



July 16, 2018

**VIA ONLINE PORTAL**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW (2822T)  
Washington, DC 20460  
Via FOIAOnline

**Re: Freedom of Information Act Request**

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations for the Environmental Protection Agency (EPA), 40 C.F.R. Part 2, American Oversight and Environmental Working Group (EWG) make the following request for records.

During his tenure as Oklahoma's Attorney General, former EPA Administrator Scott Pruitt reportedly served as a conduit for industry interests to provide input into government decisionmaking, regularly consulting directly with fossil fuel firms regarding regulations affecting that industry, among other examples.<sup>1</sup>

Last month, the EPA released "problem formulation" documents for the first 10 chemicals it is reviewing under the Toxic Substances Control Act (TSCA) and subsequent Lautenberg Chemical

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<sup>1</sup> See, e.g., Coral Davenport & Eric Lipton, *The Pruitt Emails: E.P.A. Chief Was Arm in Arm with Industry*, N.Y. TIMES, Feb. 22, 2017, <https://www.nytimes.com/2017/02/22/us/politics/scott-pruitt-environmental-protection-agency.html>; Brady Dennis & Steven Mufson, *Thousands of Emails Detail EPA Head's Close Ties to Fossil Fuel Industry*, WASH. POST, Feb. 22, 2017, [https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm\\_term=.187c5a8084fb](https://www.washingtonpost.com/news/energy-environment/wp/2017/02/22/oklahoma-attorney-generals-office-releases-7500-pages-of-emails-between-scott-pruitt-and-fossil-fuel-industry/?utm_term=.187c5a8084fb); Natasha Geiling, *Scott Pruitt's Record Reveals a Long History of Industry Favoritism*, THINKPROGRESS, Jan. 18, 2017, <https://thinkprogress.org/scott-pruitt-epa-oklahoma-record-386f13c8cc1d#.kfhqkxuw>; Eric Lipton & Coral Davenport, *Scott Pruitt, Trump's E.P.A. Pick, Backed Industry Donors Over Regulators*, N.Y. TIMES, Jan. 14, 2017, <https://www.nytimes.com/2017/01/14/us/scott-pruitt-trump-epa-pick.html>.



Safety Act, outlining the approach it will take to reviewing the risks of those chemicals.<sup>2</sup> The formulations have been controversial because they exclude major sources of exposure.<sup>3</sup>

American Oversight and EWG are seeking information to determine the extent to which industry and trade groups, and others with a stake in these rules, may have engaged with Mr. Pruitt and the EPA about these recent decisions.

### Requested Records

American Oversight and EWG request that EPA produce the following records within twenty business days:

All communications between any of the individuals listed in Appendix A and any of the outside groups listed in Appendix B regarding TSCA “scoping” or “problem formulations” for the following five chemicals, including but not limited to whether to exclude exposures from air, water, disposal, or any other uses regulated under other statutes: (i) trichloroethylene or TCE, (ii) methylene chloride, (iii) N-methylpyrrolidone or NMP, (iv) asbestos, or (v) 1,4-dioxane.

With respect to TCE, methylene chloride, and NMP, this request expressly includes communications relating to the proposed § 6(a) bans of those substances and the EPA’s consideration of whether to include those uses in the problem formulations.

With respect to 1,4-dioxane, this request expressly includes communications about de minimis exposures and contamination in ethoxylated chemicals.

Please provide all responsive records from June 22, 2017, to the date the search is conducted. Please note that we do not wish to obtain copies of any news or press clippings regarding these issues that are otherwise publicly available; accordingly, you may omit press clippings from the documents provided in response to this request, unless the record includes commentary on the press coverage.

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<sup>2</sup> News Release, *EPA Takes Three Important Steps to Ensure Chemical Safety Under the Lautenberg Act, Proposes Action on Asbestos*, EPA (June 1, 2018), <https://www.epa.gov/newsreleases/epa-takes-three-important-steps-ensure-chemical-safety-under-lautenberg-act-proposes>.

<sup>3</sup> See News Release, *Scott Pruitt Refuses to Ban New Use of Asbestos, Cooks the Books on Toxic Chemical Evaluations*, EWG (June 1, 2018), <https://www.ewg.org/release/scott-pruitt-refuses-ban-new-uses-asbestos-cooks-books-toxic-chemical-evaluations#.WzunKBJKhUO>; Richard Denison, *Pruitt EPA Illegally and Dramatically Undermines Authority to Limit Dangerous Chemicals Under Reformed Chemical Safety Law*, ENV. DEFENSE FUND, June 1, 2018, <http://blogs.edf.org/health/2018/06/01/pruitt-epa-illegally-and-dramatically-undermines-authority-to-limit-dangerous-chemicals-under-reformed-chemical-safety-law/>.

In addition to the records requested above, we also request records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

American Oversight and EWG seek all 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>4</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; we have a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**<sup>5</sup>

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered EPA prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.**<sup>6</sup> Furthermore, agencies that have adopted the National Archives and

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<sup>4</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>5</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) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>6</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

**Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files.** For example, a custodian may have deleted a responsive email from his or her email program, but EPA's archiving tools would capture that email under Capstone. Accordingly, we insist that EPA use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. We are available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>7</sup> If it is your position that any portion of the requested records is exempt from disclosure, we request that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>8</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>9</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>10</sup>

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 it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>11</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

**You should institute a preservation hold on information responsive to this request.** We intend to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, EPA is on notice that litigation is reasonably foreseeable.

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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>.

<sup>7</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

<sup>8</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>9</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

<sup>10</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

<sup>11</sup> *Mead Data Central*, 566 F.2d at 261.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, we welcome 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, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15<sup>th</sup> Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), American Oversight and EWG request 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.<sup>12</sup> Moreover, the request is primarily and fundamentally for non-commercial purposes.<sup>13</sup>

Disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding” of government.<sup>14</sup> The interest in how Mr. Pruitt ran the EPA given his conduct as Oklahoma Attorney General is plentiful.<sup>15</sup> The recent proposals to exclude from consideration some of the major sources of chemical exposures when reviewing the risks of toxic chemicals raises serious questions about the motivations of top EPA officials.<sup>16</sup> The American people deserve to know which outside individuals and groups are communicating with our nation’s top regulators. This request seeks information that will shed light on which interests are shaping our environmental policy.

This request is primarily and fundamentally for non-commercial purposes.<sup>17</sup> 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 financial 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

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<sup>12</sup> 40 C.F.R. § 2.107(l)(1).

<sup>13</sup> 40 C.F.R. § 2.107(l)(1).

<sup>14</sup> 40 C.F.R. § 2.107(l)(2)(i)-(iv).

<sup>15</sup> *See supra* note 1.

<sup>16</sup> *See supra* note 3.

<sup>17</sup> 40 C.F.R. § 2.107(l)(3)(i)-(ii).

promotes their availability on social media platforms, such as Facebook and Twitter.<sup>18</sup> American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney,<sup>19</sup> American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers.<sup>20</sup> As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.<sup>21</sup>

EWG's interest in the disclosure of the requested records is purely non-commercial. EWG is a 501(c)(3) non-profit public interest organization dedicated to using the power of information to protect public health and the environment. EWG will use the information gathered in furtherance of this mission. EWG has long studied the public health and environmental impacts of pesticides and other toxic chemicals, particularly with regards to children's health. As part of this work, EWG publishes reports and creates consumer-facing resources to educate the public and advocate for health-protective standards. For example, every year EWG releases its Shopper's Guide to Pesticides in Produce to educate consumers about pesticide residues found on conventional produce samples. Like American Oversight, EWG plans to use the information gathered, and its analysis of it, to educate the public through various media including reports, blogs, and press releases.

Accordingly, this request qualifies for a fee waiver.

## **Conclusion**

We share a common mission to promote transparency in government. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Sara Creighton at [foia@americanoversight.org](mailto:foia@americanoversight.org) or (202) 869-5245. Also, if our request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

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<sup>18</sup> American Oversight currently has over 11,800 page likes on Facebook, and over 43,900 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited July 3, 2018); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited July 3, 2018).

<sup>19</sup> *DOJ Civil Division Response Noel Francisco Compliance*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>.

<sup>20</sup> *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>21</sup> *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight



Melanie Benesh  
Legislative Attorney  
Environmental Working Group



## Appendix A

In connection with the above FOIA request, American Oversight and EWG request that EPA search the records of the following individuals:

1. Scott Pruitt, Former EPA Administrator;
2. Andrew Wheeler, Former Deputy Administrator and Acting Administrator;
3. Mike Flynn, Former Acting Deputy Administrator;
4. Ryan Jackson, Chief of Staff;
5. Helena Wooden-Aguilar, Acting Deputy Chief of Staff;
6. Charlotte Bertrand, Acting Principal Deputy Administrator in the Office of Chemical Safety and Pollution Prevention (OCSPP);
7. Nancy Beck, Deputy Assistant Administrator of OCSPP;
8. Louise P. Wise, Deputy Assistant Administrator of OCSPP;
9. Oscar Morales, Associate Assistant Administrator for Management in OCSPP;
10. Ryan Schmit, Special Assistant/Advisor to the OCSPP Director;
11. Jeffrey Morris, Director of the Office of Pollution Prevention and Toxics (OPPT);
12. Tala Henry, Acting Deputy Director for Programs in OPPT; formerly Director of OPPT's Risk Assessment Division;
13. Mark Hartman, Acting Deputy Director for Management in OPPT;
14. Lynn Vendinello, Acting Director, Chemical Control Division in OPPT; formerly Deputy Division Director
15. Cathy Fehrenbacher, Acting Director, Risk Assessment Division in OPPT; formerly Deputy Director;
16. Tanya Mottley, Director, National Program Chemicals Division in OPPT; formerly Acting Deputy Director of OPPT;
17. Maria Doa, Former Director, Chemical Control Division; Office of Science Policy
18. Niva Kramek, Associate Chief, Existing Chemicals Branch;
19. Joel Wolf, Chief, Existing Chemicals Branch;
20. Cindy Wheeler, EPA contact for 1,4-dioxane;
21. Robert Courtnage, EPA contact for asbestos;
22. Ana Corado, EPA contact for methylene chloride & NMP;
23. Toni Krasnic, EPA contact for TCE;
24. Susanne Blair, physical scientist;
25. Richard Yamada, Deputy Assistant Administrator, Office of Research and Development; and
26. Troy Lyons, Associate Administrator for Congressional and Intergovernmental Relations.



## Appendix B

In connection with the above FOIA request, American Oversight and EWG request that EPA search for communications between the individuals listed in Appendix B above and anyone at any of the entities listed below:

1. American Chemistry Council (@americanchemistry.com)
2. Society of Chemical Manufacturers and Affiliates (@socma.com)
3. American Petroleum Institute (@api.org)
4. American Fuel and Petrochemical Manufacturers (@afpm.org)
5. Dow chemical (@dow.com)
6. DuPont/Chemours (@dupont.com; @chemours.com)
7. National Association of Manufacturers (@nam.org)
8. National Association of Chemical Distributors (@nacd.com)
9. American Chemical Society (@acs.org)
10. American Cleaning Institute (@cleaninginstitute.org)
11. Consumer Specialty Products Association (@cspa.org)
12. Halogenated Solvents Industry Alliance (@hsia.org)
13. Squire Patton Boggs (@squirepb.com)
14. Alkylphenols and Ethoxylates Research Council (@aperc.org or @alkylphenol.org)
15. Arkema (@arkema.com)
16. Alliance of Automobile Manufacturers (@autoalliance.org)
17. American Coatings Association (@paint.org)
18. Adhesive & Sealant Council (@ascouncil.org)
19. Aerospace Industries Association (@aia-aerospace.org)
20. Motor & Equipment Manufacturers Association (@memma.org)
21. U.S. Tire Manufacturers Association (@ustires.org)
22. Precision Machined Products Association (@pmpa.org)
23. Chamber of Commerce (@uschamber.com)