



October 24, 2024

VIA ONLINE PORTAL

U.S. Forest Service
Southern Region (R8)
1720 Peachtree St., NW
Atlanta GA 30309
SM.FS.R8FOIA@usda.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, 7 C.F.R. Part 1, American Oversight makes the following request for records.

On October 13, 2024, the *Washington Post* reported that Federal Emergency Management Agency (FEMA) and U.S. Forest Service personnel working on Hurricane Helene recovery efforts were relocated due to threats from armed militias.¹ American Oversight seeks records with the potential to shed additional light on these threats and their impact on hurricane relief efforts.

Requested Records

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

1. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent or received by any of the U.S. Forest Service officials listed below and containing any of the key terms listed below.

U.S. Forest Service Officials:

- i. Ken Arney, Regional Forester
- ii. James Melonas, Forest Supervisor

Key Terms:

- a. militia
- b. "hunting FEMA"

¹ See, e.g., Brianna Sacks & Dan Lamothe, *North Carolina Authorities Arrest Armed Man After Threats Against FEMA Workers*, Wash. Post (Oct. 14, 2024, 4:57 PM), <https://www.washingtonpost.com/weather/2024/10/13/federal-officials-nc-temporarily-relocated-amid-report-armed-militia-email-shows/>.



2. Any records reflecting guidance, directives, memoranda, advisories, or other documents provided to your office from the FEMA regarding the relocation of workers assisting in Hurricane Helene recovery due to the presence of armed militia groups.

For both parts of this request, please provide all responsive records from September 28, 2024, 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."² The public has a significant interest in threats of militia activity against disaster recovery workers.³ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including federal agencies' preparations for potential future threats of militia activity disrupting relief efforts. 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 for non-commercial purposes.⁴ 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 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 X (formerly Twitter).⁵

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ See, e.g., *supra* note 1.

⁴ See 5 U.S.C. § 552(a)(4)(A)(iii).

⁵ American Oversight currently has approximately 16,000 followers on Facebook and 111,000 followers on X (formerly Twitter). American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 22, 2024); American Oversight (@weareoversight), X (formerly Twitter), <https://x.com/weareoversight> (last visited Oct. 22, 2024).

American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁶ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the Trump Administration's contacts with Ukraine and analyses of those contacts;⁷ posting records and editorial content about the federal government's response to the Coronavirus pandemic;⁸ 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;⁹ 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;¹⁰ and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹¹

Accordingly, American Oversight qualifies for a fee waiver.

Application for Expedited Processing

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 7 C.F.R. § 1.6(e)(1)(ii)], American Oversight requests that your agency expedite the processing of this request.

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ *Trump Administration's Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

⁸ See generally *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; see, e.g., *We've All Given Up Getting a Straight Answer From You Guys: Frustrated Emails Between Illinois Governor's Office and White House*, <https://www.americanoversight.org/weve-all-given-up-getting-a-straight-answer-from-you-guys-frustrated-emails-between-illinois-governors-office-and-white-house>.

⁹ 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>.

¹⁰ *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>.

¹¹ See generally *Swamp Airlines: Chartered Jets at Taxpayer Expense*, American Oversight, <https://www.americanoversight.org/investigation/swamp-airlines-private-jets-taxpayer-expense>; see, e.g., *New Information on Pompeo's 2017 Trips to His Home State*, American Oversight, <https://www.americanoversight.org/new-information-on-pompeos-2017-trips-to-his-home-state>.

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. Hurricane Helene has devastated the Southeast, as there has been profound loss of life, towns have been eradicated, access to the region remains limited, and residents still lack access to basic necessities.¹² Recovery efforts by federal officials and employees have already been hampered by widespread misinformation and conspiracy theories.¹³ These conspiracy theories have been spread by the Republican presidential nominee, former President Trump, making it urgent to have these records in advance of the general election on November 5, 2024.¹⁴ The recent presence of militia groups has resulted in federal responders being withdrawn from the region, denying residents relief aid and threatening further harm to impacted communities.¹⁵ There is an urgent need to understand whether militia groups remain a serious threat to Hurricane Helene recovery efforts, and the extent to which federal aid workers are threatened by armed citizens.

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 militia activity interfering with Hurricane Helen recovery efforts, as people in the region still lack access to many basic necessities, including running water.¹⁶

I further certify that, as described in the above fee waiver and incorporated herein in the request for expedited processing, American Oversight is primarily engaged in disseminating information in order to inform the public concerning actual or alleged government activity. 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

¹² See, e.g., Bruce Schreiner, *Death Toll From Hurricane Helene Rises to 227 as Grim Task of Recovering Bodies Continues*, AP (Oct. 5, 2024, 9:31 PM), <https://apnews.com/article/hurricane-helene-death-toll-asheville-north-carolina-34d1226bb31f79dfb2ff6827e40587fc>.

¹³ See, e.g., Tiffany Hsu & Stuart A. Thompson, *Bizarre Falsehoods About Hurricanes Helene and Milton Disrupt Recovery Efforts*, N.Y. Times (Oct. 10, 2024), <https://www.nytimes.com/2024/10/10/business/media/hurricane-milton-helene-conspiracy-theories.html>.

¹⁴ See, e.g., Marianne LeVine & Isaac Arnsdorf, *Trump Refuses to Denounce Threats to FEMA, Doubles Down on Falsehoods*, Wash. Post (Oct. 21, 2024, 7:01 PM), <https://www.washingtonpost.com/politics/2024/10/21/trump-fema-threats-misinformation-hurricane-helene/>.

¹⁵ See, e.g., Edward Helmore, *North Carolina Hurricane Recovery Team Relocated Amid Threat of 'Armed Militia'*, Guardian (Oct. 14, 2024, 9:58 PM), <https://www.theguardian.com/us-news/2024/oct/14/north-carolina-hurricane-helene-fema-armed-militia-threat>.

¹⁶ See, e.g., Steve Howe, *As Many as 100,000 People in Western North Carolina Don't Have Running Water After Helene*, Asheville Citizen Times (Oct. 13, 2024, 3:17 PM), <https://www.citizen-times.com/story/news/local/2024/10/13/up-to-100k-people-have-no-running-water-in-asheville-area-after-helene/75661864007/>.

found to satisfy the criteria necessary to qualify for expedition,¹⁷ 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.”¹⁸ As noted above and shown in footnotes 5-11, 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 X (formerly Twitter.com). As discussed above, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.¹⁹

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.
- 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

¹⁷ 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); *Am. Oversight v. U.S. Dep’t of State*, 414 F. Supp. 3d 182 (D.D.C. 2019).

¹⁸ *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

¹⁹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; see, e.g., *Emails and Resume of Trump’s Pick to Head Government Personnel Office*, American Oversight, <https://www.americanoversight.org/emails-and-resume-of-trumps-pick-to-head-government-personnel-office>; *CDC Calendars from 2018 and 2019: Pandemic-Related Briefings and Meetings*, American Oversight, <https://www.americanoversight.org/cdc-calendars-from-2018-and-2019-pandemic-related-briefings-and-meetings>; *State Department Releases Ukraine Documents to American Oversight*, American Oversight, <https://www.americanoversight.org/state-department-releases-ukraine-documents-to-american-oversight>; *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>.

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.²⁰ 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.²¹
- 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,²² 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

²⁰ 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).

²¹ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

²² 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>.

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. 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 Elizabeth Haddix at foia@americanoversight.org or 252.359.7424 ext. 1031. 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,

/s/ Elizabeth Haddix
Elizabeth Haddix
on behalf of
American Oversight