



January 19, 2022

Via electronic mail

Arnetta Mallory, FOIA Initiatives Coordinator
National Security Division
U.S. Department of Justice
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Room 6150
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Freedom of Information Act Request: Domestic Terrorism Unit

Dear Ms. Mallory:

America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans. Our core mission includes informing and educating the public regarding the operations and activities of the federal government. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 25,000 unique addresses, our Twitter page has over 10,000 followers, the Twitter page of our Founder and President has over 98,500 followers, and we have another 22,000 followers on GETTR.

On January 11, 2022, Assistant Attorney General Matthew G. Olsen testified before the U.S. Senate Committee on the Judiciary that, "The threat of posed by domestic terrorism is on the rise." He also testified, "I have decided to establish a Domestic Terrorism Unit to augment our existing approach – this group of dedicated attorneys will focus on the domestic terrorism threat, helping to ensure that these cases are properly handled and effectively coordinated across DOJ and around the country."¹

¹ Office of Public Affairs, Dep't of Justice, "Assistant Attorney General Matthew G. Olsen Delivers Opening Remarks Before U.S. Senate Committee on the Judiciary," (Jan. 11, 2022), <https://www.justice.gov/opa/speech/assistant-attorney-general-matthew-g-olsen-delivers-opening-remarks-us-senate-committee>.

It appears, however, that the Assistant Attorney General did not fully disclose all relevant facts to the Committee. Specifically, the “Domestic Terrorism Unit” is not actually a response to an actual *terrorism* “threat.” Rather, it is one part of the Biden Administration’s larger campaign to intimidate and silence citizens with different political views, like the Attorney General’s October 4 Memorandum (targeting parents protesting Critical Race Theory and extreme gender indoctrination at school board meetings)² and the National Strategy for Countering Domestic Terrorism (targeting U.S. citizens through, *inter alia*, a massive surveillance and data mining campaign)³ before it. Our sources suggest that Biden Administration appointees and ideologically allied career officials have singled out political conservatives, such as Christian evangelicals, pro-family groups, border security advocates, and pro-life activists, for heightened scrutiny, and that such citizens are understood “by everyone involved” to be the focus for the Domestic Terrorism Unit’s activities.

Given overwhelming evidence that the Department has, for political reasons, singled out the January 6, 2021, rioters for disproportionately harsh treatment relative to far more violent and destructive leftist rioters who attacked, injured, and killed hundreds of law enforcement personnel; burned and looted cities nationwide causing billions of dollars in damages; desecrated religious buildings; and besieged federal buildings,⁴ these suggestions are much more than facially plausible.

² Office of Public Affairs, Dep’t of Justice, “Justice Department Addresses Violent Threats Against School Officials and Teachers” (Oct. 4, 2021), <https://www.justice.gov/opa/pr/justice-department-addresses-violent-threats-against-school-officials-and-teachers>.

³ Nat’l Sec. Council, “National Strategy for Countering Domestic Terrorism,” pp. 15-16, 20, 22, 26-28, 30 (June 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>

⁴ See, e.g., Updated and Reposted: RCI’s Jan. 6-BLM Riots Side-by-Side Comparison, Real Clear Investigations (Jan. 4, 2022), https://www.realclearinvestigations.com/articles/2021/09/09/realclear-investigations_jan_6-blm_comparison_database_791370.html; Byron York, “Armed insurrection’: What weapons did the Capitol rioters carry?”, The Washington Examiner (Oct. 11, 2021), <https://www.washingtonexaminer.com/news/armed-insurrection-what-weapons-capitol-rioters-carry>; Mark Hosenball and Sarah N. Lynch, “Exclusive: FBI finds scant evidence U.S. Capitol attack was coordinated – sources”, Reuters (Aug. 20, 2021), <https://www.reuters.com/world/us/exclusive-fbi-finds-scant-evidence-us-capitol-attack-was-coordinated-sources-2021-08-20/>; Major Cities Chiefs Association Intelligence and Commanders Group, “Report on the 2020 Protests & Civil Unrest” (Oct. 2020) <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Report-on-the-2020-Protest-and-Civil-Unrest.pdf>; Jennifer A. Kingson, Exclusive: \$1 billion-plus riot damage is most expensive in insurance history, Axios (Sept. 20, 2020), <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>; Mike Balsamo and Gillian Flaccus, “On Portland’s streets, Anger, fear, and a fence that divides”, AP (July 27, 2020), <https://apnews.com/article/virus-outbreak-ap-top-news-race-and-ethnicity-music-or-state-wire-1dd1bb39093a3691f4e78093787ab877>; see also House Judiciary GOP, “The video Chairman Nadler doesn’t want you to see!”, You Tube (Jul. 28, 2020), <https://www.youtube.com/watch?v=BbKvhnLoV0Q&t=6s>; Daniel Greenfield, “God is dead’: Leftist rioters vandalize churches and synagogues,” JNS (June 4, 2020), <https://www.jns.org/opinion/god-is-dead-leftist-rioters-vandalize-churches-and-synagogues/>; Katherine Macintire Peters, “Weekend of violent protests leaves trail of damage for feds,” Government Executive (May 31, 2020), <https://www.govexec.com/management/2020/05/weekend-violent-protests-leaves-trail-damage->

Pursuant to 5 U.S.C. § 552(a), AFL makes the following Freedom of Information Act request.

I. Special Definitions

“Congress” means any Member serving on the U.S. Senate Committee on the Judiciary and/or any person with an email address containing “senate.gov”.

“Domestic Terrorism Unit” has the meaning given to it by the Assistant Attorney General in his January 11, 2022, testimony to the U.S. Senate Committee on the Judiciary.

“FBI” means any person in the Federal Bureau of Investigation with a grade of or equivalent to GS-14, step 1, or above.

“NSD” means any (a) every political appointee and (b) any career employee with a grade of or equivalent to GS-14, step 1, or above, in the National Security Division. This includes, but is not limited to, Assistant Attorney General Olsen, his chief of staff, his counselors, and any of his direct reports.

“OAG” means any political appointee and/or any career employee with a grade of or equivalent to GS-14, step 1, or above, in the Office of the Attorney General.

“ODAG” means any political appointee and/or any career employee with a grade of or equivalent to GS-13, step 3, or above, in the Office of the Deputy Attorney General.

“OLA” means any political appointee and/or any career employee with a grade of or equivalent to GS-14, step 1, or above, in the Office of Legislative Affairs.

“Olsen” means Assistant Attorney General Olsen, his chief of staff, his counselors, and any of his direct reports.

“OPA” means any political appointee and/or any career employee with a grade of or equivalent to GS-13, step 1, or above, in the Office of Public Affairs.

“JMD” means every political appointee and/or any career employee with a grade equivalent to GS 11, step 1, or above in the Justice Management Division.

“Record” has the meaning given at 44 U.S.C. § 3301(a)(1).

feds/165786/; Associated Press, “Government drops charges against all inauguration protesters,” (July 6, 2018), <https://www.nbcnews.com/news/us-news/government-drops-charges-against-all-inauguration-protesters-n889531>

“January 11, 2022, testimony” means the Assistant Attorney General’s January 11, 2022, testimony to the U.S. Senate Committee on the Judiciary.

“White House” means any person serving in the Executive Office of the President or with an email address containing “eop.gov”.

II. Requested Records

A. Records of all email correspondence, text messages, or briefing materials exchanged between Olsen and the Congress, FBI, OAG, ODAG, OLA, OPA, and the White House, regarding or concerning the January 11, 2022, testimony. The time frame for this request is December 13, 2021, to January 14, 2022.

B. For NSD, all calendar entries regarding (a) the January 11, 2022, testimony, and (b) the Domestic Terrorism Unit.

C. For NSD, all records containing the term “Domestic Terrorism Unit.” The time frame for this request is November 1, 2021, to the date this request is processed.

D. For NSD, all records, including briefing materials, budget requests, communications, emails, and/or text messages to or from the OAG or JMD containing the terms “Domestic Terrorism Unit” and/or “DTU”.

E. For Olsen, all records of communications with the Congress, FBI, OAG, ODAG, JMD, and/or the White House containing the term “Domestic Terrorism Unit”. The time frame for this request is November 1, 2021, to the date this request is processed.

F. All records concerning or relating to the processing of this request.

III. Processing

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL’s requests and make a good faith effort to search for requested records using methods “which can be reasonably expected to produce the information requested.” At all times, FOIA must be construed to carry out Congress’s open government mandate according to the ordinary public meaning of its terms at the time of its enactment.⁵ As a general matter:

⁵ 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

- Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the Department must disclose the entire record, as a single record cannot be split into responsive and non-responsive bits. 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 locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. In conducting your search, please construe both our Items and the term "record" broadly and give full effect to all applicable authorities.
- 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 records to official systems within a certain time. AFL has a right to records 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 available tools to conduct a complete and efficient search for potentially responsive records. Many agencies have adopted the National Archives and Records Administration ("NARA") Capstone program or similar policies. These provide options for searching emails and other electronic records in a manner 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, then 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 before our Items are processed. If potentially responsive records 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.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” AFL’s request concerns identifiable operations or activities of the government, and the information requested is likely to contribute significantly to the public understanding such activities.

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. 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. As a nonprofit organization primarily engaged in the dissemination of information to educate the public, AFL does not have a commercial purpose and the release of the information requested is not primarily in AFL’s financial interest. Our status as a qualified non-commercial public education and news media requester previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

VI. Production

AFL welcomes production on an agreed rolling basis to speed production and reduce agency burden. If possible, please provide responsive records in an electronic format by email, native format by mail, 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, Fifth Floor, Washington, D.C. 20005.

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V. Conclusion

If you have any questions about this request or believe further discussions regarding search and processing will speed the efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. Finally, please contact us immediately if AFL's request for a fee waiver is not granted in full. Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation