



July 22, 2021

VIA ELECTRONIC MAIL: usdoj-officeoflegalcounsel@usdoj.gov

Melissa Golden
Lead Paralegal and FOIA Specialist
Department of Justice
Room 5511, 950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Freedom of Information Act Request for Records from the U.S. Department of Justice Office of Legal Counsel Regarding the Biden Administration's Domestic Surveillance Strategy

Dear Ms. Golden:

This Freedom of Information Act (FOIA) request for records from the U.S. Department of Justice Office of Legal Counsel (DOJ) regarding the Biden Administration's Domestic Surveillance Strategy is directed to you in accordance with the Department's "Find a FOIA Contact" webpage.¹

America First Legal Foundation ("AFL") is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and social media platforms to educate the public.

A core part of this mission is exposing the extent of the partnership between the President and the agencies he directs with the tech oligarchs of Alphabet, Amazon, Apple, Facebook, Microsoft, Moonshot CVE, and Twitter to control information regarding, *inter alia*, Biden's financial ties to the Chinese Communist Party; the efficacy of coronavirus policy and scientific choices made by the Centers for Disease Control; the race or religion of the criminals who have assaulted and attacked Asians or Jews in New York, Los Angeles, Chicago, and other leftist-controlled American cities; and, of course, 2020 Presidential election integrity. Another core part of this mission is exposing how and why the Biden Administration

¹ See [Find a FOIA Contact at DOJ | OIP | Department of Justice](#)

is using a coalition of multinational technology corporations, domestic security agencies, and the U.S. intelligence community to discourage and/or prevent Americans from exercising their Constitutional rights to speak, to receive information, to peaceably assemble, and to petition the government for a redress of grievances.

In the summer of 2020, the United States suffered an unprecedented surge of coordinated political violence in the context of a larger collusive effort by special interests, including technology corporations, to “tip” and control the outcome of the 2020 Presidential election. See Molly Ball, *The Secret History of the Shadow Campaign That Saved the 2020 Election*, Time Magazine (Feb. 5, 2021) available at <https://time.com/5936036/secret-2020-election-campaign/>; Chris Fox, *Twitter and Facebook's action over Joe Biden article reignites bias claims*, BBC News (Oct. 15, 2020) <https://www.bbc.com/news/technology-54552101>; Epstein and Anderson, “The search engine manipulation effect (SEME) and its possible impact on the outcomes of elections”, The Proceedings of the National Academy of Sciences of the United States of America (Aug. 2015) <https://www.pnas.org/content/112/33/E4512>. From attacks against federal buildings, to the cold-blooded murders of police officers, to assaults, beatings, and intimidation of innocent citizens, to the burning of private property in cities around the country, it was clear public order, and the men and women of law enforcement, were being sacrificed for a larger political agenda. For example, as the lawlessness, riots, and intimidation raged on, persons now serving in the Biden Administration attacked the police as racists and called for them to be “defunded” and prosecuted. Campaign staff of the sitting Vice President openly raised bail money for looters and arsonists. Democrats on the House Intelligence Committee opened investigations into the Department of Homeland Security (“DHS”) to hamstring DHS’s ability to help local police respond to rioting, burning, and murder. [Full Committee Hearing: DHS Senior Official Performing the Duties of the Under Secretary for Intelligence and Analysis Joseph B. Maher | Committee Repository | U.S. House of Representatives](#) at 22-23 (Oct. 2, 2020).

Once in power, and using civil disobedience on January 6, 2021 as pretext, the Biden Administration crafted and in June 2021 released the “first-ever National Strategy for Countering Domestic Terrorism” (the “Domestic Surveillance Strategy”), <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>. The close alliance between technology companies and the political and corporate left to censor or “manage” information for their mutual benefit is open and obvious.² The Domestic Surveillance Strategy takes

² See, e.g., Schwartz, “WH's Psaki: ‘We're Flagging Problematic Posts For Facebook That Spread Disinformation’”, Real Clear Politics (July 15, 2021) https://www.realclearpolitics.com/video/2021/07/15/psaki_were_flagging_problematic_posts_for_facebook_that_spread_disinformation.html; Turley, “Censoring the Biden story: How social media becomes state media”, The Hill (Oct. 17, 2020) <https://www.msn.com/en-us/news/politics/censoring-the-biden-story-how-social-media-becomes-state-media/ar-BB1a7Rid>; Richardson, “Google exec in Project Veritas sting says only big tech can stop ‘the next Trump situation’”, The Washington Times (June

the next logical step in that alliance: It memorializes a partnership between the Biden Administration and tech oligarchs to weaponize the federal government’s law enforcement and intelligence capabilities against loyal and patriotic American citizens they have deemed undesirable and deplorable due to their traditional, Constitutional, or conservative political and religious views. Specifically, the Biden strategy is to use the domestic security apparatus (DHS, DOJ, and the Federal Bureau of Investigation), as well as internationally focused agencies like the Departments of Defense and State, the National Counterterrorism Center, and unnamed “others” (presumably the Central Intelligence Agency, and the National Security Agency) to monitor and “address” “misinformation” and “disinformation” without saying who will be the arbiter of what is correct or allowable. *See* Domestic Surveillance Strategy at pp. 9, 18, 20, 29. In a particularly chilling Maoist turn of a phrase, the Biden Administration promises to “enhance critical thinking” through a combination of censorship, re-education, and financial and other de-platforming measures against anyone it deems to be holding inappropriate political views. *Id.*

FOIA’s purpose is to ensure an informed citizenry, which is vital to the functioning of a democratic society, needed to check against corruption, and required to hold the governors accountable to the governed. 5 U.S.C. § 552; *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). Given the strong and voluminous evidence of domestic security and intelligence community politicization,³ the operation and execution of the Domestic Surveillance Strategy are evident matters of pressing public concern. Accordingly, pursuant to FOIA, AFL requests production of the following records within twenty days.

I. Special Definitions

“DOJ” means the U.S. Department of Justice Office of Legal Counsel.

24, 2019) <https://www.washingtontimes.com/news/2019/jun/24/google-exec-project-veritas-sting-says-only-big-te/>.

³ *See, e.g.*, Dep’t of Justice, Office of the Inspector General, *Investigative Summary 21-096: Findings of Misconduct by a Then-Senior FBI Official for Having Numerous Unauthorized Contacts with the Media, and for Accepting Unauthorized Gifts from Members of the Media* (July 20, 2021) <https://oig.justice.gov/sites/default/files/reports/21-096.pdf>; Letter from the Director of National Intelligence to Sen. Lindsey Graham, Chairman, Committee on the Judiciary (Unclassified) (Sept. 29 2020) <https://www.judiciary.senate.gov/imo/media/doc/09-29-20-Letter%20to%20Sen.%20Graham-Declassification%20of%20FBI's%20Crossfire%20Hurricane%20Investigations-20-00912-U-SIGNED-FINAL.pdf>; Dep’t of Justice, Office of the Inspector General, “*Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigation*” (Dec. 9, 2019), <https://oig.justice.gov/reports/2019/o20012.pdf>; Dep’t of Justice, Office of the Inspector General, *Review of Allegations Regarding Various Actions by the Department and the Federal Bureau of Investigation (FBI) in Advance of the 2016 Election* (June 14, 2018) <https://oig.justice.gov/reports/review-various-actions-federal-bureau-investigation-and-department-justice-advance-2016>.

“Domestic Surveillance Strategy” means the *National Strategy for Countering Domestic Terrorism* (June 2021)
<https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

II. Requested Records

- A. All records regarding, referring, or related to the Domestic Surveillance Strategy. The time frame for this request is January 20, 2021, to the present.
- B. All records regarding, referring, or related to the legal meaning of “disinformation”, “misinformation”, “anti-government ideologies”, and “extremism” as used in the Domestic Surveillance Strategy. The time frame for this request is January 20, 2021, to the present.
- C. All records sufficient to identify every political appointee, special government employee, and/or career official with a grade of GS-14 who is responsible for determining what information, ideology, or belief is or is not “disinformation”, “misinformation”, “anti-government”, or “extremism”, as those terms are used in the Domestic Surveillance Strategy. The time frame for this request is January 20, 2021, to the present.
- D. All records regarding, referring, or relating to the Domestic Surveillance Strategy and containing any of the following terms: “Trump”, “Trump voters”, “conservatives”, “Republicans”, “civil rights”, “free speech”, “privacy”, “Supreme Court”, “flagging”, “authority”. The time frame for this request is January 20, 2021, to the present.
- E. All records sufficient to identify every “interagency partner” referenced on p. 18 of the Domestic Surveillance Strategy.
- F. All records sufficient to identify the “entities outside the government” referenced at p. 16 of the Domestic Surveillance Strategy. The time frame for this request is January 20, 2021, to the present.
- G. All records of, regarding, referring, or relating to the legal meaning of the term “gender-motivated violence” used at p. 16 of the Domestic Surveillance Strategy.
- H. With respect to the statement “support from the National Counterterrorism Center and others as appropriate” at p. 15 of the

Domestic Surveillance Strategy, all records sufficient to identify the “others”.

- I. All records of, regarding, referring, or relating to the statement “Furthermore, we will focus specifically on violence and factors which contribute to it while respecting civil rights, civil liberties, and privacy protections, and while recognizing and maximizing the positive benefits of modern communications technologies such as the Internet” at p. 12 of the Domestic Surveillance Strategy, including all records sufficient to show how DOJ defines the “positive benefits of modern communications technologies such as the Internet” and how it can, consistent with the First Amendment, engage in content moderation to “maximize” those “benefits”. The time frame for this request is January 20, 2021, to the present.
- J. All records regarding, referring, or relating to the statement: “We are addressing domestic terrorism–related online recruitment and mobilization to terrorism while respecting foundational constitutional protections for free speech and association” at p. 22 of the Domestic Surveillance Strategy, including records sufficient to support the claim that such activity is being done consistent with the First Amendment. The time frame for this request is January 20, 2021, to the present.
- K. All records of, regarding, referring, or relating to the jurisdiction or legal authority of the National Counterterrorism Center and the unnamed “others” to provide “support”, as referenced at p. 15 of the Domestic Surveillance Strategy.
- L. All records of, regarding, referring, or relating to the Domestic Surveillance Strategy and containing one or more of the following terms: “jurisdiction”, “jurisdictional limits”, “constitutional rights”, “privacy”, “Fourth Amendment”, “Fifth Amendment”, “First Amendment”, “free speech”, “association”, “surveillance”, “domestic violent extremist”, “extremism”, “approval”, “power”, “overreach”, “NCTC”, “DOD”, “ODNI”, “CIA”, “NSA”, “Facebook”, “Twitter”, or “social media”. The time frame for this request is March 1, 2021, to the present.
- M. For the persons, agencies, departments, and offices listed below, all records, sufficient to identify every political appointee, special government employee, or career employee with a grade of GS-14 step 1 or higher who communicated or consulted with DOJ and used any one of the words or phrases “domestic terrorism”, “disinformation”, “misinformation”, “anti-government”, “extremism”, “domestic violent

extremist”, “DVE”, “white supremacy”, “flagging”, “technology sector”, or “social media”.

1. Any person with an email address containing “eop.gov”.
2. The Office of the President.
3. The Office of the White House Counsel.
4. The Office of Management and Budget.
5. The Department of the Treasury.
6. The National Security Council.
7. The National Counterterrorism Center.
8. The Department of Defense.
9. The Department of State.
10. The Department of Homeland Security.
11. The Central Intelligence Agency.
12. The National Security Agency.
13. The Federal Bureau of Investigation.
14. The Domestic Policy Council.

The time frame for this request is January 20, 2021.

III. Redactions

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then the DOJ must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; *see also Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, you should produce email attachments.

In connection with this request, and to comply with your legal obligations:

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

- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, 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 those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- 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. 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; AFL 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.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, 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; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If 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.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your regulations, AFL requests a waiver of all search and duplication fees associated with this request.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, waiver is proper as 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." 5 U.S.C. § 552(a)(4)(A)(iii). The public has a significant interest in DOJ's compliance with and faithful execution of the laws, in its respect for Congressional prerogative and the separation of powers, and in its commitment to protecting our citizens' Constitutional rights.

Other government agencies, including the Department of Homeland Security, the Department of Education and the Department of the Interior, have acknowledged AFL is entitled to a fee waiver and granted our request.

V. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VI. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more

efficient production of records of interest to AFL, please do not hesitate to contact me at foia@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you.

/S/ _____
Reed D. Rubinstein
America First Legal Foundation