

UNCLASSIFIED

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

Mr. Austin Evers
Executive Director
American Oversight
1030 15th Street, Suite B255
Washington, DC 20005

June 25, 2021

Subject: ODNI Case DF-2020-00143; Civil Case 1:20-cv-01797 (American Oversight v. ODNI)

Mr. Evers,

This is the second interim and final response to your Freedom of Information Act (FOIA) request dated 21 February 2020 (Enclosure 1), in which you requested “*All decision memoranda, directives, or policy interpretations or guidance signed, approved, or otherwise adopted by Acting DNI Grenell.*” Please note we are continuing to process records related to your other case involved in this litigation (DF-2020-00244).

Your request was processed in accordance with the FOIA, 5 U.S.C. § 552, as amended. This response addresses the processing of six documents.

Upon review, we have determined that portions of two of the documents must be withheld (Enclosures 2 and 3) and three documents must be withheld in their entirety pursuant to the following FOIA exemptions:

- (b)(1), which applies to information that is currently and properly classified pursuant to Executive Order 13526, Section 1.4(c);
- (b)(3), which applies to information exempt by statute. The relevant statutes are the National Security Act of 1947, as amended, 50 U.S.C. § 3024(i) and 50 U.S.C. § 3024(m), which protect intelligence sources and methods and identifying information of ODNI personnel;
- (b)(6), which applies to information, the release of which would constitute a clearly unwarranted invasion of personal privacy.

Additionally the National Security Agency (NSA) withheld information from the documents pursuant to FOIA exemptions (b)(1), (b)(3), and (b)(5). The applicable (b)(3) statutes applied by NSA are 50 U.S.C. § 3024(i) and 50 U.S.C. § 3605 (Public Law 86-36, Section 6), which protects NSA functions and information. Exemption (b)(5) applies to information that concerns communications within or between agencies which are protected by legal privileges.

The remaining document is released in full (Enclosure 4).

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If you have any questions, please contact DOJ attorney, Michael Drezner, at Michael.L.Drezner@usdoj.gov or by phone at (202) 514-4505.

Sincerely,

A handwritten signature in black ink that reads "Sally A. Nicholson". The signature is written in a cursive, flowing style.

Sally A. Nicholson
Chief, Information Review
& Release Group
FOIA Public Liaison
Information Management Office

Enclosures

FEB 24 2020

From: FOIA <foia@americanoversight.org>
Sent: Friday, February 21, 2020 4:07 PM
To: DNI-FOIA
Subject: FOIA Request (ODNI-20-0266)
Attachments: ODNI-20-0266.pdf

Dear FOIA Officer:

Please find attached a request for records under the Freedom of Information Act.

Sincerely,

Clay M. Goode
Paralegal
American Oversight
foia@americanoversight.org
www.americanoversight.org | @weareoversight

FOIA: ODNI-20-0266



FEB 24 2020

February 21, 2020

VIA EMAIL

Patricia Gaviria
Office of the Director of National Intelligence
Information Management Division
ATTN: FOIA/PA
Washington, DC 20511
dni-foia@dni.gov

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

The Office of the Director of National Intelligence (ODNI) has recently undergone significant turmoil. This week, press reported that three senior career officials—Joseph Maguire, Jason Klitenic, and Andrew Hallman—would be stepping down from their leadership roles. Notably, press reports indicate that President Trump decided to remove Joseph Maguire, Acting DNI, from his position after Trump learned that the Intelligence Community had briefed Congress on Russian interference on his behalf in the 2020 elections.¹ In his place, President Trump named Ambassador to Germany Richard “Ric” Grenell—a highly political ally of the president, with minimal experience in foreign policy or national security²—and reporting also indicates Grenell will take on Kash Patel, a former staffer of Representative Devin Nunes who worked to discredit the investigation into Russian interference during the 2016 election, as a senior advisor.³ This leadership

¹ Ellen Nakashima, et al., *Senior Intelligence Official Told Lawmakers that Russia Wants to See Trump Reelected*, WASH. POST (Feb. 21, 2020, 6:53 AM), https://www.washingtonpost.com/national-security/after-a-congressional-briefing-on-election-threats-trump-soured-on-acting-spy-chief/2020/02/20/1ed2b4ec-53f1-11ea-b119-4faabac6674f_story.html.

² Julian Barnes & Maggie Haberman, *Trump Names Richard Grenell as Acting Head of Intelligence*, N.Y. TIMES, Feb. 19, 2020, <https://www.nytimes.com/2020/02/19/us/politics/dni-national-intelligence-director-grenell.html>.

³ Daniel Lippman, *NSC Aide Who Worked to Discredit Russia Probe Moves to Senior ODNI Post*, POLITICO (Feb. 20, 2020, 8:00 PM) <https://www.politico.com/news/2020/02/20/kash-patel-odni-post-116546>.

transition follows on the heels of other indications that Trump may be politicizing ODNI. In July 2019, former Director Dan Coats was asked to step down just three days after President Trump's now-infamous call with Ukrainian President Zelensky in which the president pressured the Ukrainians to investigate a domestic political opponent, and another respected career official, Principal Deputy DNI Sue Gordon, was also forced out soon thereafter.⁴

American Oversight seeks records to shed light on whether and to what extent the President is politicizing the intelligence community.

Requested Records

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

All decision memoranda, directives, or policy interpretations or guidance signed, approved, or otherwise adopted by Acting DNI Grenell. This request includes any document establishing, modifying, clarifying, or rescinding any DNI or other Intelligence Community policy, legal or policy interpretation, or practice, whether presented as a memorandum, letter, guidance document, or in any other form.

Please provide all responsive records from February 19, 2020, through the date the search is conducted.

American Oversight believes this request for a small number of recent readily-identifiable documents created by high-ranking officials should be assigned to the Simple processing track, and American Oversight expects that ODNI will be able to respond promptly.

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

⁴ Julian Borger, *Trump's Ukraine Call Sparks New Questions Over Intelligence Chief's Firing*, THE GUARDIAN (Sep. 28, 2019, 1:01 AM), <https://www.theguardian.com/us-news/2019/sep/27/dan-coats-dni-trump-firing-ukraine>.

public understanding of operations or activities of the government.”⁵ The public has a significant interest in ensuring that the Intelligence Community does not become politicized but rather is able to continue providing objective, unbiased assessments to national security decisionmakers. Records with the potential to shed light on recent leadership transitions would contribute significantly to public understanding of operations of the federal government, including whether and to what extent decisions about DNI leadership are being made for political reasons. 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.⁶ 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.⁷

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.⁸ 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;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

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁷ American Oversight currently has approximately 15,500 page likes on Facebook and 101,500 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited Feb. 7, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited Feb. 7, 2020).

⁸ News, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁹ 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>.

a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹¹ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;¹² and 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.¹³

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:

- 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.
- 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

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 *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>.

¹² *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>.

¹³ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

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.¹⁴ 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.¹⁵
- 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,¹⁶ 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.

¹⁴ 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).

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

¹⁶ 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>.

- 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 Hart Wood at foia@americanoversight.org or 202.873.1743. 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,



Austin R. Evers
Executive Director
American Oversight

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

ES 2020-00122

MEMORANDUM FOR: General Paul M. Nakasone, USA
Director, National Security Agency

SUBJECT: (U) Approval of NSA's Request to Continue Retention of Personal Information Concerning Non-U.S. Persons under Presidential Policy Directive 28

REFERENCES: A. (U//~~FOUO~~) NSA Memorandum, Request for Continued Retention of Data Concerning Non-U.S. Persons, 5 February 2020 (~~TS//SI//NF~~)
B. (U) Presidential Policy Directive 28, Signals Intelligence Activities, 17 January 2014 (~~S//NF~~)
C. (U) Intelligence Community Standard 107-01, Continued Retention of SIGINT under PPD-28, 2 February 2015 (U)

(U//~~FOUO~~) I reviewed the request sent to former Acting Director Maguire regarding continued retention of data concerning non-U.S. persons (Reference A).

(U) Presidential Policy Directive 28 (Reference B) provides that certain information concerning non-U.S. persons may not be retained for more than five years unless the Director of National Intelligence expressly determines that continued retention is in the national security interests of the United States. Intelligence Community Standard 107-01 (Reference C) establishes the process by which Intelligence Community elements may seek this determination.

~~(TS//SI//REL TO USA, FVEY)~~ In accordance with References B and C, I approve your request for continued retention of the (b)(3) dataset, for up to an additional (b)(3) based on my determination that such continued retention is in the national security interests of the United States.

~~(TS//SI//REL TO USA, FVEY)~~ If at any time prior to (b)(3) from the date of this memorandum, NSA assesses that this dataset no longer has analytic value, NSA should cease retention in accordance with pertinent policy guidance.

Classified By: (b)(3), (b)(6)
Derived From: NSACSSM 1-52
Declassify On: 20451231

SUBJECT: (U) Approval of Continued Retention of Personal Information Concerning Non-U.S. Persons under Presidential Policy Directive 28

(U//~~FOUO~~) The point of contact for this matter is Mr. Paul Wogaman, and he can be reached at (b)(3), (b)(6)


Richard A. Grenell
Acting Director

Date 3/13/20

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC

ES 2020-00284

Charter: Intelligence Community Advanced Campaign Cell

- 1. OFFICIAL DESIGNATION.** Intelligence Community Advanced Campaign Cell (IC/ACC).
- 2. AUTHORITIES.**
 - The National Security Act of 1947, as amended;
 - Executive Order (EO) 12333, as amended;
 - Director of National Intelligence Memorandum ES 00206, *Intelligence Community Charters*, 18 April 2009; and
 - Other applicable provisions of law.
- 3. OBJECTIVES AND SCOPE.** The IC/ACC develops and applies innovative analytic and collection methods, technology, and tradecraft techniques that integrate multiple intelligence disciplines that are scalable and adaptive, in support of efforts against the IC's most difficult problems. The ACC will:
 - Develop new collaboration, analytic, and collection tradecraft methodologies and strategies leveraging current and legacy systems and data, integrate multiple intelligence disciplines, and incorporate expertise from across the IC in support of mission needs;
 - Automate and augment analysis and collection using data sources from across the IC as well as the Department of Defense (DoD) and the Law Enforcement (LE) community, to include compartmented data as appropriate; and
 - Share across the IC, DoD, and LE community, as appropriate, innovative tradecraft methodologies, processes, and tools from all sources.
- 4. MEMBERSHIP AND LEADERSHIP.** Participating IC elements are the Office of the Director of National Intelligence (ODNI), the Central Intelligence Agency (CIA), the Defense Intelligence Agency (DIA), the National Geospatial-Intelligence Agency (NGA), the National Reconnaissance Office (NRO), and the National Security Agency (NSA) and any other IC member. They shall:
 - Assign full-time personnel, co-located physically or virtually, as necessary, to the IC/ACC enabling eligibility for IC Joint Duty credit, consistent with Intelligence Community Directive 660, *Intelligence Community Civilian Joint Duty Program*. Personnel assigned part-time may apply for Joint Duty credit in accordance with their home agency policy;

- Provide and maintain computer access to their home agency network for their IC/ACC participants;
- Provide governance and oversight for gaining and maintaining access to data relevant for use in an integrated context to address intelligence issues.
- Remain responsible for their participants' overall administrative support, including training, travel, and other resources;
- When requested, nominate a candidate for the Director, IC/ACC to the Principal Deputy Director of National Intelligence (PDDNI) for selection. Nominees shall be from the Senior National Intelligence Service ranks or equivalent; and
- Exercise their respective agency authorities through their assigned personnel.

Elements outside of the IC may participate in the ACC and provide subject matter expertise.

4.1. The ODNI shall: Staff and support the IC/ACC, via the Directorate for Mission Integration's Mission Performance, Analysis and Collection (DMI/MPAC), by providing personnel and resources to advance collection, analysis, and linked data tradecraft for integrated intelligence.

4.2. The NGA shall: Staff and support the IC/ACC by providing personnel and resources to advance collection, analysis, and linked data tradecraft for integrated intelligence (b)(3)

4.3. The NRO shall: (b)(3)

(b)(3) Staff and support the IC/ACC by providing personnel and resources (b)(3)
(b)(3)

4.4. The NSA shall: Staff and support the IC/ACC by providing personnel and resources to advance collection, analysis, and linked data tradecraft for integrated intelligence and to advance SIGINT use for the IC. (b)(3)

4.5. The DIA shall: Provide personnel and information technology resources to support DIA's mission responsibilities to the IC/ACC to advance collection, analysis, and linked data tradecraft for integrated intelligence.

4.6. The CIA shall: Staff and support the IC/ACC by providing personnel and resources to advance collection, analysis, and linked data tradecraft for integrated intelligence.

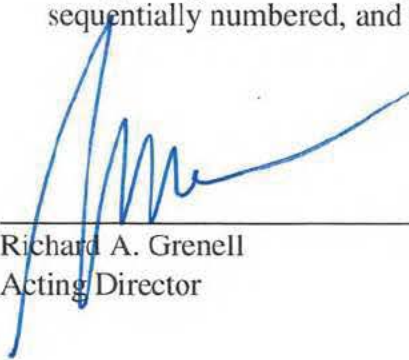
5. RESPONSIBILITIES:**5.1. The Director, IC/ACC shall:**

- Be responsible for the day-to-day management and recordkeeping of the IC/ACC consistent with ODNI strategic guidance;
- Consult regularly with ODNI component leadership to ensure projects align with evolving IC priorities and needs;
- Provide reporting to the ODNI in order to track IC/ACC progress in mission performance;
- On an annual basis (at a minimum), brief ODNI leadership, including National Intelligence Managers, on the IC/ACC's current priorities and IC/ACC's progress against those priorities; and
- Brief the Deputies Executive Committee (DEXCOM) on an annual basis, at a minimum.

5.2. The ODNI shall:

- Provide oversight with respect to IC/ACC mission, priorities, and resources via DMI/MPAC on behalf of the Office of the PDDNI;
- Provide annual strategic guidance to ensure alignment with efforts undertaken elsewhere in the IC; and
- Provide input on performance for the selected Director, IC/ACC to his or her home agency for consideration.

- 6. EFFECTIVE DATE:** This charter is effective upon the date of signature. This charter shall expire five years from the date of signature, at which time it may be extended or reauthorized. Changes to this charter may be made only in writing. Such amendments shall be signed by the authorizing official to this charter, or their successors, and will be sequentially numbered, and attached as a permanent part of this record.



Richard A. Grenell
Acting Director

Date