

EXHIBIT E



April 16, 2020

VIA FACSIMILE

Appeals Officer
Appeals Review Panel
Office of Information Programs and Services
U.S. Department of State
2201 C Street NW, Suite B266
Washington, DC 20520
Facsimile: 202-485-1718

Re: Expedited Freedom of Information Act Appeal for F-2020-05029

Dear FOIA Appeals Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(6)(A), and Department of State (State) regulations at 22 CFR § 171.13, American Oversight submits the following administrative appeal.

American Oversight submitted FOIA request number F-2020-05029 to State on March 16, 2020, seeking email communications sent by specified State officials containing key terms related to the coronavirus. *See* Ex. A. American Oversight sought expedition of its request pursuant to 5 U.S.C. § 552(a)(6)(E)(1). By email dated March 30, 2020, State denied the request for expedition on the grounds that the “request does not demonstrate a ‘compelling need’ for the requested information.” *See* Ex. B.

Consistent with the requirements of 22 CFR § 171.13, American Oversight hereby submits this administrative appeal of the denial of expedited processing.

Appeal of Denial of Expedited Processing

American Oversight’s request is entitled to expedited processing under federal law, 5 U.S.C. § 552(a)(6)(E)(1), and departmental regulations, which provide for expedited processing based on “compelling need” when “information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity.” 22 CFR § 171.11(f)(2).

First, there is an urgent need to inform the public about the subject of this request, the federal government’s response to the coronavirus pandemic. This urgency existed when American Oversight filed its request on March 16, 2020, and new urgency continues to arise as media reports



show the continued spread of the virus and its devastating impact on the American public, as well as a lack of coordination and care in the federal government's handling of the coronavirus pandemic.¹

In its initial FOIA request, American Oversight explained that the virus, at that time, had spread rapidly and already killed thirty-one people in the United States, and was exacerbated by a series of government failures to appropriately respond to the pandemic. *See* Ex. A. These failures included significant problems in the rollout of coronavirus tests,² and an effort by the government to minimize press coverage of this issue and prevent public health officials from speaking freely about the threats.³ American Oversight further explained that the “exceptionally widespread news reporting on this virus demonstrates that the public urgently needs information concerning the subject matter of this request,” citing multiple articles tracking coronavirus cases and deaths.⁴ Ex. A.

In the month since filing its request, the public's need for information about the federal government's handling of the coronavirus has only grown more urgent. For example, according to news reports, the federal government received several warnings from the intelligence community

¹ *See, e.g.*, Anita Kumar & Gavin Bade, *States Still Baffled over How to Get Coronavirus Supplies from Trump*, POLITICO (Apr. 13, 2020, 4:30 AM), <https://www.politico.com/news/2020/04/13/states-baffled-coronavirus-supplies-trump-179199>; Eric Lipton et al., *He Could Have Seen What Was Coming: Behind Trump's Failure on the Virus*, N.Y. TIMES (Apr. 13, 2020, 8:30 PM), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>; Yasmeen Abutaleb et al., *The U.S. Was Beset by Denial and Dysfunction as the Coronavirus Raged*, WASH. POST, Apr. 4, 2020, <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction/>.

² Alice Park, *Responding to Coronavirus Testing Problems, U.S. Government Expands Number of Labs That Can Run Tests*, TIME (Mar. 2, 2020, 1:50 PM), <https://time.com/5793605/coronavirus-testing-united-states/>.

³ Brianna Ehley, *Trump's Team Shifts Tone from Preventing Coronavirus to Containing It*, POLITICO (Mar. 2, 2020, 7:52 PM), <https://www.politico.com/news/2020/03/02/trumpcoronavirus-pence-119051>; Michael Shear & Maggie Haberman, *Pence Will Control All Coronavirus Messaging from Health Officials*, N.Y. TIMES, Feb. 27, 2020, <https://www.nytimes.com/2020/02/27/us/politics/us-coronavirus-pence.html>.

⁴ Adam Taylor et al., *Live Updates: Italy to Close Schools as Coronavirus Death Toll Passes 100, L.A. County Declares Health Emergency as Cases Mount*, WASH. POST (Mar. 4, 2020, 2:38 PM EST), <https://www.washingtonpost.com/world/2020/03/04/coronavirus-liveupdates/>; Holly Yan & Kristina Sgueglia, *New York Now Has 6 Coronavirus Cases and City Officials Are Scrambling to Find Who Else Might Have It*, CNN HEALTH (Mar. 4, 2020 12:06 PM EST), <https://www.cnn.com/2020/03/04/health/new-york-coronavirus-cases/index.html>.

about the potential risks of a coronavirus outbreak far earlier than previously known.⁵ Furthermore, the extent to which these warnings may have been ignored, even as late as January and February 2020, is currently being investigated by House Intelligence Committee.⁶ In addition, State has been at the helm of many critical decisions about how to respond to the coronavirus, including how to repatriate tens of thousands of Americans stranded abroad,⁷ while struggling with the toll the virus is taking on its own staff who are scattered across the world.⁸ And, all the while, the total numbers of cases and deaths have continued to rise dramatically across the country.⁹

The records requested by American Oversight will shed light on these pressing matters, including the extent to which top government officials were informed about risks posed by the coronavirus and involved in implementing policies designed to mitigate risks and respond to the pandemic. See Ex. A.

Second, as certified in its request, American Oversight is primarily engaged in the dissemination of information to the public. Ex. A. 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,¹⁰ 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

⁵ Joseph Margolin & James Gordon Meek, *Intelligence Report Warned of Coronavirus Crisis as Early as November: Sources*, ABC NEWS (Apr. 8, 2020, 9:55 PM),

<https://abcnews.go.com/Politics/intelligence-report-warned-coronavirus-crisis-early-november-sources/story?id=70031273>; see also Josh Rogin, *State Department Cables Warned of Safety Issues at Wuhan Lab Studying Bat Coronaviruses*, WASH. POST, Apr. 14, 2020, <https://www.washingtonpost.com/opinions/2020/04/14/state-department-cables-warned-safety-issues-wuhan-lab-studying-bat-coronaviruses/>.

⁶ David Corn, *Adam Schiff: House Dems Investigating How Trump Handled Coronavirus Intelligence*, MOTHER JONES, Apr. 14, 2020, <https://www.motherjones.com/politics/2020/04/adam-schiff-house-dems-investigating-how-trump-handled-coronavirus-intelligence/>.

⁷ Michele Kelemen, *50,000 Americans Stranded Abroad by Coronavirus Events, State Department Says*, NPR (Mar. 25, 2020, 9:25 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/25/821731668/50-000-americans-stranded-abroad-by-coronavirus-events-state-department-says>; Nicole Gaouette & Kylie Atwood, *Lacking Clear State Department Coronavirus Guidance, Embassies Are Just 'Making it up as We Go Along'*, CNN (Mar. 20, 2020, 2:23 PM), <https://www.cnn.com/2020/03/20/politics/state-department-coronavirus-confusion/index.html>.

⁸ *Id.*; Lara Jakes, *When the Face of America Falls Ill: A Virus's Toll on Diplomats*, N.Y. TIMES, Apr. 4, 2020, <https://www.nytimes.com/2020/04/04/us/politics/coronavirus-state-department.html>.

⁹ *Coronavirus Map: Tracking the Global Outbreak*, N.Y. TIMES (Apr. 14, 2020, 8:19 AM) <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html>.

¹⁰ 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).

distributes that work to an audience.”¹¹ 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.¹² American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content,¹³ including specifically with respect to documents related to the coronavirus.¹⁴

For the foregoing reasons, American Oversight’s request satisfies the statutory and regulatory requirements for expedited processing.

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

¹² American Oversight currently has approximately 15,500 page likes on Facebook and 102,200 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Apr. 14, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Apr. 14, 2020).

¹³ 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/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>.

¹⁴ *‘We Are Flying Blind’: Health Officials’ Late February Emails Show Rising Coronavirus Concerns*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/we-are-flying-blind-health-officials-late-february-emails-show-rising-coronavirus-concerns>.

Conclusion

Thank you for your consideration of this appeal. As provided in 5 U.S.C. § 552(a)(6)(A)(ii), we look forward to your determination on our appeal within twenty working days.

For questions regarding any part of this appeal or the underlying request for records, please contact Christine Monahan at foia@americanoversight.org or 202.869.5244.

Respectfully submitted,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Austin R. Evers
Executive Director
American Oversight

EXHIBIT A



March 16, 2020

VIA EMAIL

Office of Information Programs and Services
Department of State
A/GIS/IPS/RL
SA-2, Suite 8100
Washington, DC 20522
foiarequest@state.gov

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

The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels.¹ Since late 2019, the virus has spread to dozens of countries, sickened tens of thousands of people, and resulted in thousands of deaths.² This is a rapidly evolving situation that is demanding coordinated attention and action across the federal government. Yet the Trump administration has so far failed to ensure timely availability of testing kits for healthcare providers,³ prevented health experts from speaking about the growing crisis,⁴ and removed information on the spread of the virus from public health resources.⁵ President Trump has

¹ *Coronavirus Disease 2019 (COVID-19) Situation Summary*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

² *Coronavirus Live Updates: W.H.O Says Covid-19 Has Higher Fatality Rate Than the Flu*, N.Y. TIMES, Mar. 4, 2020, https://www.nytimes.com/2020/03/04/world/coronavirus-news.html?action=click&pgtype=Article&state=default&module=stylncoronavirus&variant=show®ion=TOP_BANNER&context=storyline_menu.

³ Alice Park, *Responding to Coronavirus Testing Problems, U.S. Government Expands Number of Labs That Can Run Tests* (Mar. 2, 2020, updated 1:50 PM EST), TIME, <https://time.com/5793605/coronavirus-testing-united-states/>.

⁴ Michael Shear & Maggie Haberman, *Pence Will Control All Coronavirus Messaging from Health Officials*, N.Y. TIMES, Feb. 27, 2020, <https://www.nytimes.com/2020/02/27/us/politics/us-coronavirus-pence.html>.

⁵ Brianna Ehley, *Trump's Team Shifts Tone from Preventing Coronavirus to Containing It*, POLITICO (Mar. 2, 2020, 7:52 PM), <https://www.politico.com/news/2020/03/02/trump-coronavirus-pence-119051>.



consistently downplayed the threat of the virus to public health, appearing to express concern and attention to the matter only with respect to any economic effects.⁶

American Oversight seeks records with the potential to shed light on how the administration is handling this public health emergency.

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:

All email communications (including email messages, complete email chains, email attachments, calendar invitations) sent by the government officials specified below containing any of the following key terms:

1. Coronavirus
2. Corona
3. Virus
4. Disease
5. Pandemic
6. Epidemic
7. Outbreak
8. containment
9. “public health emergency”
10. “COVID-19”
11. “COVID 19”
12. COVID19
13. SARS
14. “2019-nCOV”
15. POTUS
16. Test
17. Tests
18. Testing
19. EUA
20. Emergency
21. Wuhan
22. Hoax
23. Hubei
24. Princess

⁶ Alan Rappeport & Jim Tankersley, *As Stock Markets Plunge, Trump Calls for Economic Response to Coronavirus*, N.Y. TIMES, Mar. 9, 2020, <https://www.nytimes.com/2020/03/09/business/economy/trump-coronavirus-economic-fallout.html>.

25. Cruise
26. Kirkland
27. Seattle
28. "New Rochelle"
29. "BioGen Conference"
30. CPAC
31. AIPAC
32. RNA
33. "Extraction kits"
34. Roche
35. Vaccine
36. Antiviral
37. Antiretroviral
38. Quarantine
39. Distancing
40. Isolation
41. N95
42. Mask
43. Respirator

Government Officials

1. Mike Pompeo, Secretary
2. Lisa Kenna, Executive Secretary
3. Ulrich Brechbuhl, including in his capacity of Counselor to the Secretary or Undersecretary for Public Diplomacy
4. Stephen Biegun, Deputy Secretary
5. Ian Brownlee, Principal Deputy Assistant Secretary
6. Jonathan Fritz, Deputy Assistant Secretary
7. Carl Risch, Assistant Secretary for Consular Affairs
8. Deborah Birx, Global AIDS Coordinator
9. Sean Doocey, Bureau of International Organization Affairs

Please provide all responsive records from January 15, 2020, through the date of the search.

American Oversight has limited its request to sent messages to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a government official sent a response to an incoming message containing one of the key terms above, the email chain containing the initially received message and the response is responsive to this request.

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.”⁷ The public has a significant interest in the federal government’s response to the coronavirus. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including the role of top officials in implementing policies to mitigate the spread of the disease. 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.⁸ 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.⁹

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.¹⁰ 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;¹¹ posting records received as part of American Oversight’s “Audit the Wall”

⁷ 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁹ American Oversight currently has approximately 15,500 page likes on Facebook and 102,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 12, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 12, 2020).

¹⁰ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

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

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 posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹³ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹⁴ 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.¹⁵

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1), 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 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.

Recent reporting demonstrates that there is clearly an urgent need to inform the public regarding the matters that are the subject of American Oversight's FOIA request. First, American Oversight has requested records with the potential to shed light on the steps the administration has undertaken to manage a public health emergency at both national and international levels. Because the virus has spread rapidly and has already killed at least 31

OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

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 *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>.

¹⁴ *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>.

¹⁵ *Sessions' Letter Shows DOJ Acted On Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

people in the United States,¹⁶ there is plainly an urgent need to inform the public about the actions that the government has taken to mitigate the spread and treat the ongoing cases. The exceptionally widespread news reporting on this virus demonstrates that the public urgently needs information concerning the subject matter of this request.¹⁷ Second, factual developments in the last few weeks have demonstrated a series of government failures to appropriately handle testing decisions, including failures in the rollout of coronavirus tests and overly restrictive testing protocols,¹⁸ as well as an effort by government officials to minimize press coverage and reduce public information¹⁹ about the testing of coronavirus cases. There is also widespread public concern that public health officials are being prevented from speaking about the coronavirus more broadly²⁰—information that is critical for educating the public on steps to contain the future spread of the virus and mitigate the outbreaks that have already occurred.

Moreover, I certify to be true and correct to the best of my knowledge and belief that there is an urgent need to inform the public about testing for coronavirus. American Oversight's request seeks information that can shed light on the role that top government officials have played in the crisis – including the extent to which they were informed about risks and involved in implementing policies designed to mitigate those risks. The public urgently needs the information to understand the extent of the growing health crisis and make decisions that promote public health and mitigate the spread of the disease.

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,²¹ 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.”²² 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

¹⁶ *Coronavirus Live Updates*, *supra* note 1.

¹⁷ *Id.*; Adam Taylor et al., *Live Updates: Italy to Close Schools as Coronavirus Death Toll Passes 100, L.A. County Declares Health Emergency as Cases Mount*, WASH. POST (Mar 4., 2020, 2:38 PM EST), <https://www.washingtonpost.com/world/2020/03/04/coronavirus-live-updates/>; Holly Yan & Kristina Sgueglia, *New York Now Has 6 Coronavirus Cases and City Officials Are Scrambling to Find Who Else Might Have It*, CNN HEALTH (Mar. 4, 2020 12:06 PM EST), <https://www.cnn.com/2020/03/04/health/new-york-coronavirus-cases/index.html>.

¹⁸ Park, *supra* note 3.

¹⁹ Ehley, *supra* note 5.

²⁰ Shear & Haberman, *supra* note 4.

²¹ 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).

²² *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

media platforms, such as Facebook and Twitter.²³ As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.²⁴

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.

²³ American Oversight currently has approximately 15,500 page likes on Facebook and 102,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Mar. 12, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Mar. 12, 2020).

²⁴ 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/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>.

- 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.²⁵ 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.²⁶
- 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,²⁷ 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

²⁵ 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).

²⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²⁷ 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>.

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 Christine Monahan at foia@americanoversight.org or 202.869.5244. 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

EXHIBIT B

Subject: [Ext]Ref: F-2020-05029, Freedom of Information Act Acknowledgement

Date: Monday, March 30, 2020 at 6:18:41 PM Eastern Daylight Time

From: A_FOIAacknowledgement@groups.state.gov

To: foia@americanoversight.org

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****

Mr. Evers:

This email acknowledges receipt of your March 16, 2020, Freedom of Information Act (FOIA) (5 U.S.C. § 552) request received by the U.S. Department of State, Office of Information Programs and Services on March 17, 2020, regarding email communication sent by Mike Pompeo, Lisa Kenna, Ulrich Brechbuhl, Stephen Biegun, Ian Brownlee, Jonathan Fritz, Carl Risch, Deborah Birx, and Sean Doocey containing various key words related to the outbreak of the novel coronavirus, SARS-CoV-2, and disease COVID-19. This Office assigned your request the subject reference number and placed it in the complex processing track where it will be processed as quickly as possible. See 22 CFR § 171.11(h).

You requested a waiver for all fees associated with the processing of your request. Please be advised this Office will make a determination regarding a fee waiver at a later date.

Also, you requested expedited processing of this request. According to 22 CFR § 171.11(f), requests shall receive expedited processing when a requester demonstrates a “compelling need” for the information exists for one of the following reasons: (1) failure to obtain the requested information on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (2) the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal government activity; or (3) failure to release the information would impair substantial due process rights or harm substantial humanitarian interests. Your request does not demonstrate a “compelling need” for the requested information. Therefore, this Office denies your request for expedited processing.

If you are not satisfied with this Office’s determination in response to your request for expedited processing, you may administratively appeal to: Appeals Officer, Appeals Review Panel, Office of Information Programs and Services, U.S. Department of State, 2201 C Street, NW, Suite B266, Washington, D.C. 20520; or facsimile at 202-485-1718. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this email.

This Office will not be able to respond within the 20 days provided by the statute due to “unusual circumstances.” See 5 U.S.C. § 552(a)(6)(B)(i)-(iii). In this instance, the unusual circumstances include the need to search for and collect requested records from other Department offices or Foreign Service posts.

If you have any questions regarding your request, would like to narrow the scope or arrange an alternative time frame to speed its processing, or would like an estimated date of completion, please contact our FOIA Requester Service Center or our FOIA Public Liaison by email at FOIAstatus@state.gov or telephone at 202-261-8484. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

/s/ Nicholas J. Cormier

Nicholas J. Cormier

Chief, Requester Communications Branch

Office of Information Programs and Services

****THIS EMAIL BOX IS NOT MONITORED, PLEASE DO NOT REPLY TO THIS EMAIL.****