



September 14, 2020

VIA EMAIL AND ONLINE PORTAL

Dena Kozanas
Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
FOIA@hq.dhs.gov

FOIA Officer
U.S. Customs and Border Protection
90 K Street NE
FOIA Division
Washington, DC 20229
Via FOIA Online

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
ICE-FOIA@dhs.gov

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 6 C.F.R. Part 5, American Oversight makes the following request for records.

Following the murder of George Floyd in Minneapolis on May 25, 2020, thousands of people have held daily protests in Portland, Oregon and nationwide. Law enforcement has sometimes responded to these protests with violence, including firing smoke canisters, pepper spray, and rubber bullets.¹ After six weeks of daily demonstrations, the Department of Homeland Security (DHS) deployed federal agents to the city to suppress the protests, exacerbating concerns—including from Oregon’s own government—about

¹ Jonathan Levinson, *Portland Police Under Scrutiny for Dangerous Crowd Control Munitions*, OPB (July 2, 2020, 6:00 AM), <https://www.opb.org/news/article/crowd-control-weaponsportland-police-rubber-foam-bullets-tear-gas/>.



the use of excessive force against protesters.² The Oregon Attorney General and the American Civil Liberties Union Foundation of Oregon are both suing the federal government in response to possible civil rights violations committed by DHS, Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) officials.³ During this time, media reports indicated that these agents were housed in a Marriott hotel⁴ and were utilizing unmarked rental vans from Enterprise Holdings in carrying out their activities.⁵

Requested Records

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

1. Any final contracts signed by DHS, CBP, or ICE with (a) Enterprise Holdings, Inc., or (b) Marriott International.
2. All email communications (including emails, email attachments, calendar invitations, and attachments thereto) between (a) any agency point-of-contact charged with overseeing agency contracts with Enterprise Holdings, Inc. or Marriott International and (b) the specified Enterprise and Marriot entities listed below.

Enterprise Holdings, Inc.

- i. Executive Chairman Andrew C. Taylor
- ii. President and Chief Executive Officer Chrissy Taylor

² Gillian Flaccus, *Chaotic Protests Prompt Soul-Searching in Portland, Oregon*, Associated Press (July 15, 2020), <https://apnews.com/4533bdf304692961ece51a828a1f5600>.

³ Emily Gillespie & Rachel Siegel, *Oregon Attorney General Sues Federal Agencies for Allegedly Violating Protesters' Civil Rights*, Wash. Post (July 19, 2020, 1:52 AM), <https://www.washingtonpost.com/nation/2020/07/18/portland-oreland-ag-lawsuit/>.

⁴ Tess Riski, *Federal Officers Appear to Use Rental Cars From Enterprise to Snatch Portland Protesters*, Willamette Week, July 17, 2020, <https://www.wweek.com/news/2020/07/17/federal-officers-appear-to-be-using-rental-cars-from-enterprise-to-snatch-portland-protesters/>; see also @Jobs With Justice, “[. . .] Federal forces in Portland are currently using @Marriott hotels as barracks, and @enterprisecares is giving DHS the unmarked vehicles they are using to abduct protestors,” Twitter (July 28, 2020, 2:07 PM); see also Vi La Bianca, *DHS Agents are Kidnapping Portlanders – Here’s How to Help*, Medium, July 18, 2020, https://medium.com/@Vi_LaBianca/dhs-agents-are-kidnapping-portlanders-heres-how-to-help-5e8200c2770d.

⁵ Transcript, *‘Camouflaged Goon Squads’: Outrage, Legal Challenges in Portland as Federal Agents Snatch Protesters*, Democracy Now! July 21, 2020, https://www.democracynow.org/2020/7/21/portland_oregon_legal_challenges_federal_agents.

- iii. Any email address ending in @enterpriseholdings.com, @enterprise.com, and @ehi.com
- iv. Any email address ending in @alamo.com
- v. Any email address ending in @nationalcar.com

Marriott International

- vi. President and Chief Operating Officer Arne Sorenson
- vii. Executive Chairman Bill Marriott
- viii. Any email address ending in @marriott.com
- ix. Ritz-Carlton Hotel Company President and Chief Operating Officer Herve Humler
- x. Ritz-Carlton Hotel Chief Financial Officer Kathleen Oberg
- xi. Any email address ending in @ritzcarlton.com
- xii. Any email address ending in @starwoodhotels.com

Please provide all responsive records from May 25, 2020 through the date the search is conducted.

- 3. All email communications (including email messages, email attachments, and calendar invitations) sent by any agency point-of-contact charged with overseeing agency contracts with Enterprise Holdings, Inc. or Marriott International that contain any of the following search terms:
 - a. Enterprise
 - b. Alamo
 - c. "National Car"
 - d. "rental car"
 - e. "rental van"
 - f. "rental vehicle"
 - g. Unmarked
 - h. "rental contract"

Please provide all responsive records from May 25, 2020 through the date the search is conducted.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to

public understanding of operations or activities of the government.”⁶ The public has a significant interest in which private companies have contracted with DHS to assist the agency’s controversial response to protest in Portland, Oregon. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the extent to which transportation and hospitality business are facilitating federal law enforcement’s activities. 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 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

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ *See id.*

⁸ American Oversight currently has approximately 15,900 page likes on Facebook and 104,600 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Sept. 8, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Sept. 8, 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>.

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

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:

- 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

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>.

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).

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.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

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>.

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 Katherine Anthony at foia@americanoversight.org or 202.897.3918. 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