

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

|                                  |   |                     |
|----------------------------------|---|---------------------|
| AMERICAN OVERSIGHT,              | ) |                     |
|                                  | ) |                     |
|                                  | ) |                     |
| <i>Plaintiff,</i>                | ) |                     |
|                                  | ) |                     |
| v.                               | ) | Case No. 19-cv-8215 |
|                                  | ) |                     |
| U.S. DEPARTMENT OF JUSTICE,      | ) |                     |
|                                  | ) |                     |
| <i>and</i>                       | ) |                     |
|                                  | ) |                     |
| FEDERAL BUREAU OF INVESTIGATION, | ) |                     |
|                                  | ) |                     |
| <i>Defendants.</i>               | ) |                     |

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice and the Federal Bureau of Investigation 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 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B), as the agency records requested by Plaintiff American Oversight are situated in this district.

4. Because Defendants have 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 uses 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.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Executive Office of United States Attorneys (EOUSA) is a component of DOJ, which receives and processes FOIA requests on behalf of U.S. Attorneys' offices, which are also components of DOJ. The U.S. Attorney's Office for the Southern District of New York has possession, custody, and control of the records that American Oversight seeks.

7. Defendant Federal Bureau of Investigation (FBI) is a component of DOJ, a department of the executive branch of the U.S. government, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). FBI has possession, custody, and control of the records that American Oversight seeks.

### **STATEMENT OF FACTS**

8. The U.S. Attorney's Office for the Southern District of New York conducted an investigation of potential campaign finance violations by Michael Cohen in connection with his

work for and with the presidential campaign of then-candidate Donald J. Trump, including violations of the Federal Election Act of 1971. This investigation led to an indictment and eventual guilty plea by Mr. Cohen. *See* Information, *United States v. Michael Cohen*, 18-cr-602 (S.D.N.Y., filed Aug. 21, 2018), ECF No. 2; Testimony of Michael D. Cohen at 2, Comm. on Oversight & Reform, U.S. House of Representatives, Feb. 27, 2019, <https://www.documentcloud.org/documents/5753160-Michael-Cohen-s-written-testimony-to-House.html>.

9. On July 17, 2019, the federal court that oversaw Mr. Cohen's prosecution ordered that materials related to Mr. Cohen's campaign finance violations could be unsealed in light of the Government's representations that it had concluded the aspects of its investigation that justified the continued sealing of materials related to Mr. Cohen's campaign finance violations. Memorandum & Order, *United States v. Michael Cohen*, 18-cr-602 (S.D.N.Y. filed July 17, 2019), ECF No. 47. The Court recognized that materials related to Mr. Cohen's campaign finance violations concerned "a matter of national importance" and disclosure of those materials was warranted in light of the "weighty public ramifications" of the conduct described in the materials. *Id.*

10. On July 22, 2019, American Oversight submitted a FOIA request to EOUSA and FBI for records that, broadly speaking, reflecting the content of interviews conducted in the course of the government's investigation of potential campaign finance violations committed by President Trump, Michael Cohen, the Trump Organization, or individuals representing President Trump or the Trump Organization. Attached hereto as Exhibit A.

11. Specifically, American Oversight's FOIA request sought the following:

- 1) All FBI form 302s reflecting the content of all interviews conducted as a part of the government's investigation of potential

campaign finance violations committed by President Trump, the Trump Organization, Michael Cohen, or others representing President Trump or the Trump Organization, as well as any investigation of other potential violations related to that investigation (including, for example, obstruction of justice). Specifically, this request seeks 302s from the investigation(s) that a Southern District of New York court acknowledged had been concluded, at least in part, in its July 17, 2019 Opinion and Order in *United States v. Cohen*, Case No. 18cr602 (S.D.N.Y.), ECF No. 47.

- 2) All other records intended to summarize, memorialize, or record witness interviews or witness statements collected or used in the investigation(s) described in Item 1, including written proffers, written summaries of oral proffers, transcripts or recordings of any witness interviews or statements, and any other record summarizing, memorializing, or reproducing the content of witness interviews or statements collected or used in connection with the above-described investigation.

Please provide all responsive records from September 1, 2016, through the date the search is conducted.

Ex. A at 2.

12. The records American Oversight has requested are related to an investigation and prosecution conducted by the U.S. Attorney's Office for the Southern District of New York and, on information and belief, the requested records are situated in this district.

13. American Oversight requested expedited processing of its request. Ex. A at 4–6.

14. By letter dated July 24, 2019, EOUSA acknowledged receipt of American Oversight's request and noted that the request seeks records from "one or more field offices." EOUSA assigned the request tracking number EOUSA-2019-003828.

15. On July 25, 2019, EOUSA indicated that it had denied American Oversight's request for expedited processing by a system-generated FOIAOnline notification, which contained no explanation of the agency's reasoning for its denial.

16. By letter dated July 31, 2019, FBI acknowledged receipt of American Oversight's request and assigned the request tracking number 1443116-000.

17. By letter dated August 1, 2019, FBI granted American Oversight's request for expedited processing.

18. American Oversight has not received any further communication from Defendants regarding its FOIA Request.

*Exhaustion of Administrative Remedies*

19. As of the date of this complaint, Defendants have failed to (a) notify American Oversight of any determination regarding its FOIA request, including the scope of any responsive records Defendants intend 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 Defendants' failure to respond to American Oversight's FOIA request within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

21. EOUSA's denial of expedited processing is subject to immediate judicial review pursuant to 5 U.S.C. § 552(a)(6)(E)(iii).

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Grant Expedited Processing**  
*(as to EOUSA)*

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

23. American Oversight properly requested records within the possession, custody, and control of DOJ on an expedited basis.

24. DOJ is an agency subject to FOIA, and it must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

25. The records sought relate to a subject of widespread and exceptional media interest implicating questions concerning the government's integrity that affect public confidence. Therefore, American Oversight's FOIA request justified expedited processing under FOIA and DOJ regulations.

26. DOJ's failure to grant expedited processing of American Oversight's FOIA request violated FOIA and DOJ regulations.

27. American Oversight is therefore entitled to declaratory and injunctive relief requiring DOJ to grant expedited processing of American Oversight's FOIA request.

## **COUNT II**

### **Violation of FOIA, 5 U.S.C. § 552**

#### **Failure to Conduct Adequate Searches for Responsive Records**

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

29. American Oversight properly requested records within the possession, custody, and control of Defendants.

30. Defendants are an agency and a component thereof subject to FOIA and must therefore make reasonable efforts to search for requested records.

31. Defendants failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA request.

32. Defendants' failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

33. 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 request.

**COUNT III**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

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

35. American Oversight properly requested records within the possession, custody, and control of Defendants.

36. Defendants are an agency and a component thereof subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

37. Defendants are wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA request.

38. Defendants are 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 request.

39. Defendants' failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

40. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA request 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 EOUSA to expedite the processing of American Oversight's FOIA request;
- (2) Order Defendants to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA request;
- (3) Order Defendants 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 request and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA request;
- (5) 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
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: September 4, 2019

Respectfully submitted,

/s/ Austin R. Evers

Austin R. Evers

Daniel A. McGrath\* N.Y. Bar No. 5541198

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 897-4213

austin.evers@americanoversight.org

daniel.mcgrath@americanoversight.org

*Counsel for Plaintiff*

*\*pro hac vice motion forthcoming*



# EXHIBIT A



July 22, 2019

**VIA ONLINE PORTAL**

David M. Hardy  
Chief, Record/Information  
Dissemination Section  
Records Management Division  
Federal Bureau of Investigation  
170 Marcel Drive  
Winchester, VA 22602-4843  
Via Online Portal

Kevin Krebs,  
Assistant Director, FOIA/Privacy Unit  
Executive Office for United States  
Attorneys  
175 N Street, NE, Suite 5.400  
Washington, DC 20530-0001  
Via FOIAOnline

**Re: Expedited Freedom of Information Act Request**

Dear Mr. Hardy and Mr. Krebs:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of your agency, 28 C.F.R. Part 16, American Oversight makes the following request for records.

Recent public reports indicate that the investigation regarding President Trump's potential violation of campaign finance laws conducted by the U.S. Attorney's Office for the Southern District of New York has been concluded.<sup>1</sup> Despite the recent practice of the Department of Justice (DOJ) providing information about its decisions not to charge the subjects of high-profile investigations, DOJ has not provided any public information regarding its decision to close this investigation into potential crimes committed by the president.<sup>2</sup>

**Requested Records**

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

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<sup>1</sup> See Ben Protess et al., *Investigation into Trump Campaign Violations Is Over, Judge Says*, N.Y. TIMES, July 17, 2019, <https://www.nytimes.com/2019/07/17/nyregion/michael-cohen-trump-investigation.html>.

<sup>2</sup> Jim Mustian, *Why No Hush-Money Charges Against Trump? Feds Are Silent*, AP, July 19, 2019, <https://www.apnews.com/0543a381b39a42d09c27567274477983>.



1. All FBI form 302s reflecting the content of all interviews conducted as a part of the government's investigation of potential campaign finance violations committed by President Trump, the Trump Organization, Michael Cohen, or others representing President Trump or the Trump Organization, as well as any investigation of other potential violations related to that investigation (including, for example, obstruction of justice). Specifically, this request seeks 302s from the investigation(s) that a Southern District of New York court acknowledged had been concluded, at least in part, in its July 17, 2019 Opinion and Order in *United States v. Cohen*, Case No. 18cr602 (S.D.N.Y.), ECF No. 47.
2. All other records intended to summarize, memorialize, or record witness interviews or witness statements collected or used in the investigation(s) described in Item 1, including written proffers, written summaries of oral proffers, transcripts or recordings of any witness interviews or statements, and any other record summarizing, memorializing, or reproducing the content of witness interviews or statements collected or used in connection with the above-described investigation.

Please provide all responsive records from September 1, 2016, 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."<sup>3</sup> The public has a significant interest in DOJ's investigation of potential crimes committed by the president and information gained from that investigation. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether DOJ conducted a thorough investigation of potential criminal activity by the highest-ranking official in the executive branch. 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.

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<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

This request is primarily and fundamentally for non-commercial purposes.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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;<sup>7</sup> 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;<sup>8</sup> posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;<sup>9</sup> posting records and analysis relating to the federal

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<sup>4</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>5</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 29, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 29, 2019).

<sup>6</sup> News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

<sup>7</sup> *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>.

<sup>8</sup> 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>.

<sup>9</sup> *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>.

government's efforts to sell nuclear technology to Saudi Arabia;<sup>10</sup> 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.<sup>11</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 28 C.F.R. § 16.5(e)(1)(iv), 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 widespread and exceptional media interest and there exist possible questions concerning the government's integrity, which affect public confidence.

There is widespread and exceptional media interest in understanding the conduct of and facts gathered by DOJ's investigation of the president's potential commission of campaign finance violations.<sup>12</sup> The subject matter of this request also concerns possible questions concerning the government's integrity. In particular, the fact that the president's former attorney is serving a multi-year sentence in prison in part for his role in making payments to women who accused the president of extramarital affairs before the 2016 presidential election has given rise to public concerns that DOJ has not pursued criminal charges against the president because of his position of power rather than the absence of evidence

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<sup>10</sup> *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>.

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

<sup>12</sup> See, e.g., Protess et al., *supra* note 1; Mustian, *supra* note 2; William K. Rashbaum & Ben Protess, *New Charges in Stormy Daniels Hush Money Inquiry Unlikely, Prosecutors Signal*, N.Y. TIMES, July 18, 2019, <https://www.nytimes.com/2019/07/18/nyregion/stormy-daniels-michael-cohen-documents.html>; Rebecca Balhaus, *Prosecutors Are Asked Why Trump Wasn't Indicted for Campaign Violations*, WALL ST. J. (July 19, 2019, 4:18 PM), <https://www.wsj.com/articles/prosecutors-asked-why-trump-wasnt-indicted-for-campaign-finance-violations-11563561750>; Matt Zapposky, *Prosecutors Have 'Concluded' Michael Cohen Campaign Finance Probe, Judge Says*, WASH. POST, July 17, 2019, [https://www.washingtonpost.com/national-security/prosecutors-have-concluded-michael-cohen-campaign-finance-probe-judge-says/2019/07/17/733391a0-a8b1-11e9-9214-246e594de5d5\\_story.html?utm\\_term=.df3f81727e82](https://www.washingtonpost.com/national-security/prosecutors-have-concluded-michael-cohen-campaign-finance-probe-judge-says/2019/07/17/733391a0-a8b1-11e9-9214-246e594de5d5_story.html?utm_term=.df3f81727e82).

of his guilt.<sup>13</sup> The U.S. House of Representatives Committee on Oversight and Reform has expressed similar concerns. In particular, the Committee has asked whether DOJ failed to pursue criminal charges due to an opinion that the president cannot be prosecuted while in office, and the Committee further requested documents underlying the investigation.<sup>14</sup>

Moreover, I certify to be true and correct to the best of my knowledge and belief that there exist possible questions concerning the government's integrity regarding the conduct of the investigation into the president's potential criminal activity, and the decision to conclude the investigation without filing charges.

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,<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>18</sup>

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<sup>13</sup> Chris Smith, "It Would Be Ridiculously Naïve Not to Be Concerned": Trump Has Politicized the DOJ. How Long Can the SDNY Hold Out?, VANITY FAIR, July 8, 2019, <https://www.vanityfair.com/news/2019/07/trump-has-politicized-the-doj-how-long-can-the-sdny-hold-out>.

<sup>14</sup> Kyle Cheney, *Dems Ask Whether DOJ Memo Prevented Prosecuting Trump for Hush Payments*, Politico (July 19, 2019, 2:49 PM), <https://www.politico.com/story/2019/07/19/doj-memo-trump-hush-payments-1422933>; Ltr. from Rep. Elijah Cummings, Chairman, U.S. House of Representatives, Comm. on Oversight and Reform, to Audrey Strauss, Deputy United State Attorney, Southern District of New York, July 19, 2019, <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2019-07-19.COR%20to%20Strauss-SDNY%20re%20Hush%20Money%20Investigation.pdf>.

<sup>15</sup> 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).

<sup>16</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>17</sup> American Oversight currently has approximately 12,200 page likes on Facebook and 54,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited May 29, 2019); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited May 29, 2019).

<sup>18</sup> See generally *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>; see, e.g., *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT,



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.
- 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

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<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/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>.

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.<sup>19</sup> 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.<sup>20</sup>

- 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,<sup>21</sup> 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.

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<sup>19</sup> 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).

<sup>20</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>21</sup> 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>.



## 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 Dan McGrath at [foia@americanoversight.org](mailto: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", with a long horizontal flourish extending to the left.

Austin R. Evers  
Executive Director  
American Oversight