



February 02, 2022

VIA ONLINE PORTAL

Deborah R. Snowden
Deputy Chief FOIA Officer
U.S. Department of Housing and Urban Development
451 7th Street SW, Room 10139
Washington DC, 20410
Via Online Portal

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 U.S. Department of Housing and Urban Development (HUD), 24 C.F.R. Part 15, American Oversight makes the following request for records.

Former Acting Assistant Secretary of Housing and Urban Development John Gibbs has faced controversy for past political comments involving confirmed conspiracy theories sent on Twitter in the months leading up to the 2016 presidential election.¹

American Oversight seeks records with the potential to shed light on Gibbs' communications regarding misinformation² related to the November 2020 election.

Requested Records

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

1. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by former Acting Assistant Secretary John Gibbs containing any of the key terms listed below:

Key Terms:

- a. "National emergency"
- b. Conspiracy

¹ Eric Yoder, *He Tweeted About a Conspiracy Theory and "Gender Bending." Now Trump Wants Him to Run the Office of Personnel Management*, Wash. Post, September 10, 2020, https://www.washingtonpost.com/politics/opm-tweets-conspiracy-theory/2020/09/10/8d243ad8-f383-11ea-b796-2dd09962649c_story.html.

² Melissa Block, *The Clear and Present Danger of Trump's Enduring 'Big Lie,'* NPR (December 23, 2021, 5:00 AM), <https://www.npr.org/2021/12/23/1065277246/trump-big-lie-jan-6-election>.



- c. Insurrection
- d. Capitol
- e. "Stop the steal"
- f. "Save America"
- g. "Rally to Revival"
- h. "Electoral college"
- i. Certification
- j. "January 6"
- k. Trump
- l. Biden
- m. Dominion
- n. Smartmatic
- o. Fox
- p. Newsmax
- q. OANN
- r. OAN
- s. "One America News"
- t. "Gateway Pundit"
- u. MyPillow
- v. Bobb
- w. Lindell
- x. Murdoch
- y. "election fraud"
- z. "election integrity"
- aa. MAGA

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited item 1 of its request to emails sent by Acting Assistant Secretary Gibbs. 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 Acting Assistant Secretary Gibbs' response to an email containing the key term "certification" and the initial received message are responsive to this request and should be produced.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Acting Assistant Secretary Gibbs received a mass-distribution news clip email containing one of the specified key terms, that initial email would not be responsive to this request. However, if Acting Assistant Secretary Gibbs forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

2. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) between (a) Acting Assistant Secretary John Gibbs and (b) any entity or individual listed below.
 - i. Emily Newman (enewman@protonmail.com)
 - ii. Katherine Friess (kfriess@protonmail.com)
 - iii. Bernard Kerik (bernardkerik@protonmail.com)
 - iv. Boris Ephsteyn (bepshytn@gmail.com)
 - v. John Eastman (jeastman@claremont.org)
 - vi. Lin Wood, or anyone communicating from an email address ending in @fightback.law
 - vii. Sidney Powell (sp@seeking-justice.org), or anyone communicating on behalf of Sidney Powell, P.C. (including anyone communicating from an email address ending in @federalappeals.com)
 - viii. Matthew DePerno (matthew@deper nolaw.com)
 - ix. Patrick Colbeck (patrick@migrassrootsalliance.org)
 - x. Stefanie Lambert Junttila (attorneystefanielambert@gmail.com)
 - xi. Jason Roe, Ron Weiser, Meshawn Maddock, or anyone communicating from an email address ending in @migop.com or @mrp.org
 - xii. Norm Shinkle (normshinkle@gmail.com)
 - xiii. Matt Braynard, Ian Camacho, Caroline Craze, Ken Bennett, and/or anyone communicating on behalf of Look Ahead America (including, but not limited to, anyone communicating from an address ending in @LookAheadAmerica.org)
 - xiv. Douglas Frank (including, but not limited to, the email address drdouglasgfrank@protonmail.com)
 - xv. Ken Blackwell (kennethblackwell693@gmail.com) and/or anyone communicating on behalf of America First Policy Institute (including, but not limited to, anyone communicating from an address ending in @americafirstpolicy.com)
 - xvi. Former National Security Advisor Mike Flynn (including, but not limited to, an address ending in @generalflynn.com) and/or anyone communicating on behalf of America's Future (including, but not limited to, anyone communicating from an address ending in @americasfuture.net)
 - xvii. Ivan Raiklin (ivan.raiklin@gmail.com or socialmediaraiklin@gmail.com)
 - xviii. Cleta Mitchell (including, but not limited to, cleta@cletamitchell.com, cmitchell@foley.com, or an address ending in @bradleyfdn.org)
 - xix. Jenna Ellis (jenna.ellis.esq@gmail.com) and/or anyone communicating on behalf of Liberty University's Falkirk Center (including, but not limited to, anyone communicating from an address ending in @falkirkcenter.com), Thomas More Society (including, but not limited to, anyone communicating from an address ending in @thomasmoresociety.org), or American

- Greatness Fund (including, but not limited to, anyone communicating from an address ending in @americangreatnessfund.com)
- xx. Colonel Phil Waldron (including, but not limited to, phil@onewarrior.com or anyone communicating from an email address ending in [@bonfiresearch.org](http://bonfiresearch.org)), Russell Ramsland (including, but not limited to, ryuks9sq@alliedspecialops.us or yrku9sqs@protonmail.com), J. Keet Lewis, and/or anyone communicating on behalf of Allied Security Operations Group (including, but not limited to, anyone communicating from an address ending in @alliedspecialops.us)
 - xxi. Jovan Hutton Pulitzer (jovanhuttonpulitzer@gmail.com)
 - xxii. Christina Bobb, Chanel Rion, or anyone communicating from an address ending in @oann.com, or Voices and Votes, including anyone communicating from an email address ending in @voicesandvotes.org
 - xxiii. Mike Lindell (mike@mypillow.com)
 - xxiv. Kurt Olsen (kurtols@protonmail.com)
 - xxv. William Olson (williamolson@lawandfreedom.com, wjo@mindspring.com)
 - xxvi. Phill Kline (phillklineva@gmail.com), Luis Cornelio (lcornel001@citymail.cuny.edu) Jacqueline Timmer, Mary Coran, Tom Breth, or anyone communicating on behalf of the American Voter's Alliance (including, but not limited to, anyone communicating from an address ending in @got-freedom.org)
 - xxvii. Ian Northon, Jessica Jolliffe, or anyone communicating from an email address ending in @rhoadesmckee.com
 - xxviii. Seth Keshel
 - xxix. Al Hartman, Jenny Limcher, or anyone communicating on behalf of Hartman REIT (@hi-reit.com)

For items 1 and 2, please provide all responsive records from November 1, 2020, through January 20, 2021.

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."³ The public has a

³ 5 U.S.C. § 552(a)(4)(A)(iii).

significant interest in the communications of public officials with known histories of spreading political conspiracy theories.⁴ 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 former HUD official John Gibbs indicated support for conspiracy theories or communicated with proponents of them. 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.⁵ 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.⁶

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁷ 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;⁸ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁹ 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

⁴ Andrew Kaczynski, *Senior Adviser at HUD Spread Conspiracy Theory that Clinton Campaign Chairman Was Satanist*, CNN (March 8, 2018, 4:39 PM), <https://www.cnn.com/2018/03/08/politics/kfile-john-gibbs-hud/index.html>.

⁵ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ American Oversight currently has approximately 15,600 page likes on Facebook and 113,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited January 24, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited January 24, 2022).

⁷ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁹ 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>.

analyses of what those records reveal;¹⁰ 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;¹¹ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹²

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.¹³ 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

¹⁰ 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>.

¹¹ *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>.

¹² 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>.

¹³ 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).

systems or if officials have, by intent or through negligence, failed to meet their obligations.¹⁴

- 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,¹⁵ 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, American

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

¹⁵ 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>.

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 Rachel Baron at foia@americanoversight.org or (202) 897-2465. 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/ Rachel Baron
Rachel Baron
on behalf of
American Oversight