



February 4, 2025

**VIA EMAIL**

U.S. Agency for International Development  
1300 Pennsylvania Avenue, NW  
USAID Annex, M/MS/IRD, Room 2.4.0A  
Washington, DC 20523  
[foia@usaid.gov](mailto:foia@usaid.gov)

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

Dear FOIA Officer(s):

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.

On January 31, 2025, one week after the Trump Administration froze nearly all U.S. foreign aid,<sup>1</sup> *Politico* reported that the administration is exploring shutting down the U.S. Agency for International Development (USAID) and folding it into the State Department (STATE).<sup>2</sup> Two days later, Elon Musk of the Department of Government Efficiency (DOGE) stated that it is time for USAID “to die,”<sup>3</sup> and Secretary of State Marco Rubio announced that he is now acting Administrator for USAID.<sup>4</sup> American Oversight seeks records with the potential to shed light on the status and operations of USAID.

**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:

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<sup>1</sup> Ellen Knickmeyer & Farnoush Amiri, *State Department Freezes New Funding for Nearly All US Aid Programs Worldwide*, Assoc. Press (Jan. 24, 2025, 8:15 PM), <https://apnews.com/article/state-department-trump-foreign-aid-bf047e17ef64cb42a1a1b7fdf05caffa>.

<sup>2</sup> Robbie Gramer et al., *Trump Is Wreaking Havoc at USAID. Is the Goal to Shut It Down?*, *Politico* (Jan. 31, 2025, 2:11 PM), <https://www.politico.com/news/2025/01/31/trump-usaid-shutdown-state-department-00201760>.

<sup>3</sup> Carmen Paun et al., *Musk on USAID: ‘Time for It to Die,’* *Politico* (Feb. 2, 2025, 3:29 PM), <https://www.politico.com/news/2025/02/02/musk-usaid-time-00201987>.

<sup>4</sup> Lauren Kent et al., *Rubio Says He’s Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, *CNN* (updated Feb. 3, 2025, 1:06 PM EST), <https://www.cnn.com/2025/02/03/politics/usaid-washington-workers/index.html>.



**All email communications** (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) **and text messages** (including complete text message threads or conversations) **or messages on messaging platforms** (such as Signal, Slack, GChat or Google Hangouts, Lync, Skype, X (formerly Twitter) direct messages, Facebook messages, WhatsApp, Telegram, or Parler) sent or received (a) by any of the officials listed below — and/or anyone communicating on their behalf, such as an assistant, secretary, and/or scheduler — and (b) containing any of the key terms listed below.

USAID Officials:

- i. Acting Administrator Jason Gray
- ii. Acting Administrator Marco Rubio
- iii. Anyone serving in the role of senior advisor, special advisor, and/or chief of staff to the acting administrator
- iv. Former Director of Security John Vorhees
- v. Former Deputy Director of Security Brian McGill
- vi. Former Chief of Staff Matt Hopson
- vii. Anyone serving in the role of White House Liaison
- viii. Bureau of Conflict Prevention and Stabilization Acting Assistant Administrator Mark Kevin Lloyd
- ix. Peter Marocco, Office of Foreign Assistance
- x. Nicholas Gottlieb, former Director of Employee and Labor Relations
- xi. Gavin Kliger
- xii. Any official who has been selected as a member of USAID’s “DOGE team”<sup>5</sup>

Key Terms:

- a. “clean house”
- b. firing
- c. Elon
- d. Musk
- e. DOGE
- f. “Department of Government Efficiency”
- g. USDS
- h. Gemini
- i. “shut down”
- j. Shutter
- k. resign\*
- l. purg\*
- m. dismantl\*
- n. eliminat\*
- o. remov\*

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<sup>5</sup> For further identifying information, see, e.g., Jory Heckman, *Trump Installs DOGE Within White House, Scrapping Plan for an Outsider Task Force*, Federal News Network (Jan. 20, 2025, 5:11 PM), <https://federalnewsnetwork.com/federal-report/2025/01/trump-administration-faces-lawsuits-over-doges-membership/>.

- p. terminat\*
- q. dismiss\*
- r. freez\*
- s. froz\*
- t. reduc\*
- u. separat\*
- v. death
- w. die
- x. pause
- y. RIF
- z. “admin leave”
- aa. “admin. leave”
- bb. “administrative leave”
- cc. Rubio

Please note that American Oversight is using the asterisk (\*) to designate the standard use of “wildcards” in the search for responsive records. For example, a search for “resign\*” would return all of the following: resign, resigned, resignation, resigning, etc. If your agency is unable to search for wildcards, please advise so that we may specifically include the variations that should be searched.

For text messages or messages on other messaging platforms, American Oversight requests that full text message threads/conversations be produced. For example, if an official sent or received a text message containing any of the key terms listed above, the complete thread/conversation for the timeframe listed below should be produced, and not just the message containing the key term.

**Please provide all responsive records from January 20, 2025, 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 for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”<sup>6</sup> The public has a

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<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

significant interest in the Trump administration’s plans for USAID.<sup>7</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent the administration plans to attempt to dismantle USAID. 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.”<sup>8</sup> 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).<sup>9</sup>

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.<sup>10</sup> Examples reflecting this commitment include the posting of records related to the first Trump Administration’s contacts with Ukraine and analyses of those contacts;<sup>11</sup> posting records and editorial content about the federal government’s response to the Coronavirus pandemic;<sup>12</sup> 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

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<sup>7</sup> See, e.g., Jennifer Hansler et al., *Elon Musk Said Donald Trump Agreed USAID Needs to Be ‘Shut Down,’* CNN (Feb. 3, 2025, 7:48 AM), <https://www.cnn.com/2025/02/02/politics/usaid-officials-leave-musk-doge/index.html>.

<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>9</sup> American Oversight currently has approximately 16,000 followers on Facebook and 96,200 followers on X (formerly Twitter). American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 3, 2025); American Oversight (@weareoversight), X (formerly Twitter), <https://x.com/weareoversight> (last visited Feb. 3, 2025).

<sup>10</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>11</sup> *Trump Administration’s Contacts with Ukraine*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-contacts-with-ukraine>.

<sup>12</sup> 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>.

border, and analyses of what those records reveal;<sup>13</sup> the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;<sup>14</sup> and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.<sup>15</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Application for Expedited Processing**

Pursuant to 5 U.S.C. § 552(a)(6)(E)(1) and 22 C.F.R. Part 212, American Oversight requests that your agency expedite the processing of this request.

On behalf of American Oversight, 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.<sup>16</sup> After a federal freeze on U.S. foreign aid,<sup>17</sup> the Trump Administration reportedly began to explore the possibility of shutting down USAID.<sup>18</sup> On February 3, 2025, Elon Musk said that President Trump agreed that USAID needs to be "shut down,"<sup>19</sup> and Secretary of State Marco Rubio announced that he is now acting Administrator for USAID indicating that USAID may be subsumed into the State Department.<sup>20</sup> This news came amidst numerous reports on the global humanitarian, public health, and security impacts of the

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<sup>13</sup> See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

<sup>14</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>15</sup> 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>.

<sup>16</sup> 22 C.F.R.

<sup>17</sup> See *supra* note 1.

<sup>18</sup> See *supra* note 2.

<sup>19</sup> See, e.g., Jennifer Hansler et al., *Elon Musk Said Donald Trump Agreed USAID Needs to Be 'Shut Down,'* CNN (Feb. 3, 2025, 7:48 AM), <https://www.cnn.com/2025/02/02/politics/usaid-officials-leave-musk-doge/index.html>.

<sup>20</sup> Jennifer Hansler et al., *Rubio Says He's Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, CNN (updated Feb. 3, 2025, 2:20 PM EST), <https://www.cnn.com/2025/02/03/politics/usaid-washington-workers/index.html>.

pause on U.S. foreign aid, potentially to be worsened by the dismantling of USAID.<sup>21</sup> Given the importance of the USAID's work globally and the suggestion by some elected officials that shutting down USAID is "illegal,"<sup>22</sup> the American public is entitled to records responsive to American Oversight's requests centered on the Trump administration's seismic changes at USAID. The American public has a substantial and urgent interest in understanding the Trump Administration's recent actions regarding USAID, especially amidst reporting of "chaos and confusion" at the longstanding government agency.<sup>23</sup>

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 efforts to dismantle, eliminate, and/or shut down USAID, including efforts to subsume USAID into STATE and/or transfer the duties and/or operations of USAID to any other federal agency. There is an urgent need to obtain the requested records to instill public confidence in global peace, health, and security.<sup>24</sup> At least one U.S. congressman has suggested that legislators "would fight [the USAID takeover] in court,"<sup>25</sup> and the public requires the requested information urgently to inform themselves about whether, to what extent, and by what means the Trump Administration is exploring and/or effectuating the dismantling of USAID and engage with their senators or representatives who may be able to investigate or litigate the matter.

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<sup>21</sup> See, e.g., Sui-Lee Wee et al., *How the World Is Reeling From Trump's Aid Freeze*, N.Y. Times, Jan. 31, 2025, <https://www.nytimes.com/2025/01/31/world/asia/trump-usaid-freeze.html>; Stephanie Nolan, *Health Programs Shutter Around the World After Trump Pauses Foreign Aid*, N.Y. Times, Feb. 1, 2025, <https://www.nytimes.com/2025/02/01/health/trump-aid-malaria-tuberculosis-hiv.html>.

<sup>22</sup> Jennifer Hansler et al., *Rubio Says He's Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, CNN (updated Feb. 3, 2025, 2:20 PM EST), <https://www.cnn.com/2025/02/03/politics/usaid-washington-workers/index.html>.

<sup>23</sup> Belinda Luscombe, *Inside the Chaos, Confusion, and Heartbreak of Trump's Foreign Aid Freeze*, TIME (Feb. 1, 2025, 6:46 AM), <https://time.com/7211200/usaid-foreign-aid-freeze-trump-rubio/>.

<sup>24</sup> See, e.g., Brett Murphy & Anna Maria Barry-Jester, *'People Will Die': The Trump Administration Said It Lifted Its Ban on Lifesaving Humanitarian Aid. That's Not True.*, ProPublica (Jan. 31, 2025, 3:00 PM), <https://www.propublica.org/article/trump-state-department-usaid-humanitarian-aid-freeze-ukraine-gaza-sudan>; Donald Steinberg, *'Elections Have Consequences': Trump and Rubio's Foreign Aid Halt Will Hit the World's Most Vulnerable*, Just Security, Jan. 28, 2025, <https://www.justsecurity.org/106930/trump-rubio-foreign-aid-halt/>; Dafna Rand, *Stopped Security Assistance: From Counter-Narcotics to Combating Human Trafficking Programs*, Just Security, Jan. 28, 2025, <https://www.justsecurity.org/106919/stopped-security-assistance/>; Michael Schiffer, *Stop-Work Order on US Foreign Aid Puts China First and America Last*, Just Security, Jan. 27, 2025, <https://www.justsecurity.org/106876/us-foreign-aid-stop-work-order/>.

<sup>25</sup> Jennifer Hansler et al., *Rubio Says He's Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, CNN (updated Feb. 3, 2025, 2:20 PM EST), <https://www.cnn.com/2025/02/03/politics/usaid-washington-workers/index.html>.

I also certify to be true and correct to the best of my knowledge and belief that there is widespread and exceptional media interest and there exist possible questions concerning the government's integrity, which affect public confidence. Since Trump's freezing of U.S. foreign aid, media interest in the operations and future of USAID has been widespread and exceptional.<sup>26</sup> The media coverage became only more voluminous and exceptional after USAID's website was pulled down, employees were locked out of systems, and the Secretary of State announced he was acting Administrator.<sup>27</sup>

Moreover, I certify to be true and correct to the best of my knowledge and belief that there exist possible questions concerning the government's integrity regarding efforts to dismantle USAID. On February 3, 2025, Secretary of State Marco Rubio announced that he is the acting director of USAID,<sup>28</sup> despite analyses by some experts finding that USAID cannot be dismantled by the President alone, nor without an act of Congress.<sup>29</sup> In addition, there are open and outstanding questions regarding the steps that members of the Trump Administration — including allies of Elon Musk and DOGE — have

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<sup>26</sup> See, e.g., Fatma Tanis, *U.S. Puts Virtually All Foreign Aid on 90- Day Hold, Issues 'Stop-Work' Order*, NPR (Jan. 24, 2025, 6:41 PM), <https://www.npr.org/sections/goats-and-soda/2025/01/24/g-s1-44643/trump-foreign-aid-assistance-pause>; John Hudson & Jeff Stein, *Senior USAID Staff Put on Leave Amid Trump's Order Halting Foreign Aid*, Wash. Post, Jan. 27, 2025, <https://www.washingtonpost.com/national-security/2025/01/27/senior-usaid-staff-put-leave-amid-trumps-order-halting-foreign-aid/>;

<sup>27</sup> See, e.g., Omar Gallaga, *Missing: Thousands of Government Web Pages Removed by New Administration*, CNET (Feb. 3, 2025, 8:43 AM PT), <https://www.cnet.com/tech/services-and-software/missing-thousands-of-government-web-pages-removed-by-new-administration/>; Will Steakin et al., *Turmoil Inside USAID: Staff to Work from Home as Musk Seeks to Shut Down Agency*, ABC News (Feb. 3, 2025, 12:55 PM), <https://abcnews.go.com/Politics/turmoil-inside-usaid-doge-reps-offices-senior-officials/story?id=118368900>; Rebecca Heilweil, *USAID Website Goes Dark, Staff Emails Deactivated Amid DOGE Takeover, Source Says*, FedScoop, Feb. 2, 2025, <https://fedscoop.com/usaid-website-goes-dark-staff-emails-deactivated-amid-doge-takeover-source-says/>; Ellen Knickmeyer & Fatima Hussein, *USAID Headquarters in Washington are Blocked After Musk Says Trump Agrees to Close the Aid Agency*, Associated Press (updated Feb. 3, 2025, 12:50 PM EST), <https://apnews.com/article/trump-musk-usaid-c0c7799be0b2fa7cad4c806565985fe2>.

<sup>28</sup> Jennifer Hansler et al., *Rubio Says He's Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, CNN (updated Feb. 3, 2025, 2:20 PM EST), <https://www.cnn.com/2025/02/03/politics/usaid-washington-workers/index.html>.

<sup>29</sup> See, e.g., George Ingraham, *Why Merging USAID into State Would Undermine U.S. Strategic Interests*, Brookings Institution, Feb. 3, 2025, <https://www.brookings.edu/articles/why-merging-usaid-into-state-would-undermine-u-s-strategic-interests/>; Tess Bridgeman, *Can the President Dissolve USAID by Executive Order?*, Just Security, Feb. 1, 2025, <https://www.justsecurity.org/107267/can-president-dissolve-usaid-by-executive-order/>.

taken to dismantle USAID.<sup>30</sup> Elected officials have questioned the legality of the Trump administration's actions, stating that it is "plain illegal" and "a constitutional crisis."<sup>31</sup> The information requested is necessary to provide an explanation to the public as to whether the Trump administration has followed the law in shutting down USAID funding and programs and moving the agency's work to a different federal agency.

I further certify that American Oversight is primarily engaged in disseminating information to the public. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to other organizations that have been found to satisfy the criteria necessary to qualify for expedition,<sup>32</sup> American Oversight "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience."<sup>33</sup> American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, and other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and X (formerly Twitter).<sup>34</sup> As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.<sup>35</sup> These functions comprise American Oversight's core, primary activities.

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<sup>30</sup> See, e.g., Edward Wong et al., *Top Security Officials at Aid Agency Put on Leave After Denying Access to Musk Team*, N.Y. Times, Feb. 2, 2025, <https://www.nytimes.com/2025/02/02/us/politics/usaaid-official-leave-musk.html>; Michael Crowley et al., *Rubio Says He Now Runs Aid Agency, as Staff Are Blocked From Systems*, N.Y. Times (Feb. 3, 2025, 12:54 PM), <https://www.nytimes.com/2025/02/03/us/politics/usaaid-trump-musk.html?smid=url-share>; Ellen Knickmeyer & Fatima Hussein, *USAID Headquarters in Washington are Blocked After Musk Says Trump Agrees to Close the Aid Agency*, Associated Press (updated Feb. 3, 2025, 12:50 PM EST), <https://apnews.com/article/trump-musk-usaid-c0c7799be0b2fa7cad4c806565985fe2>.

<sup>31</sup> Jennifer Hansler et al., *Rubio Says He's Acting Director of USAID as Humanitarian Agency is Taken Over by the State Department*, CNN (updated Feb. 3, 2025, 2:20 PM EST), <https://www.cnn.com/2025/02/03/politics/usaaid-washington-workers/index.html>.

<sup>32</sup> See *ACLU v. U.S. Dep't of Justice*, 321 F. Supp. 2d 24, 30–31 (D.D.C. 2004); *EPIC v. Dep't of Defense*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

<sup>33</sup> *ACLU*, 321 F. Supp. 2d at 29 n.5 (quoting *EPIC*, 241 F. Supp. 2d at 11).

<sup>34</sup> American Oversight currently has approximately 16,000 followers on Facebook and 96,200 followers on X (formerly Twitter). American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 3, 2025); American Oversight (@weareoversight), X (formerly Twitter), <https://x.com/weareoversight> (last visited Feb. 3, 2025).

<sup>35</sup> 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*

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 X (formerly 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 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

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*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>.

using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.<sup>36</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.<sup>37</sup>

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,<sup>38</sup> and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

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<sup>36</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149–50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

<sup>37</sup> See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).

<sup>38</sup> Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

## Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight. 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 Emma Lewis at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 919-6303. 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/ Emma Lewis

Emma Lewis

on behalf of

American Oversight