 public has a significant interest in the federal government's support of and relationship with the WHO, the world's leading international public health organization. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the circumstances surrounding the administration's decision to make permanent a unilateral funding halt. These issues are of particular concern given the WHO's role in combatting the ongoing coronavirus pandemic, such as by conducting vaccine trials and distributing test kits,¹⁰ as well as the outstanding questions regarding the legality of the administration's actions.¹¹ 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.¹² 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

⁹ 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁰ See, e.g., Torbati, *supra* note 6; Ollstein, *supra* note 3.

¹¹ Emma, *supra* note 5.

¹² See 5 U.S.C. § 552(a)(4)(A)(iii).

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.¹³

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.¹⁴ 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;¹⁵ 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;¹⁶ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹⁷ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁸ 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.¹⁹

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:

¹³ American Oversight currently has approximately 15,500 page likes on Facebook and 102,100 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited June 9, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited June 9, 2020).

¹⁴ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

¹⁵ *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>.

¹⁶ *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>.

¹⁷ *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>.

¹⁸ *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>.

¹⁹ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, because 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,” in its 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.²⁰ 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.²¹
- 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,²² 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

²⁰ 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).

²¹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²² 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>.

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 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 Christine H. Monahan at foia@americanoversight.org or (202) 869-5244. 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,



Melanie Sloan
Senior Advisor
American Oversight