



July 12, 2021

VIA EMAIL

U.S. Department of Defense
OSD/JS FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155
whs.mc-alex.esd.mbx.osd-js-foia-requester-service-center@mail.mil

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 the Department of Defense (DOD), 32 C.F.R. Part 286, American Oversight makes the following request for records.

Less than a week after the 2020 presidential election, then-President Trump fired Defense Secretary Esper and forced out other high-level officials, replacing them with loyalists including those who have in the past advanced conspiracy theories.¹ These officials subsequently dismissed members of multiple Pentagon advisory boards and increased vetting of incoming DOD employees.²

American Oversight seeks records to shed light on this purge in the months since the 2020 election. This request is an updated version of American Oversight's previous FOIA request submitted on December 15, 2020 and assigned DOD case number 21-F-0301.³

¹ Jack Detsch & Robbie Gramer, *Trump Loyalists Primed to Further Remake Pentagon*, Foreign Policy (Nov. 11, 2020, 6:51 PM), <https://foreignpolicy.com/2020/11/11/trump-loyalists-primed-to-further-remake-pentagon/>; Lara Seligman *et al.*, *White House Fires Pentagon Advisory Board Members, Installs Loyalists*, Politico (updated Dec. 4, 2020, 3:20 PM), <https://www.politico.com/news/2020/12/04/pentagon-fires-business-advisory-board-members-442892>; Jack Detsch & Robbie Gramer, *Pentagon Purges Leading Advisors from Defense Policy Board*, Foreign Policy (Nov. 25, 2020, 3:51 PM), <https://foreignpolicy.com/2020/11/25/pentagon-purges-leading-advisors-from-defense-policy-board/>; Jack Detsch, *Trump's Pentagon Now Vetting Nonpolitical Experts*, Foreign Policy (Nov. 24, 2020, 10:47 AM), <https://foreignpolicy.com/2020/11/24/trumps-pentagon-now-vetting-non-political-experts/>.

² See note 1.

³ In Request 21-F-0301, American Oversight requested a search timeframe from "November 10, 2020, to the date the search is conducted." See *FOIA to DOD Seeking*



Requested Records

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

- 1) All email communications (including emails, email attachments, calendar invitations, or attachments thereto) sent by the (a) specified officials below to (b) anyone with an email address ending in who.eop.gov:

Specified Officials:

- i. Chris Miller
- ii. Ezra Cohen-Watnick
- iii. Kash Patel
- iv. Joshua Whitehouse
- v. Anthony Tata
- vi. Douglas Macgregor

In an effort to accommodate DOD and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by specified officials. 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 a specified official's response to an email and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from the search cutoff date used for American Oversight FOIA Request 21-F-0301 through January 21, 2021.

- 2) All email communications (including emails, email attachments, calendar invitations, or attachments thereto) sent by (a) the specified officials below to (b) anyone with an email address ending in .com/.net/.org/.edu/.us, or anyone with an email address ending in house.gov or senate.gov.

Specified Officials:

- i. Chris Miller
- ii. Ezra Cohen-Watnick
- iii. Kash Patel
- iv. Joshua Whitehouse
- v. Anthony Tata
- vi. Douglas Macgregor

Communications and Calendars of Top Officials Following Esper's Departure, American Oversight, Dec. 15, 2020, <https://www.americanoversight.org/document/foia-to-dod-seeking-communications-and-calendars-of-top-officials-following-espers-departure>; *see also* Email Correspondence, Interim Response to case number 21-F-0301, Dep't of Defense, Dec. 16, 2020.

In an effort to accommodate DOD and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the specified officials. 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 a specified official’s response to an email and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from the search cutoff date used for American Oversight FOIA Request 21-F-0301⁴ through January 21, 2021.

- 3) All email communications (including email messages, email attachments, and complete email chains) sent by the specified officials listed in Column A below that contain any of the following terms listed in Column B below:

Column A: Specified DOD Officials	Column B: Specified Search Terms
<ul style="list-style-type: none"> i. Chris Miller ii. Ezra Cohen-Watnick iii. Kash Patel iv. Joshua Whitehouse v. Anthony Tata vi. Douglas Macgregor 	<ul style="list-style-type: none"> i. Loyal ii. Loyalist iii. Loyalty iv. MAGA v. KAG vi. “Great Again” vii. “America First” viii. “Never Trump” ix. “Never Trumper” x. “anti-Trump” xi. McEntee xii. POTUS xiii. “president’s agenda” xiv. Vetting xv. Vetted xvi. “research questionnaire” xvii. “schedule F” xviii. “Sched F” xix. “Trump campaign” xx. Hicks xxi. Biden xxii. “Defense Business Board” xxiii. “Defense Policy Board” xxiv. Declassify xxv. Declassification xxvi. Nunes

⁴ See *id.*

	xxvii. Yates xxviii. Flynn xxix. “Ron Johnson” xxx. “Sen. Johnson” xxxi. “Senator Johnson” xxxii. Grassley xxxiii. “transition team” xxxiv. “agency review team” xxxv. “deep state”
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In an effort to accommodate DOD and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by specified officials. 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 a specified official’s response to an email from another individual and the initial received message are responsive to this request and should be produced.

This request includes all prior messages (whether incoming or outgoing) reflected in the responsive correspondence and any attachments thereto.

Please provide all responsive records from the search cutoff date used for American Oversight FOIA Request 21-F-0301 through January 21, 2021.

- 4) All calendars or calendar entries for specified officials including any calendars maintained on behalf of specified officials, from the search cutoff date used for American Oversight FOIA Request 21-F-0301⁵ through January 21, 2021.

Specified Officials:

- i. Chris Miller
- ii. Ezra Cohen-Watnick
- iii. Kash Patel
- iv. Joshua Whitehouse
- v. Anthony Tata
- vi. Douglas Macgregor

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate a specified official allocates his time on agency business.

⁵ See *id.*

The search would include any calendars associated with his individual email account, as well as any official calendars maintained for him, including by his administrative assistant or scheduler.

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 understanding whether the administration made senior personnel decisions on the basis of perceived political loyalty rather than performance, and whether DOD decision-making during the presidential transition period was politicized. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether new appointees are undertaking significant actions at DOD following a sudden purge of senior officials. 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 regular substantive analyses

⁶ 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ American Oversight currently has approximately 15,600 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 23, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 23, 2021).

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 the Trump Administration’s contacts with Ukraine and analyses of those contacts;¹⁰ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;¹¹ 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;¹² 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;¹³ and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.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:

⁹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

¹⁰ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹¹ 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., *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>.

¹² 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>.

¹³ *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>.

¹⁴ 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>.

- 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.
- 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 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

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).

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>.

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, 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 Khahilia Shaw at foia@americanoversight.org 202.539.6507.

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,

/s/ Khahilia Shaw
Khahilia Shaw
on behalf of
American Oversight