



July 9, 2020

**VIA EMAIL**

FOIA Director (Legal)  
U.S. International Development Finance Corporation  
1100 New York Avenue NW  
Washington, DC 20527  
[foia@dfc.gov](mailto:foia@dfc.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, 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.<sup>1</sup> Since late 2019, the virus has spread across the globe, sickened millions of people, and resulted in hundreds-of-thousands of deaths.<sup>2</sup> This is a rapidly evolving situation that is demanding coordinated attention and action across the federal government.

American Oversight seeks to shed light on the federal government's response to this pandemic.

**Requested Records**

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

The record referenced in DFC's July 6, 2020 response letter to American Oversight's prior FOIA request (assigned FOIA Number 20-043), which DFC stated contained an email address similar to the address described in American Oversight's prior request. *See Ex. A at 2* ("Further, in the course of processing another FOIA request, the FOIA Office identified an email address in the body of a document that is similar to the parameters of your current request."). To be clear,

---

<sup>1</sup> *Coronavirus Disease 2019 (COVID-19) Situation Summary*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>2</sup> *Coronavirus Map: Tracking the Global Outbreak*, N.Y. Times (July 9, 2020, 8:26 AM), <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.



the document referenced in this sentence of DFC's response letter is the record sought by American Oversight through this FOIA request.

American Oversight expects that its request for a single record showing the email address recently identified during FOIA processing will be assigned to the Simple processing track and that this request can, consequently, be processed promptly.

### **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."<sup>3</sup> The public has a significant interest in the federal government's response to the coronavirus. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent the federal government is prioritizing the interests of friends or allies of the president in formulating its response through use of a "Covid mail" email address.<sup>4</sup> 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.<sup>5</sup> 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

---

<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>4</sup> See Ashley Parker et al., *Under Trump, Coronavirus Scientists Can Speak – As Long As They Mostly Toe the Line*, Wash. Post (Apr. 22, 2020, 8:20 PM), [https://www.washingtonpost.com/politics/under-trump-coronavirus-scientists-can-speak-as-long-as-they-toe-the-line/2020/04/22/a0a67c12-84b9-11ea-878a-86477a724bdb\\_story.html](https://www.washingtonpost.com/politics/under-trump-coronavirus-scientists-can-speak-as-long-as-they-toe-the-line/2020/04/22/a0a67c12-84b9-11ea-878a-86477a724bdb_story.html).

<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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;<sup>8</sup> 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;<sup>9</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>10</sup> posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;<sup>11</sup> 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.<sup>12</sup>

---

<sup>6</sup> American Oversight currently has approximately 15,600 page likes on Facebook and 104,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 9, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 9, 2020).

<sup>7</sup> News, American Oversight, <https://www.americanoversight.org/blog>.

<sup>8</sup> *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>.

<sup>9</sup> 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>.

<sup>10</sup> *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>.

<sup>11</sup> *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>.

<sup>12</sup> *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 your agency's regulations, 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 receives 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: whether and to what extent federal officials are giving special treatment to friends and allies of the president, instead of prioritizing requests for or offers of assistance based on merit and need.<sup>13</sup> American Oversight has requested records with the potential to shed light on the use of an internal "Covid mail" system to forward missives from "friends and family" of White House officials to agency officials leading the government's response to the coronavirus pandemic.<sup>14</sup> Because the virus has spread rapidly and has already killed over 130,000 people in the United States,<sup>15</sup> there is plainly an urgent need to inform the public about how the federal government is responding to the virus. The widespread media interest in coronavirus demonstrates that the public urgently needs information about the federal government's efforts and policies concerning the subject matter of this request.<sup>16</sup> For example, there is widespread reporting on the equipment shortages faced by healthcare providers, first responders, and essential workers,<sup>17</sup> and the considerable confusion—even amongst governors, congresspeople, and healthcare leaders—about how to obtain needed

---

<sup>13</sup> See Parker et al., *supra* note 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Coronavirus in the U.S.: Latest. Map and Case Count*, N.Y. Times (July 9, 2020, 2:26 PM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>16</sup> John Wagner et al., *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>;

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](https://www.cnn.com/us/live-news/us-coronavirus-update-05-06-20/h_ed73f0f5aa5c0e04163d4c0da8b2c2b8).

<sup>17</sup> See, e.g., Parker et al., *supra* note 3.

supplies amidst competing governmental task forces and evolving procedures.<sup>18</sup> There has also been widespread reporting regarding political pressure trumping scientific expertise in the government's response to the epidemic, most notably, but not limited to, with respect to the use of hydroxychloroquine to combat COVID-19.<sup>19</sup> The records requested can shed light on whether and to what extent the administration has prioritized favors for its allies, over the broader public, in its pandemic response.

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 whether and to what extent federal officials are engaged in political favoritism in responding 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,<sup>20</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn

---

<sup>18</sup> See, e.g., Rachael Levy, *Volunteers in Coronavirus Response Ruffle Some at FEMA*, Wall St. J. (Apr. 21, 2020, 2:37 PM), <https://www.wsj.com/articles/volunteers-in-coronavirus-response-ruffle-some-at-fema-11587489141>; 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-to-get-coronavirus-supplies-from-trump-1275083>; 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](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).

<sup>18</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>19</sup> See, e.g., Parker et al., *supra* note 4; Katherine Eban, "Really Want to Flood NY and NJ": *Internal Documents Reveal Team Trump's Chloroquine Master Plan*, Vanity Fair (Apr. 24, 2020), <https://www.vanityfair.com/news/2020/04/internal-documents-reveal-team-trumps-chloroquine-master-plan>; Lisette Voytko, *Trump Has 'Small,' 'Distant Link' To Sanofi, French Drugmaker of Hydroxychloroquine*, Forbes (Apr. 7, 2020, 12:55 PM), <https://www.forbes.com/sites/lisettevoytko/2020/04/07/trump-has-small-distant-link-to-sanofi-french-drugmaker-of-hydroxychloroquine/#2169e7fb7260>; Philip Bump, *Trump's Promotion of Hydroxychloroquine is Almost Certainly About Politics, Not Profits*, Wash. Post (Apr. 7, 2020, 11:24 AM), <https://www.washingtonpost.com/politics/2020/04/07/trumps-promotion-hydroxychloroquine-is-almost-certainly-about-politics-not-profits/>; Peter Baker et al., *Trump's Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community*, N.Y. Times, Apr. 6, 2020, <https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html>.

<sup>20</sup> 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).

the raw material into a distinct work, and distributes that work to an audience.”<sup>21</sup> 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.<sup>22</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>23</sup>

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:

- 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,

---

<sup>21</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>22</sup> See *supra* note 7.

<sup>23</sup> 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>.

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.<sup>24</sup> 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.<sup>25</sup>

- 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,<sup>26</sup> 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.

---

<sup>24</sup> 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).

<sup>25</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>26</sup> 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>.

## 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 Monahan at [foia@americanoversight.org](mailto: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,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight



# EXHIBIT A

July 6, 2020

Mr. Austin Evers  
American Oversight  
SENT VIA E-MAIL: [foia@americanoversight.org](mailto:foia@americanoversight.org)

**RE: Response for FOIA Request 20-043**

Dear Mr. Evers,

This letter is the final response to your Freedom of Information Act (“FOIA”) request received on June 1, 2020. Your request was assigned **FOIA Number 20-043**. Please reference this number in all correspondence concerning your request. You requested:

**Between March 1, 2020 through the date of search, all email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) from the internal White House “Covid Mail” email address that were either directly received by or forwarded to the government officials listed below:**

- i. Chief Executive Officer Adam Bohler, and anyone communicating on his behalf, including assistants and schedulers;*
- ii. Chief of Staff Stewart Ackerly;*
- iii. Counselor to the Chief Executive Officer Caleb Charles McCarry;*
- iv. Chief Operating Officer Austin Smith;*
- v. Vice President for Office of Strategic Initiatives Garrett Marquis;*
- vi. Anyone serving as White House Liaison or as point person to the White House coronavirus task force.*

This is a no records response to your request. Your request was processed under the Freedom of Information Act (FOIA), Section 552 of Title 5 of the United States Code. The FOIA requires agencies to search records within the agency’s control and that are reasonably likely to produce your requested records. In order to ensure that an agency can do this, the FOIA requires that requesters reasonably describe the records sought so that an agency staff member can determine what records are responsive and where they can be located with a reasonable amount of effort.<sup>1</sup>

This request sought email correspondence between the above-named officials and the “White House ‘Covid Mail’ email address,” but did not specify a specific address for the inbox or contain any other keywords, phrases, or subjects. An agency generally “is not obligated to look beyond the

---

<sup>1</sup> See H.R. Rep. No. 93-876, at 6 (1974), reprinted in 1974 U.S.C.C.A.N. 6267, 6271; Truitt v. Dep’t of State, 897 F.2d 540, 544-45 (D.C. Cir. 1990).

1100 New York Avenue, NW  
Washington, DC 20527  
Office +1 202.336.8400

**dfc.gov**

four corners of the request for leads to the location of responsive documents.”<sup>2</sup> Accordingly, as indicated in DFC’s acknowledgement letter, DFC executed a search of the records of the identified individuals using the timeframe, keywords and phrases you provided. Further, in the course of processing another FOIA request, the FOIA Office identified an email address in the body of a document that is similar to the parameters of your current request. The search terms used in DFC’s electronic search would have located any e-mail correspondence with that e-mail address however, DFC’s search for this FOIA request yielded no responsive records. If you have a specific e-mail address that you wish to have searched, please submit a new FOIA request and that term will be searched as a new FOIA request.

This is a final agency response. You may contact me or the FOIA Public Liaison for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about FOIA dispute resolution services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
Email: ogis@nara.gov  
Phone: 202-741-5770 | Toll Free: 877-684-6448 | Fax: 202-741-5769

If you are not satisfied with DFC’s response to this request, you may administratively appeal by addressing a written appeal to the following:

Deputy General Counsel  
U.S. International Development Finance Corporation  
1100 New York Ave., N.W.—12th Floor  
Washington, D.C. 20527

Your appeal must be postmarked or electronically transmitted **within 90 days** of the date of this response to your request. Both the envelope and the letter should be marked “FREEDOM OF INFORMATION ACT APPEAL.” If you are not satisfied with the results of any such appeal, judicial review is available to you in the United States District Court for the judicial districts in which you reside or have your principal place of business, or in the District of Columbia.

Sincerely,

Eric Styles Digitally signed by Eric Styles  
Date: 2020.07.06 14:44:41  
-04'00'

Eric Styles  
Administrative Counsel  
United States International Development Finance Corporation  
1100 New York Avenue, N.W.  
Washington, D.C. 20527  
Eric.Styles@dfc.gov

---

<sup>2</sup> Kowalczykv. DOJ, 73 F.3d 386, 389 (D.C. Cir. 1996).