AMERICAN OVERSIGHT

February 25, 2025

VIA ONLINE PORTAL

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Avenue, SW,
LBJ 7W106A
Washington, DC 20202
ATTN: FOIA Public Liaison
Via Online Portal

Re: 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, the *Washington Post* reported that a longtime career civil servant announced his retirement from the Department of the Treasury (TREAS) amidst tension with Elon Musk of the Department of Government Efficiency (DOGE) and U.S. DOGE Service (USDS, formerly U.S. Digital Service) over access to the Bureau of Fiscal Service payment system.[1] Late that same night, newly-confirmed Treasury Secretary Scott Bessent reportedly granted DOGE representatives access to the payments system,[2] a move that sparked criticism over data privacy concerns.[3] There has been similar reporting over data privacy concerns regarding potential DOGE access to

[1] Jeff Stein et al., *Senior U.S. Official Exits After Rift with Musk Allies Over Payment System*, Wash. Post, updated Jan. 31, 2025, https://www.washingtonpost.com/business/2025/01/31/elon-musk-treasury-department-payment-systems/.
[2] *See, e.g.*, Andrew Duehren et al., *Elon Musk's Team Now Has Access to Treasury's Payments System*, N.Y. Times, Feb. 1, 2025, https://www.nytimes.com/2025/02/01/us/politics/elon-musk-doge-federal-payments-system.html.
[3] *See, e.g.*, Alan Rappeport, *Treasury Defends Musk Team's Access to Federal Payment System*, N.Y. Times, Feb. 4, 2025, https://www.nytimes.com/2025/02/04/us/politics/elon-musk-federal-payments.html.

data at the Department of Education (ED),[4] Department of Labor (DOL),[5] Department of Health and Human Services (HHS),[6] Centers for Disease Control and Prevention (CDC),[7] Centers for Medicare & Medicaid Services (CMS),[8] Department of Energy (DOE),[9] Social Security Administration (SSA),[10] Internal Revenue Service (IRS),[11] General Services Administration (GSA),[12] Office of Personnel Management (OPM),[13] State Department (STATE),[14] and Cybersecurity & Infrastructure Security Agency (CISA).[15] American Oversight seeks records with the potential to shed light on this matter.

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[4] *See* Hannah Natanson et al., *Elon Musk's DOGE Is Feeding Sensitive Federal Data into AI to Target Cuts*, Wash. Post (updated Feb. 6, 2025), https://www.washingtonpost.com/nation/2025/02/06/elon-musk-doge-ai-department-education/.

[5] *See* Dan Diamond et al., *DOGE Broadens Sweep of Federal Agencies, Gains Access to Health Payment Systems*, Wash. Post (updated Feb. 5, 2025), https://www.washingtonpost.com/health/2025/02/05/doge-health-agencies-labor/.

[6] *See id.*

[7] *See supra* note 5.

[8] *See* Anna Wilde Mathews & Liz Essley Whyte, *DOGE Aides Search Medicare Agency Payment Systems for Fraud*, Wall Street Journal (updated Feb. 5, 2025, 1:05 PM), https://www.wsj.com/politics/elon-musk-doge-medicare-medicaid-fraud-e697b162.

[9] *See* Timothy Gardner, *Democratic US Lawmakers Ask Energy Department About Any DOGE Access to Nuclear Data*, Reuters (Feb. 12, 2025, 12:49 PM), https://www.reuters.com/world/us/democratic-us-lawmakers-ask-energy-department-about-any-doge-access-nuclear-data-2025-02-12/.

[10] *See* Alan Rappeport et al., *Top Social Security Official Leaves After Musk Team Seeks Data Access*, N.Y. Times, Feb. 17, 2025, https://www.nytimes.com/2025/02/17/us/politics/social-security-musk-team-access.html.

[11] *See* Zac Anderson, *Elon Musk's DOGE Seeks Access to Sensitive and Restricted IRS Data*, USA Today (updated Feb. 18, 2025, 3:59 PM), https://www.usatoday.com/story/news/politics/2025/02/17/doge-seeks-irs-computer-system-access/78960447007/.

[12] *See* Emily Davies & Faiz Siddiqui, *GSA Engineering Lead Resigns Over DOGE Ally's Request for Access*, Wash. Post (updated Feb. 18, 2025, 6:08 PM), https://www.washingtonpost.com/business/2025/02/18/gsa-staffer-resigns-doge/.

[13] *See* Zachary Cohen et al., *'Good Luck with That.' Trump Administration Terminates Privacy Officials at Agency Overseeing Government Hiring and Firing*, CNN (Feb. 18, 2025, 12:14 PM), https://www.cnn.com/2025/02/18/politics/opm-privacy-team-fired/index.html.

[14] *See* Kim Zetter, *DOGE Now Has Access to the Top US Cybersecurity Agency*, WIRED (Feb. 19, 2025, 8:59 PM), https://www.wired.com/story/doge-cisa-coristine-cybersecurity/.

[15] *See id.*

Requested Records

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

1. Records sufficient to identify the name, title, office, category of employment,[16] and level of access[17] of all individuals who have been granted access for the first time to personally identifiable or sensitive information or data **since January 20, 2025.**

2. Records sufficient to identify, for all individuals identified above in part one of this request:

    a. The training provided to such individuals regarding the requirements for handling personally identifiable or sensitive information or data.

    b. The specific information or data to which such individuals have been granted access.

    For part 2b of this request, American Oversight does not request — and this request specifically excludes — the complete sets of information or data responsive to this request. Rather, this request seeks records sufficient to identify this information or data, such as the name of the information or datasets.

    c. The specific legal purpose for granting such individuals access to that personally identifiable or sensitive information or data.

3. Records sufficient to identify all steps that your agency has taken to protect personally identifiable or sensitive information or data in your agency's control, including records sufficient to identify how those steps have been communicated to each individual identified above in part one of this request.

4. Records sufficient to identify all memoranda of understanding (MOUs) between your agency and the Department of Government Efficiency (DOGE), U.S. DOGE Service (USDS, formerly U.S. Digital Service), and/or the U.S. DOGE Temporary Service Organization.

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[16] E.g., Senior Executive Service, Special Government Employee, permanent career employee, career-conditional employee, etc.

[17] Examples of level of access may include, for example, read/write permissions (edit access) and read-only access. *See, e.g.*, Beatrice Nolan, *A 25-Year-Old Staffer with Elon Musk's DOGE Was Accidentally Given Permission to Edit a Sensitive Treasury Payments System*, Fortune (Feb. 13, 2025, 1:30 PM), https://fortune.com/2025/02/13/a-25-year-old-staffer-with-elon-musks-doge-was-accidentally-given-permission-to-edit-a-sensitive-treasury-payments-system/.

American Oversight requests as responsive to part four of this request a complete, final copy of each responsive MOU.

5. All records governing access to personally identifiable or sensitive information or data, including directives, instructions, directions, memoranda, policies, procedures, informal email guidance, and/or any other informal written guidance.

For all parts of this request, 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."[18] The public has a significant interest in the protection of sensitive data and personally identifiable information in the possession of the federal government.[19] 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 new individuals are gaining access to sensitive data and personally identifiable information, in addition to what protocols are in place to protect this data and information. 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. "[20] 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

[18] 5 U.S.C. § 552(a)(4)(A)(iii).
[19] *See supra* notes 1-15.
[20] 5 U.S.C. § 552(a)(4)(A)(iii).

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).[21]

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.[22] Examples reflecting this commitment include the posting of records related to the first Trump Administration's contacts with Ukraine and analyses of those contacts;[23] posting records and editorial content about the federal government's response to the COVID-19 pandemic;[24] 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;[25] 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;[26] and posting records and analysis of federal officials' use of taxpayer dollars to charter private aircraft or use government planes for unofficial business.[27]

Accordingly, American Oversight qualifies for a fee waiver.

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[21] American Oversight currently has approximately 16,000 followers on Facebook and 95,700 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited Feb. 17, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited Feb. 17, 2025).

[22] *See generally News*, American Oversight, https://www.americanoversight.org/blog.

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

[24] *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.

[25] *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.

[26] *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.

[27] *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:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.

- 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.[28] 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.[29]

- 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,[30] and many

[28] *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).
[29] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).
[30] 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

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.

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 or (202) 897-3915. Also, if American Oversight's request

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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.

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