



October 7, 2020

VIA EMAIL & CERTIFIED MAIL

U.S. Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
(note that request seeks records from the **White House Military Office**)
1155 Defense Pentagon
Washington, DC 20301-1155
whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

FOIA
Chief of Naval Operations, DNS-36
2000 Navy Pentagon
Washington, DC 20350-2000
DONFOIA-PA@navy.mil

Walter Reed National Military Medical Center
ATN SJA Office
8901 Wisconsin Ave
Bethesda, MD 20889-5600

DHA Freedom of Information Service Center
(note that request seeks records from the **White House Military Office**)
7700 Arlington Boulevard Suite 5101
Falls Church, Virginia 22042-5101
DHA.FOIA@mail.mil

Re: Expedited 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, American Oversight makes the following request for records.

The White House has officially acknowledged that President Trump has been regularly tested for COVID-19, and that “the first positive test he received was after his return from Bedminster” on Thursday, October 1, 2020.¹ American Oversight seeks records from the White House Military Office’s White House Medical Unit with the potential to confirm whether the administration’s representations about the timing of the president’s test results are accurate. In light of the fact that in the days preceding the evening of October 1, the president both attended large gatherings and

¹ The Hill, *Kayleigh McEnany Speaks to Reporters About Trump’s COVID-19 Diagnosis*, YouTube, Oct. 4, 2020, <https://www.youtube.com/watch?v=LtJgeiYB3ys>.



spoke at length indoors while near his campaign opponent, the timing of his coronavirus tests informs whether he knowingly put a large number of individuals at risk and potentially destabilizing the presidential election.²

Requested Records

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

1. Any records reflecting the date and/or time of the first test result for COVID-19 that the president received that was positive (or “detected” or which otherwise indicated infection).
2. Any records reflecting the date and/or time of the last test result for COVID-19 that the president received that was negative (or “not detected” or which otherwise indicated absence of infection) before his first positive test result.

Please provide all responsive records from September 10, 2020, through the date search is conducted.

To be clear, a report of test results with a date and/or time would be responsive to this request, but other types of records would also be responsive. For example, email records about the president’s first positive or last negative test result would also be responsive as the date and time stamp of those records would shed light on the timing of the tests.

Although the Department of Defense (DOD), the U.S. Navy, and the White House Military Office (WHMO) are best positioned to identify the location of responsive records, public information suggests that the White House Military Unit, the records of Navy officer Dr. Sean Conley, and Walter Reed National Military Medical Center must be included in an adequate search.

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.

² Sam Gringlas & Barbara Sprunt, *Timeline: What We Know of President Trump’s COVID-19 Diagnosis and Treatment*, NPR (Oct. 5, 2020, 5:00 PM), <https://www.npr.org/sections/latest-updates-trump-covid-19-results/2020/10/03/919898777/timeline-what-we-know-of-president-trumps-covid-19-diagnosis>.

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.”³ The subject matter of the requested records specifically relates to the operations or activities of the government, including documents related to administration statements about the president’s test result for coronavirus infection. There is significant public interest in understanding whether and to what extent the Trump administration’s statements on the timing of the president’s test results is accurate. The subject of this request is a matter of public interest, and the public’s understanding of the government’s activities and use of resources would be enhanced through American Oversight’s analysis and publication of these records.

This request is primarily and fundamentally for non-commercial purposes.⁴ 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.⁵

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.⁶ 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;⁷ 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

³ 5 U.S.C. § 552(a)(4)(A)(iii).

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 15,600 page likes on Facebook and 105,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 6, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 6, 2020).

⁶ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ *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>.

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

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and the implementing regulations of your agency, 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 there is a compelling need for expedited processing of the above request because 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 received from public records requests to the public.

There is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, there has been significant doubt about the accuracy of the testing timeline that the Trump administration has provided to the public regarding when the president first received a positive coronavirus test.¹² This request seeks documents that could confirm, or undermine, the accuracy of the officially acknowledged facts surrounding the president's positive coronavirus test. Second, there have also been unanswered questions about the president's last negative test, despite many official statements stating that the president is tested regularly or

⁸ 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>.

⁹ *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>.

¹⁰ *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>.

¹¹ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

¹² See, e.g., Anya van Wagtenok, *Trump's Covid-19 Diagnosis May Have Come Earlier Than We Thought*, Vox (Oct. 3, 2020, 2:40 PM), <https://www.vox.com/policy-and-politics/2020/10/3/21500127/trump-covid-19-diagnosis-timeline-sean-conley>.

even multiple times per day.¹³ The documents that this request seeks can confirm whether the president was aware that he may be infected with coronavirus as he participated in large group gatherings, and even as he participated in a debate with his political opponent. If former Vice President Biden is ultimately infected with coronavirus as a result of the presidential debate, the urgency to inform the public would grow exponentially. The requested records would also shed light on the WHMO's White House Military Unit's coronavirus efforts, a matter of urgent public concern.

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,¹⁴ 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."¹⁵ 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.¹⁶ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.¹⁷

¹³ Aaron Rugar, *The White House Won't Sat When Trump's Last Negative Test Was. Here's Why It Matters.*, Vox (Oct. 6, 2020, 10:20 AM),

<https://www.vox.com/2020/10/6/21503023/trump-last-negative-coronavirus-test>.

¹⁴ 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).

¹⁵ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

¹⁶ American Oversight currently has approximately 12,300 page likes on Facebook and 54,500 followers on Twitter. American Oversight, Facebook,

<https://www.facebook.com/weareoversight>

(last visited Sept. 20, 2019); American Oversight (@weareoversight), Twitter,

<https://twitter.com/weareoversight> (last visited Sept. 20, 2019).

¹⁷ 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/investigation/saudi-arabia>.

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. 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.¹⁸ 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

<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>.

¹⁸ 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).

official systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁹

- 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,²⁰ 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 duplication costs. By working together at the outset,

¹⁹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁰ 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>.

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". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Austin R. Evers
Executive Director
American Oversight