June 10, 2025

VIA EMAIL

Office of Legal Counsel
Department of Justice
Room 5517, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530
usdoj-officeoflegalcounsel@usdoj.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, American Oversight makes the following request for records.

In response to protests against Immigration and Customs Enforcement (ICE) enforcement actions, President Trump deployed the National Guard to Los Angeles, California.[1] American Oversight seeks records with the potential to shed light on the mobilization of the National Guard to address immigration-related protests.

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:

1. All formal or informal final directives (including informal email communications), guidance, protocol, or policies created by, issued to, or otherwise provided to the Office of Legal Counsel ("OLC"), regarding 10 U.S.C. § 12406.

2. Records reflecting any final legal advice or analysis (including both formal legal analyses, opinions, or memoranda, as well as informal electronic communications) regarding 10 U.S.C. § 12406.

3. All legal opinions issued by OLC and disseminated outside of OLC regarding 10 U.S.C. § 12406.

[1] *See* Mem. From President Donald J. Trump to Secretary of Defense, Attorney General, and Secretary of Homeland Security, *Department of Defense Security for the Protection of Department of Homeland Security Functions*, June 7, 2025, https://www.whitehouse.gov/presidential-actions/2025/06/department-of-defense-security-for-the-protection-of-department-of-homeland-security-functions/.

For both parts of this request, please provide all responsive records created or circulated 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."[2] The public has a significant interest in the deployment of the National Guard to protests in California.[3] Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including coordination of federal and state officials over the deployment of National Guard troops. 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."[4] 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).[5]

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[2] 5 U.S.C. § 552(a)(4)(A)(iii).
[3] *See, e.g.*, Andrew Gumbel, *National Guard Deploys in Downtown LA Amid Eerie Calm After Two Days of Unrest*, Guardian (June 8, 2025, 3:01 PM), https://www.theguardian.com/us-news/2025/jun/08/la-immigration-protests-national-guard-deploys.
[4] 5 U.S.C. § 552(a)(4)(A)(iii).
[5] American Oversight currently has approximately 16,000 followers on Facebook and 94,600 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited June 9, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited June 9, 2025).

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.[6] Examples reflecting this commitment include the posting of records related to the first 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 COVID-19 pandemic;[8] 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;[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 28 C.F.R. § 16.5(e)(1)(ii), American Oversight requests that your agency expedite the processing of this request.

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[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., 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.
[9] *See generally Audit the Wall*, American Oversight, https://www.americanoversight.org/investigation/audit-the-wall; *see, e.g., Audit the Wall: No Plans, No Funding, No Timeline, No Wall*, American Oversight, https://americanoversight.org/audit-the-wall-no-plans-funding-or-timeline-and-no-wall/.
[10] *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, https://www.documentcloud.org/documents/25544090-doj-records-relating-to-solicitor-general-noel-franciscos-recusal-american-oversight; *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. In recent weeks, Immigration and Customs Enforcement (ICE) has increased immigration enforcement actions in the Los Angeles area as part of President Trump's mass deportation agenda.[12] In response, actions were staged to protest ICE and President Trump's immigration policies.[13] On June 7, 2025, President Trump deployed 2,000 National Guard personnel in response to these protests, despite California Governor Newsom stating that troops were not needed and their deployment represented a "serious breach of state sovereignty."[14] 700 Marines were set to be deployed to Los Angeles shortly after.[15]

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 the federal governments' deployment of National Guard troops against the wishes of California state and local officials. President Trump's deployment of National Guard and U.S. Marine Corps troops to address protests in Los Angeles is a serious escalation of the involvement of military personnel in domestic matters, posing a potential violation of the Posse Comitatus

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[12] *See, e.g.*, Los Angeles Times Staff, *What Happened During Three Days of Protests Over Immigration Raids in Downtown L.A.*, L.A. Times, June 9, 2025, https://www.latimes.com/california/live/national-guard-troops-la-immigration-ice-clashes-paramount; Brandon Drenon & James FitzGerald, *Everything We Know About the LA Protests*, BBC, June 9, 2025, https://www.bbc.com/news/articles/cj93d3r0zz0o.

[13] *See, e.g.*, Austin Turner et al., *Los Angeles Anti-ICE Protestors Clash With Police, Set Fires Downtown Amid National Guard Deployment*, CBS (June 9, 2025, 4:40 AM), https://www.cbsnews.com/losangeles/news/national-guard-troops-los-angeles-immigration-protests/; Jake Offenhartz, *Protests Intensify in Los Angeles After Trump Deploys Hundreds of National Guard Troops*, AP (June 8, 2025, 11:00 PM), https://apnews.com/article/immigration-protests-raids-los-angeles-78eaba714dbdd322715bf7650fb543d7; Avery Lotz, *LA Protests: What to Know As the National Guard Mobilizes*, Axios, June 8, 2025, https://www.axios.com/2025/06/08/la-protests-national-guard-ice.

[14] *See, e.g.*, Melanie Mason, *Newsom Blasts Deployment of National Guard to LA as 'Purposefully Inflammatory'*, Politico (June 7, 2025, 9:28 PM), https://www.politico.com/news/2025/06/07/newsom-national-guard-los-angeles-00393526; Jessica Flores, *Newsom Vows to Sue Trump Administration Over L.A. National Guard Deployment*, S.F. Chronicle (June 9, 2025, 8:22 AM), https://www.sfchronicle.com/california/article/ice-protest-newsom-national-guard-trump-lawsuit-20368164.php; Jorge Garcia & Arafat Barbakh, *California Governor Calls Trump National Guard Deployment in LA Unlawful*, Reuters (June 9, 2025, 6:24 AM), https://www.reuters.com/world/us/national-guard-deployed-los-angeles-amid-protests-against-immigration-raids-2025-06-08/; Ben Fritz et al., *Dozens Arrested in Weekend L.A. Protests*, Wall Street Journ. (June 9, 2025, 6:02 AM), https://www.wsj.com/us-news/national-guard-la-ice-protests-c0d325dd?st=UBPjsA&reflink=desktopwebshare_permalink.

[15] *See, e.g.*, Jason Dearden et al., *Marines Will Be Deployed to LA to Respond to Immigration Protests*, AP (June 9, 2025, 5:27 PM), https://apnews.com/article/los-angeles-protests-national-guard-trump-14c9dda32663d7d2c45f2b1c5a1d219c.

Act.[16] President Trump deployed troops without consulting with or the consent of California leaders, and against their expressed wishes, overturning broad precedent on the division of federal and state powers.[17] The public requires the requested information to understand whether and to what extent federal officials have threatened unlawfully used federal military personnel for domestic law enforcement purposes, and threatened state sovereignty by deploying military personnel without consent.

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,[18] 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.'"[19] 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

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[16] *See, e.g.*, Rebecca Schneid, *Trump Sparks Backlash as National Guard Arrives in L.A. on His Orders to Quell Immigration Protests: 'Purposefully Inflammatory'*, Time (June 8, 2025, 2:39 PM), https://time.com/7291978/los-angeles-immigration-protests-trump-national-guard-deployed-newsom-backlash/; Charlie Savage, *The Legal Issues Surrounding Trump's Plan to Use Troops to Suppress Protests*, N.Y. Times, June 8, 2025, https://www.nytimes.com/2025/06/08/us/politics/trump-los-angeles-national-guard-explainer.html; A.Martinez, *Why Trump's Deployment of the National Guard to LA is Unprecedented*, NPR (June 9, 2025, 9:25 AM), https://www.npr.org/2025/06/09/nx-s1-5427233/why-trumps-deployment-of-the-national-guard-to-la-is-unprecedented; *Posse Comitatus Act at Center of Trump-Newsom National Guard Dispute in LA*, Fox News (June 8, 2025, 9:57 PM), https://www.foxnews.com/politics/posse-comitatus-act-center-trump-newsom-national-guard-dispute-la; Stephen Collinson, *Trump Seizes on Los Angeles Protests in Contentious Use of Military Amid Migrant Crackdown*, CNN (June 9, 2025, 10:33 AM), https://www.cnn.com/2025/06/09/politics/trump-national-guard-los-angeles-hegseth.

[17] *See, e.g.*, Rebecca Boone, *What to Know About Trump's Deployment of National Guard Troops to LA Protests*, AP (June 9, 2025, 9:14 AM), https://apnews.com/article/insurrection-act-trump-troops-newsom-military-national-guard-a842f79e1c0e244039be274a6f266a7a; Nigel Duara & Jeanne Kuang, *With Troops and Protests, Trump's Feud With California Moves to the Streets of LA*, Cal Matters, June 9, 2025, https://calmatters.org/politics/2025/06/los-angeles-national-guard-trump/; Adam Nagourney, *Newsom Formally Asks Trump to Pull National Guard Out of L.A.*, N.Y. Times, June 8, 2025, https://www.nytimes.com/2025/06/08/us/newsom-formally-asks-trump-to-pull-national-guard-out-of-la.html; Jason Dearden et al., *California Governor Plans to File Lawsuit Against Trump Over National Guard Deployment to Protests*, AP (June 9, 2025, 11:20 AM), https://apnews.com/article/los-angeles-protests-national-guard-trump-14c9dda32663d7d2c45f2b1c5a1d219c.

[18] *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).

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

availability on social media platforms, such as Facebook and X (formerly Twitter).[20] As discussed previously, American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content.[21]

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.

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[20] American Oversight currently has approximately 16,000 followers on Facebook and 94,600 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited June 10, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited June 10, 2025).

[21] *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.

- 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.[22] 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.[23]

- 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,[24] 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.

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[22] *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).
[23] *See Competitive Enter. Inst. v. Off. of Sci. & Tech. Pol'y*, No. CV 14-765 (GK), 2016 WL 10676292, at *3 (D.D.C. Dec. 12, 2016).
[24] 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.

- 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 Ben Sparks at foia@americanoversight.org or (202) 873-1741. 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/ Ben Sparks
Ben Sparks
on behalf of
American Oversight