



May 21, 2021

Via Electronic Mail:

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<https://www.esd.whs.mil/FOID/Submit-Request/>

OSD/JS FOIA Requester Service Center
Freedom of Information Division
1155 Defense Pentagon
Washington, DC 20301-1155

Freedom of Information Act Request:

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working 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. AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public on significant policy matters.

The public has a compelling interest in our Armed Services and our soldiers remaining above partisan politics. Politicians should not be able to use the military as a tool to punish political disagreements. Moreover, our citizens have a right to know if their taxpayer money is being used to fund contracts with partisan third parties to single out loyal Americans of strictly one political persuasion for discrimination and harassment.

Section 8(b) of Department of Defense (“DOD”) [Instruction No. 1325.06](#), last revised during the Obama Administration to address several key command failures that led to the Fort Hood terrorist attack, provides:

Military personnel must reject active participation in criminal gangs pursuant to section 544 of Public Law 110-181 and in other

organizations that advocate supremacist [white, black, Islamist, or other], extremist, or criminal gang doctrine, ideology, or causes; including those that attempt to create illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin; advocate the use of force, violence, or criminal activity; or otherwise engage in efforts to deprive individuals of their civil rights. Active participation in such gangs or organizations is prohibited. Active participation includes, but is not limited to, fundraising; demonstrating or rallying; recruiting, training, organizing, or leading members; distributing material (including posting online); knowingly wearing gang colors or clothing; having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of the objective of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service.

Now, however, it appears hyper-partisan civilians may be weaponizing this Instruction to facilitate deeply racist and offensive “Critical Race Theory” principles, to undermine the military’s traditional apolitical role, and to support an “ideological cleansing” of political conservatives and believing Christians from the military.

We are deeply troubled by multiple and facially credible reports of “anti-conservative purges” within DOD. These reports, if true, suggest DOD and White House operatives are engaging in manifestly unlawful conduct detrimental to U.S. national security solely to punish and suppress lawful political opposition. In this regard, we note with concern the apparently [preferential treatment](#) accorded a “chief of diversity” who publicly equated then-President Trump with Adolph Hitler, relative to a former Space Force officer who was subjected to a [Command Directed Investigation](#) and relieved from his post for advocating nonpartisanship, criticizing racist DOD mandates, and exposing high-ranking DOD officials who said the military has “too many white pilots.”

Accordingly, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

I. Special Definitions

“Contractor” shall have the meaning given to the term “Defense contractor” at 32 CFR § 158.3.

“Civilian employee” means a person directly hired and paid from appropriated or non-appropriated funds, under permanent or temporary appointment. See [DOD Dictionary of Military and Associated Terms](#) at 61 (Jan. 2021).

“Secretary’s Memo” means the “Memorandum for Senior Pentagon Leadership Commanders of the Combatant Commands Defense Agency And DOD Field Activity Directors” on the subject of “Immediate Actions to Counter Extremism in the Department and the Establishment of the Countering Extremism Working Group” from Secretary of Defense Lloyd J. Austin III dated April 09, 2021, and hyperlinked at <https://www.defense.gov/Newsroom/Releases/Release/Article/2567545/secretary-of-defense-austin-announces-immediate-actions-to-counter-extremism-in/>

“Uniformed servicemember” means any person who is a current or former member of the uniformed services including the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force, as defined at 5 U.S.C. § 2101(c).

II. Requested Records

- A. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the content and meaning of the words and/or terms “extremism”, “extremist”, “extremist groups”, “extremist activity”, “extremist activities”, “extremist material and content”, “social media forums and platforms”, “actionable information” and “concerning behaviors” as those words and/or terms are used in the Secretary’s Memo.
- B. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to any contracts, policies, or plans to monitor or survey the social media accounts of uniformed servicemembers, contractors, and/or civilian employees, or any pilot programs, working groups, or Steering Committees developed, formed, or tasked with the same. The timeframe for this request is January 20, 2021 to the date of production of the requested documents.
- C. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to any contracts, policies, or plans to monitor or survey the social media accounts of uniformed servicemembers, or any pilot programs, working groups, or Steering Committees developed, formed, or tasked with the same, from, to, or in the possession of each of the following DOD components:
 - 1. Office of the Secretary
 - 2. Office of the Deputy Secretary
 - 3. Office of the Joint Chiefs of Staff
 - 4. Office of Policy
 - 5. Office of Personnel and Readiness
 - 6. Office of Acquisition & Sustainment
 - 7. Office of Intelligence & Security

8. Office of Strategy and Force Development
9. Department of Defense Education Activity
10. Office of the Assistant Secretary of Defense for Homeland Defense and Global Security
11. Office of Homeland Defense Integration and Defense Support of Civil Authorities
12. Office of Public Affairs

The timeframe for this request is January 20, 2021, to date of production of the requested records.

- D. All records, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to: (a) any contracts, policies, or plans to monitor or survey the social media accounts of uniformed servicemembers, contractors, or civilian employees, or (b) any pilot programs, working groups, or Steering Committees developed, formed, or tasked with the same, or (c) containing the words or terms “extremism”, “extremist”, “social media”, “actionable” and “concerning”, “Trump”, “Republicans”, “Christian”, “conservative”, “White House”, or “Congress” from, to, or in the possession of each of the following custodians:

1. Lloyd J. Austin III, Secretary of Defense
2. Kathleen Hicks, Deputy Secretary of Defense
3. Thomas Brady, Director Department of Defense Education Activity
4. Julie Blanks, Executive Director, Office of the Under Secretary of Defense for Personnel and Readiness
5. Eric Ridge, Deputy Assistant Secretary of Defense for Strategy and Force and Development
6. Jennifer Walsh, Office of the Assistant Secretary of Defense for Homeland Defense and Global Security
7. Robert G. Salesses, Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities
8. Heather King, Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities
9. Steven L. Schleien, Office of the Under Secretary of Defense (Policy)
10. Kelly E. Magsamen, Chief of Staff to the Secretary of Defense
11. Farooq A. Mitha, Office of Small Business Programs
12. Colin H. Kahl, Under Secretary of Defense for Policy
13. John F. Kirby, Assistant to the Secretary of Defense for Public Affairs
14. Bishop Garrison

The timeframe for this request is January 20, 2021, to the date of production of the requested records, and the search terms identified below should be queried in each custodian’s records.

- E. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the continuous monitoring or surveillance of any military personnel for “extremist material” or “extremism.” The timeframe for this request is January 20, 2021, to date of production of the requested records.
- F. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to the definition of or activities that would constitute “concerning behavior” or “concerning behaviors” in the context of social media activity. The timeframe for this request is January 20, 2021, to date of production of the requested records.
- G. All records, including, but not limited to electronic mail, texts, memoranda, and handwritten notes, of, regarding, referring, or relating to “keywords” that may or will be used in “accessions and continuous vetting for national security positions” and “social media screening platforms” and “user activity monitoring” as those terms are used in the Secretary’s Memo. The timeframe for this request is January 20, 2021, to date of production of the requested records.

III. Redactions and Search Terms

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 DOD 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, DOD should produce email attachments.

The search terms for our requests should include, but not be limited to, all the following:

1. Monitor
2. Screen
3. Survey
4. Pilot Program
5. Steering Committee
6. extremism
7. extremist
8. material
9. Right-Wing
10. Contractor

11. Contract Out
12. First Amendment
13. civil rights
14. Continuously
15. Babel Street
16. Locate X
17. .EOP
18. DOJ
19. DHS
20. Keywords
21. CWEG
22. WMG
23. USD
24. GC
25. Joint Staff
26. DWC
27. Steering Committee
28. conservative
29. Republican
30. Christian
31. .gmail
32. .protonmail.com
33. LOE
34. concerning behaviors
35. USD(P&R)
36. I&S
37. 1325.06

The above search terms are not case-sensitive.

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.

III. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's 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."

IV. 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.

V. 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 info@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/ Gene P. Hamilton
Gene P. Hamilton
America First Legal Foundation