



August 21, 2020

VIA EMAIL

Jane Eyre
Deputy Chief FOIA Officer
Privacy & Records Management Office
U.S. Postal Service
475 L'Enfant Plaza SW, RM 1P830
Washington, DC 20260
FOIA12@usps.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, 5 U.S.C. § 552, American Oversight makes the following request for records.

The U.S. Postal Service (USPS) has recently made a series of changes that have produced widespread concern about the public's ability to vote by mail during the pandemic.¹ Multiple members of the Board of Governors have connections to the Republican Party and to the president, who has repeatedly stated without evidence that he believes increased mail-in voting will lead to voter fraud.² Prior to his appointment, Postmaster General Louis DeJoy was the "the lead fundraiser for the 2020 Republican National Convention in Charlotte."³ Board Member Robert Duncan is the "founding chairman" of

¹ Ltr. from Sens. Amy Klobuchar et al. to Louis DeJoy, Postmaster General, United States Postal Service, Aug. 12, 2020, https://www.klobuchar.senate.gov/public/_cache/files/7/2/721485f0-5623-4794-90cf-400e9a5f8539/F8AD141754ECA3E2F2F031F3D10BB2FB.081220uspsfirstclassmail.pdf

² Robert Farley, *Trump Campaign Exaggerates Potential for Mail-In Voting Fraud After Election*, FactCheck.Org, Aug. 14, 2020, <https://www.factcheck.org/2020/08/trump-campaign-exaggerates-potential-for-mail-in-voting-fraud-after-election/>; Brian Schwartz, *GOP and Trump Ties Run Deep on the U.S. Postal Service's Board of Governors*, NBC News, Aug. 18, 2020, <https://www.cnbc.com/2020/08/18/gop-and-trump-ties-run-deep-on-the-us-postal-services-board-of-governors.html>.

³ Daniel Finnegan, *Lead Fundraiser for Charlotte RNC Named Postmaster General. He Starts in June.*, Triad Business J. (May 7, 2020, 11:01 AM), <https://www.bizjournals.com/charlotte/news/2020/05/07/lead-fundraiser-for-charlotte-rnc-named-postmaster.html>.



the Super PAC American Crossroads, according to his LinkedIn.⁴

American Oversight requests records to see whether partisan political interests are affecting USPS Board of Governors' decisions.

Requested Records

American Oversight seeks expedited review of this request for the reasons identified below and requests that USPS produce the following records as soon as practicable, and at least within twenty business days:

All email communications (including email messages, email attachments, and complete email chains) sent by any of the individuals below that contain any of the following terms:

- a) Chairman Robert M Duncan
- b) Board Member Roman Martinez IV
- c) Board Member John McLeod Barger
- d) Board Member Williams D. Zollars
- e) Board Member Donald Moak

Key Terms

- a) VBM
- b) "vote-by-mail"
- c) "vote by mail"
- d) "mail-in voting"
- e) Election
- f) Ballot
- g) Ballots
- h) "ballot fraud"
- i) "voter fraud"
- j) "election mail"
- k) "election integrity"
- l) Absentee
- m) POTUS
- n) "White House"
- o) Mnuchin
- p) GOP
- q) RNC

In an effort to accommodate USPS and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the listed custodians. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Board Member Williams D. Zollars's response with the key term "Mnuchin" and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from May 1, 2020, through the date of the search.

⁴ Robert M. Duncan, LinkedIn, <https://www.linkedin.com/in/robertmduncan> (last visited Aug. 19, 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."⁵ The public has a significant interest in whether partisan interests may affect USPS's ability to deliver postal ballots in a timely manner. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including helping the public understand whether the Board of Governors is in communication with political campaigns.

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.⁶ 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.⁷

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ *See id.*

⁷ American Oversight currently has approximately 15,604 page likes on Facebook and 104,500 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Aug. 19, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Aug. 19, 2020).

to its website.⁸ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration’s contacts with Ukraine and analyses of those contacts;⁹ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;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 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;¹² and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹³

Accordingly, American Oversight qualifies for a fee waiver.

⁸ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹⁰ See generally *The Trump Administration’s Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *‘We’ve All Given Up Getting a Straight Answer From You Guys: Frustrated Emails Between Illinois Governor’s Office and White House*, <https://www.americanoversight.org/weve-all-given-up-getting-a-straight-answer-from-you-guys-frustrated-emails-between-illinois-governors-office-and-white-house>.

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 *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>.

¹³ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see e.g. *New Information on Pompeo’s 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the regulations of your agency, 39 C.F.R. § 265.5(c), American Oversight requests that USPS 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.

There is an urgent need to inform the public of the potential politicization of USPS under the leadership of the Board of Governors in light of the November 2020 elections. The COVID-19 pandemic has dramatically increased the public's desire to register to vote and to cast ballots by mail.¹⁴ USPS play a critical role in ensuring voters are able to obtain and return voting materials by mail, thereby exercising a critical right of citizenship without being forced to take on personal health risk. While recent reporting makes clear that Postmaster General DeJoy is implementing a "sweeping overhaul" of USPS policies, the extent and details of those changes are not clear.¹⁵ As demonstrated by widespread reporting on the topic,¹⁶ the public urgently needs to better understand those changes and who is effecting them. This information is needed immediately, as public officials and the public rely on USPS to facilitate vote by mail, and reporting shows that setting up and implementing voting by mail is an expensive and long process.¹⁷

Further, the public's need for clarity about whether the Board of Governors is allowing partisan politics to dictate USPS policies has only grown more urgent as the USPS faces increasing scrutiny.¹⁸ The records requested by American Oversight—emails with and

¹⁴ See, e.g., Grace Segers, *Calls For Increased Access to Vote-By-Mail Gain Traction Amid Coronavirus Pandemic*, CBS News (Apr. 22, 2020, 1:43 PM),

<https://www.cbsnews.com/news/vote-by-mail-gains-traction-coronavirus-pandemic/>;

¹⁵ Jacob Bogage, *Postal Service Overhauls Leadership as Democrats Press for Investigation of Mail Delays*, Wash. Post (Aug. 7, 2020, 7:10 PM),

<https://www.washingtonpost.com/business/2020/08/07/postal-service-investigation-dejoy/>.

¹⁶ See, e.g., *Trump Defends Postmaster as Concerns Grow Over Mail-In Ballots*, N.Y. Times, Aug. 16, 2020, <https://www.nytimes.com/live/2020/08/15/us/biden-vs-trump-election>; Ed Kilgore, *USPS Delivery Problems Adding to Suppression of Mail Ballot Votes*, N.Y. Mag., July 15, 2020, <https://nymag.com/intelligencer/2020/07/usps-delivery-problems-adding-to-mail-ballot-woes.html>.

¹⁷ Amber Philips, *Why Voting By Mail Will Be So Hard For States So Set Up On The Fly*, Wash. Post (Apr. 3, 2020, 6:00 AM),

<https://www.washingtonpost.com/politics/2020/04/03/vote-by-mail-difficulties/>.

¹⁸ See, e.g., Shear, *supra* note 6; *Crowd Protests Outside US Postmaster's North Carolina Home*, Associated Press (Aug. 17, 2020, 8:51 PM),

about partisan actors and election-involved entities—are urgently needed to clarify whether the public can rely upon USPS for election related mail. Public reporting makes clear that the Board of Governors and DeJoy have numerous financial and political interests which may be affecting his official actions as Postmaster General.¹⁹ At a moment when voters and election officials across the country are making decisions based on how much they can depend on USPS to properly handle voting-related mail, records with the potential to show whether the Board of Governors are communicating with political entities and groups focused on impacting the November 2020 election are urgently needed.

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,²⁰ 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.”²¹ 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.²² As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.²³

<https://www.nytimes.com/aponline/2020/08/17/us/ap-us-postmaster-protest.html?searchResultPosition=4>; Marshall Cohen, *Financial Disclosures Reveal Postmaster General's Business Entanglements and Likely Conflicts of Interest, Experts Say*, CNN (Aug. 12, 2020, 6:33 PM), <https://www.cnn.com/2020/08/12/politics/postal-service-dejoy-conflicts-amazon-trades-xpo-stake/index.html>.

¹⁹ See, e.g., Jacob Bogage & Joseph Marks, *House Accelerates Oversight of Postal Service as Uproar Grows, Demanding Top Officials Testify at ‘Urgent’ Hearing*, Wash. Post (Aug. 16, 2020, 11:00 AM), <https://www.washingtonpost.com/business/2020/08/16/postal-service-mail-democrats-hearing-dejoy/>; Brian Schwartz, *GOP and Trump Ties Run Deep on the U.S. Postal Service’s Board of Governors*, NBC News, Aug. 18 2020, <https://www.cnbc.com/2020/08/18/gop-and-trump-ties-run-deep-on-the-us-postal-services-board-of-governors.html>.

²⁰ 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).

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

²² *Supra*, note 8.

²³ See generally News, American Oversight, <https://www.americanoversight.org/blog>; see, e.g., *Emails and Resume of Trump’s Pick to Head Government Personnel Office*, American Oversight, <https://www.americanoversight.org/emails-and-resume-of-trumps-pick-to-head-government-personnel-office>; *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc>.

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.
- 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

[calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings](https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight); *State Department Releases Ukraine Documents to American Oversight*, American Oversight, <https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight>; *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>.

Records Act and FOIA.²⁴ 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.²⁵

- 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,²⁶ 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.

²⁴ 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).

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

²⁶ 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 Dan McGrath at foia@americanoversight.org or (202) 897-4213. 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,

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