AMERICAN OVERSIGHT

September 15, 2025

VIA ONLINE PORTAL

Department of Commerce
Office of Privacy and Open Government
1401 Constitution Ave. NW
Room 61013
Washington, DC 20230
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.

President Trump has reportedly ordered the U.S. Census Bureau to "begin work" on a new census to specifically exclude the count of undocumented immigrants.[1] American Oversight is seeking records that may shed light on the U.S. Department of Commerce and U.S. Census Bureau's involvement in census work outside the traditional decennial period.

Requested Records

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

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

   U.S. Department of Commerce Officials:
   a. Howard Lutnick, Secretary
   b. Paul Dabbar, Deputy Secretary
   c. John Guenther, Acting General Counsel
   d. Laura Grimm, Chief of Staff
   e. Jeremy Pelter, Acting Chief Financial Officer

[1] *See, e.g.*, Tyler Pager, *Trump Demands Census Excluding Undocumented Immigrants Amid Redistricting Fight*, N.Y. Times, Aug. 7, 2025, https://www.nytimes.com/2025/08/07/us/politics/trump-census-undocumented-immigrants.html.

f. Will Turner, Acting Assistant Secretary for Legislative and Intergovernmental Affairs
g. Anyone serving as Senior Advisor

Key Terms:

i. "Mid-decade"
ii. Middecade
iii. "mid decade"
iv. Redistrict*
v. Undocumented
vi. Immigrant*
vii. Alien*
viii. non-citizen
ix. "non citizen"
x. Noncitizen
xi. "Legal resident"
xii. "Legal residents"
xiii. "Citizenship Status"
xiv. "Citizenship Question"
xv. "Mid-term"
xvi. "Mid term"
xvii. Midterm
xviii. "Mid-terms"
xix. "Mid terms"
xx. Midterms
xxi. Gerrymander*
xxii. "Congressional map"
xxiii. "Congressional maps"
xxiv. "whole number"
xxv. "whole person"
xxvi. "Title 13"
xxvii. "Article I"
xxviii. "Article 1"
xxix. "Article One"
xxx. "Modern technology tools"
xxxi. "artificial intelligence"
xxxii. AI
xxxiii. "A.I."
xxxiv. "machine learning"
xxxv. "census directive"
xxxvi. "August 7"

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 "redistrict*" would return all of the following: redistrict, redistricting, redistricted, etc. If your agency is unable to search for wildcards, please advise so that we may specifically include the variations that we would like searched.

In an effort to accommodate your agency and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited part 1 of its request to emails sent by the officials listed in part 1. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both a listed official's response to an email containing any of the key terms listed above and the initial received message are responsive to this request and should be produced.

2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between a) the U.S. Department of Commerce officials listed above in part 1 and b) the external entities listed below, and c) containing any of the key terms listed above in part 1.

   External Entities:
   a. Anyone communicating on behalf of the White House, including, but not limited to those communicating with an email address that contains "whitehouse.gov" or "who.eop.gov".
   b. Anyone communicating on behalf of the U.S. House of Representatives, including, but not limited to those communicating with an email address that contains "house.gov".
   c. Anyone communicating on behalf of the U.S. Senate, including, but not limited to those communicating with an email address that contains "senate.gov".

   Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications responding to or forwarding such emails are responsive to this request. For example, if a specific individual received a mass-distribution news clip email from an email ending in "who.eop.gov", that initial email would not be responsive to this request. However, if that specific individual forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

3. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between the U.S. Department of Commerce officials listed above in part 1 and the external entities listed below.

   External Entities:
   i. Adam Kincaid
   ii. Guy Harrison
   iii. Anyone communicating on behalf of the National Republican Redistricting Trust (NRRT), including, but not limited to, those communicating with an email address containing "republicanredistrcting.org".

iv. Anyone communicating on behalf of the American Redistricting Project, including, but not limited to, those communicating with an email address containing "thearp.org".
v. Anyone communicating on behalf of the Fair Lines Foundation, including, but not limited to, those communicating with an email address containing "fairlines.org".
vi. Anyone communicating on behalf of the Center for Immigration Studies (CIS), including, but not limited to, those communicating with an email address containing "cis.org".
vii. Anyone communicating on behalf of the Federation for American Immigration Reform (FAIR), including, but not limited to, those communicating with an email address containing "fairus.org".
viii. Anyone communicating on behalf of NumbersUSA, including, but not limited to, those communicating with an email address containing "numbersusa.org".
ix. Anyone communicating on behalf of the Heritage Foundation, including, but not limited to, those communicating with an email address containing "heritage.org".
x. Anyone communicating on behalf of Turning Point USA, including, but not limited to, those communicating with an email address containing "tpusa.com".
xi. Anyone communicating on behalf of America First Legal, including, but not limited to, those communicating with an email address containing "aflegal.org".

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications responding to or forwarding such emails are responsive to this request. For example, if a specific individual received a mass-distribution news clip email from an email ending in "republicanredistricting.org", that initial email would not be responsive to this request. However, if that specific individual forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

For all parts of this request, please provide all responsive records from July 1, 2025, through the date of the search.

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 U.S. Census, including the possibility of a mid-decade census.[3] Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether legal obligations surrounding a census have been fulfilled and the extent to which government agencies have already begun work on a mid-decade census. 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]

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

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[2] 5 U.S.C. § 552(a)(4)(A)(iii).
[3] *See, e.g., supra* note 1.
[4] 5 U.S.C. § 552(a)(4)(A)(iii).
[5] American Oversight currently has approximately 16,000 followers on Facebook and 94,500 followers on X (formerly Twitter). American Oversight, Facebook, https://www.facebook.com/weareoversight/ (last visited Sept. 11, 2025); American Oversight (@weareoversight), X (formerly Twitter), https://x.com/weareoversight (last visited Sept. 11, 2025).
[6] *See generally Our Latest*, American Oversight, https://www.americanoversight.org/blog.
[7] *The 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.

"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.

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

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[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.

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.[12] 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.[13]

- 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,[14] 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

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[12] *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).
[13] *See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016).
[14] 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 Emma Lewis at foia@americanoversight.org or (202) 919-6303. 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/ Emma Lewis
Emma Lewis
on behalf of
American Oversight