

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. GENERAL SERVICES
ADMINISTRATION,
1800 F Street NW
Washington, DC 20405

Defendant.

Case No. 18-cv-2423

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. General Services Administration under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight will use the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. General Services Administration (GSA) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. GSA has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

7. On August 27, 2018, GSA's Office of the Inspector General (OIG) published a report, "Review of GSA's Revised Plan for the Federal Bureau of Investigation Headquarters Consolidation Project." The report alleged that GSA Administrator Emily Murphy may have misled Congress about the White House's involvement in the FBI Headquarters Consolidation project. Notably, it highlighted that the White House invoked executive privilege to prevent the OIG—a component of GSA, an executive branch agency—from learning statements made by the president in meetings regarding the FBI Headquarters project. In addition, recent press reporting alleged that high-level Trump administration officials played roles in scuttling plans for

relocating FBI Headquarters—instead prioritizing the costlier option of building a new headquarters downtown.

8. Documents released on October 18, 2018, by the U.S. House of Representatives Committee on Oversight and Government Reform further demonstrate involvement of the president himself, with emails referring to the decision as “direction from the White House,” “what POTUS directed everyone to do,” and “the project the president wants.”

9. American Oversight filed FOIA requests to inform the public as to whether and to what extent the president’s personal financial interests influenced a multi-billion-dollar federal project with national security implications.

White House Communications FOIA

10. On August 30, 2018, American Oversight submitted a FOIA request to GSA seeking access to the following records:

All records reflecting communications (including emails, email attachments, text messages, voicemails, voicemail transcripts, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Facebook messaging, Twitter Direct Messages, or Signal), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between or among (including those copied or blind copied on emails) the following individuals and any person at the White House Office (including anyone with an email address ending in @who.eop.gov) regarding the FBI headquarters consolidation project:

- a. Administrator Emily Murphy
- b. Acting Administrator Tim Horne
- c. Chief of Staff to the Administrator
- d. Anyone communicating on behalf of the Administrator (including those performing duties in an acting capacity), such as a Chief of Staff, Executive Assistant, or Secretary
- e. Public Affairs Spokeswoman Pamela Dixon

- f. Public Buildings Service Commissioner Daniel Mathews
- g. Former Acting Public Buildings Service Commissioner Michael Gelber
- h. Former Public Buildings Service Commissioner Norman Dong
- i. Associate Administrator and Acting Chief of Staff P. Brennan Hart III, Office of Congressional and Intergovernmental Affairs

11. American Oversight further requested that GSA use the following terms to help identify responsive records:

- i. “consolidat*”
- ii. “renovat*”
- iii. “demoli*”
- iv. “rebuild*”
- v. “relocat*”
- vi. “Trump Hotels”
- vii. “Trump International Hotel”
- viii. TIH
- ix. “Trump Org*”
- x. “Post Office”
- xi. OPO
- xii. Headquarters
- xiii. HQ
- xiv. HQS
- xv. JEH
- xvi. FBI

12. American Oversight further stated that it was using the asterisk (*) to designate the standard use of “wildcards” in the search for responsive records. For example, a search for “renovat*” would return all of the following: renovate, renovates, renovated, renovation, etc. American Oversight requested that GSA advise American Oversight if it is unable to search for wildcards so that American Oversight could specifically include the variations that it would like searched.

13. American Oversight requested all responsive records from January 20, 2017, through the date of search.

14. GSA assigned the White House Communications FOIA tracking number GSA-2018-01618.

Hotel Communications FOIA

15. On August 30, 2018, American Oversight submitted a FOIA request to GSA seeking access to the following records:

- 1) All records reflecting communications (including emails, email attachments, text messages, voicemails, voicemail transcripts, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Facebook messaging, Twitter Direct Messages, or Signal), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between or among (including those copied or blind copied on emails) GSA officials listed in Column A and Trump Organization individuals or entities listed in Column B:

Column A:	Column B:
<ol style="list-style-type: none"> a. Administrator Emily Murphy b. Acting Administrator Tim Horne c. Chief of Staff to the Administrator d. Anyone communicating on behalf of the Administrator (including those performing duties in an acting capacity), such as a Chief of Staff, Executive Assistant, or Secretary e. Public Affairs Spokeswoman Pamela Dixon f. Public Buildings Service Commissioner Daniel Mathews g. Former Acting Public Buildings Service Commissioner Michael Gelber h. Former Public Buildings Service Commissioner Norman Dong i. Associate Administrator and Acting Chief of Staff P. Brennan 	<p>Any individuals associated with the Trump Organization LLC or Trump Hotels, including but not limited to:</p> <ol style="list-style-type: none"> a. Donald “Don” Trump Jr. b. Eric Trump c. Ivanka Trump d. Jared Kushner e. George Sorial f. Amanda Miller g. Alan Garten h. Matthew Calamari i. Lawrence Glick j. Ron Lieberman k. Allen Weisselberg l. Andrew Weiss m. Jill Martin n. Deirdre Rosen o. Eric “Ed” Danziger

Hart III, Office of Congressional and Intergovernmental Affairs	p. Anyone communicating from an email address ending with @trumporg.com, @trump.com, @trumphotels.com, @ijkfamily.com
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2) All records reflecting communications (including emails, email attachments, text messages, voicemails, voicemail transcripts, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Facebook messaging, Twitter Direct Messages, or Signal), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) with the individuals at GSA listed below containing the search terms listed below:

- a. Administrator Emily Murphy
- b. Acting Administrator Tim Horne
- c. Chief of Staff to the Administrator
- d. Anyone communicating on behalf of the Administrator (including those performing duties in an acting capacity), such as a Chief of Staff, Executive Assistant, or Secretary
- e. Public Affairs Spokeswoman Pamela Dixon
- f. Public Buildings Service Commissioner Daniel Mathews
- g. Former Acting Public Buildings Service Commissioner Michael Gelber
- h. Former Public Buildings Service Commissioner Norman Dong
- i. Associate Administrator and Acting Chief of Staff P. Brennan Hart III, Office of Congressional and Intergovernmental Affairs

For this portion of the request, communications containing at least one search term from Column A and at least one search term from Column B are considered responsive:

Column A	Column B
i. "Trump Hotel*"	i. FBI
ii. "Trump International Hotel"	ii. HQ
iii. TIH	iii. HQS
iv. "Trump Org*"	iv. HQs

v. "Post Office"	v. Headquarters
vi. OPO	vi. JEH
	vii. Hoover
	viii. consolidat*
	ix. renovat*
	x. demoli*
	xi. rebuild*
	xii. relocat*

16. American Oversight further stated that it was using the asterisk (*) to designate the standard use of “wildcards” in the search for responsive records. For example, a search for “Org*” would return all of the following: Org, Organization, Organize, Organized, Organizes, Organizing, etc. American Oversight requested that GSA advise American Oversight if it is unable to search for wildcards so that American Oversight could specifically include the variations that it would like searched.

17. American Oversight requested all responsive records from January 20, 2017, through the date of search for both parts of the Hotel Communications FOIA.

18. GSA assigned the Hotel Communications FOIA tracking number GSA-2018-01619.

Exhaustion of Administrative Remedies

19. As of the date of this complaint, GSA has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records GSA intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

20. Through GSA's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I

Violation of FOIA, 5 U.S.C. § 552

Failure to Conduct Adequate Searches for Responsive Records

21. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22. American Oversight properly requested records within the possession, custody, and control of GSA.

23. GSA is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

24. GSA has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

25. GSA's failure to conduct an adequate search for responsive records violates FOIA and GSA regulations.

26. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

27. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

28. American Oversight properly requested records within the possession, custody, and control of GSA.

29. GSA is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

30. GSA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

31. GSA is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

32. GSA's failure to provide all non-exempt responsive records violates FOIA and GSA regulations.

33. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to

- American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
 - (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
 - (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: October 23, 2018

Respectfully submitted,

/s/ Cerissa Cafasso

Cerissa Cafasso
D.C. Bar No. 1011003

/s/ Austin R. Evers

Austin R. Evers
D.C. Bar No. 1006999

AMERICAN OVERSIGHT
1030 15th Street NW, B255
Washington, DC 20005
(202) 869-5244
cerissa.cafasso@americanoversight.org
austin.evers@americanoversight.org

Counsel for Plaintiff