



January 14, 2025

VIA EMAIL

Office of Legal Counsel
Department of Justice
Room 5517
950 Pennsylvania Ave, N.W.
Washington, DC 20530
usdoj-officeoflegalcounsel@usdoj.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, 28 C.F.R. Part 16, American Oversight makes the following request for records.

Requested Records

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

1. The Federal Legal Authorities for Emergency Response Briefing Book, also known as the Attorney General Emergency Manual¹
2. The following legal opinions written and/or issued by the Office of Legal Counsel (OLC)²:
 - a. “Law enforcement authority of special deputies assigned to DOT to guard against air piracy,” published on September 30, 1970.³

¹ A report from the Office of the Inspector General confirms this document’s existence. See Dep’t of Justice, Office of the Inspector General, *A Review of the Department of Justice’s Response to Protest Activity and Civil Unrest in Washington, D.C. in Late May and Early June 2020* at 14, July 2024, <https://oig.justice.gov/sites/default/files/reports/24-085.pdf>.

² Neither opinion is published on the OLC’s online list of legal opinions, but both are footnoted in existing OLC legal opinions. They also appear on the Department of Justice’s Best Effort List of Legal Advice Documents. See Dep’t of Justice, *Best Effort List of Legal Advice Documents: Office of Legal Counsel and predecessor entities, 1945 through February 15, 1994*, <https://www.justice.gov/media/1252596/dl>.

³ For further identifying information, see Authority of FBI Agents, Serving As Special Deputy United States Marshals, to Pursue Non-Federal Fugitives, 19 Op. O.L.C. 33, 45, (1995), <https://www.justice.gov/file/147141-0/dl>.



- b. “Federal Bureau of Investigation (FBI) Authority to Deputize State and Local Law Enforcement Officers in Drug Enforcement Investigations,” published on July 24, 1987.⁴

Because this request is limited to specific and readily identifiable documents, American Oversight expects that this request can be processed on the Simple processing track and result in a prompt agency response.

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 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.”⁵ The public has a significant interest in the government’s professed legal authority during emergencies.⁶ Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including informing the public about federal law enforcement officers’ legal authority. 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 not primarily in the commercial interest of the requester.”⁷ In fact, 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 commercial 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 X (formerly Twitter).⁸

⁴ For further identifying information, *see* Scope of the Attorney General’s Authority to Assign Duties Under 21 U.S.C. § 878(a)(5), 27 Op. O.L.C. 87, 88 (2003), <https://www.justice.gov/file/145826-0/dl>.

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ *See, e.g.*, Elizabeth Goitein, *2022 Update: Reforming Emergency Powers*, Brennan Center for Justice, Feb. 2, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/2022-update-reforming-emergency-powers>.

⁷ *See* 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ American Oversight currently has approximately 16,000 followers on Facebook and 97,900 followers on X (formerly Twitter). American Oversight, Facebook,

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.⁹ Examples reflecting this commitment include the posting of records related to the first Trump Administration’s contacts with Ukraine and analyses of those contacts;¹⁰ posting records and editorial content about the federal government’s response to the Coronavirus pandemic;¹¹ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the first Trump administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹² 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;¹³ and posting records and analysis of federal officials’ use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.¹⁴

Accordingly, American Oversight qualifies for a fee waiver.

<https://www.facebook.com/weareoversight/> (last visited Jan. 8, 2025); American Oversight (@weareoversight), X (formerly Twitter), <https://x.com/weareoversight> (last visited Jan. 8, 2025).

⁹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

¹⁰ *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

¹¹ 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., *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>.

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 *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>.

¹⁴ 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>.

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:

- 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.
- 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. 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 David Kronig at foia@americanoversight.org on (202) 897-3915. 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,

/s/ David Kronig
David Kronig
on behalf of
American Oversight