

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICA FIRST LEGAL
FOUNDATION,
611 Pennsylvania Ave SE #231
Washington, DC 20003

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,
2201 C Street NW
Washington, DC 20520

Defendant.

Civil Action No.: 22-3386

COMPLAINT

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against Defendant U.S. Department of State (“State”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Since July 2021, AFL has investigated the federal government’s efforts to censor speech through collaboration with establishment media and social media companies. *See e.g., AFL, Following Disturbing Admission by Biden White House, AFL FOIAS The Biden Administration About Its Directions to Social Media Companies to Censor Americans* (July 16, 2021), <https://tinyurl.com/2p8tmb24>.

3. In March 2022, the Biden Administration leaned on content creators to amplify its preferred political narratives on social media platforms on issues ranging from the Russia-Ukraine conflict to “Why is gas so expensive?” Michael Ruiz & Sarah

Rumpf, *White House Pre-Screened Questions from TikTok Influencers During Special Briefing Last Week, Attendees Say*, FOX BUS. (Mar. 17, 2022), <https://tinyurl.com/2p8vbn6w>.

4. The Biden Administration's open efforts to influence content moderation on social media platforms on domestic policy issues raised the possibility it may have also done so on foreign policy issues. See Joe Concha, Opinion, *Hypocritical Psaki Leads Chilling Effort to Flag 'Misinformation'*, HILL (Jul. 18, 2021), <https://tinyurl.com/3rfjhavs>; Munsif Vengattil & Elizabeth Culliford, *Facebook Allows War Posts Urging Violence Against Russian Invaders*, REUTERS (Mar. 11, 2022), <https://tinyurl.com/38xw65wj>; Munsif Vegattil, *Meta Narrows Guidance to Prohibit Calls for Death of a Head of State*, REUTERS (Mar. 14, 2022), <https://tinyurl.com/yckaz72v>.

5. On April 4, 2022, AFL submitted a FOIA request to State to uncover how its Global Engagement Center influences content moderation social media platforms—potentially in violation of the Constitution. The FOIA sought information on how this may have happened leading up to the 2020 election and how it occurs on an ongoing basis to this day on an evolving list of topics. See AFL, *AFL Targets Another Biden Administration Effort to Collaborate with Establishment Media and Social Media Companies* (Apr. 7, 2022), <https://tinyurl.com/zyknkbdn>.

6. On July 27, 2022, AFL released documents proving that at least one federal agency was actively causing politically sensitive content to be removed from social media platforms, including Twitter, Facebook, and Instagram. See AFL, *AFL*

Lawsuit Reveals Damning CDC Documents Proving Government Collusion with Big Tech to Censor Free Speech and Promote Biden Administration Propaganda (July 27, 2022), <https://tinyurl.com/2p9d8asz>.

7. Reportedly, records obtained by Missouri Attorney General Eric Schmitt have confirmed that, during the period leading up to November 2020, the Cybersecurity and Infrastructure Security Agency (CISA) and the Office of Intelligence and Analysis (I&A) within the Department of Homeland Security (DHS) frequently engaged with social media companies and expected them to “process reports and provide timely responses, to include the removal of reported misinformation from the platform where possible.” Ken Klippenstein & Lee Fang, *Truth Cops: Leaked Documents Outline DHS’s Plans to Police Disinformation*, INTERCEPT (Oct. 31, 2022), <https://tinyurl.com/54u6vb8c>.

8. State’s Global Engagement Center work with CISA and I&A on “countering disinformation,” further raising the possibility that it has worked with social media companies to censor politically controversial content, including during the period leading up to the 2020 election. See OFF. OF THE INSPECTOR GEN., DEP’T OF HOMELAND SEC., *OIG-22-58, DHS NEEDS A UNIFIED STRATEGY TO COUNTER DISINFORMATION CAMPAIGNS* (Aug. 10, 2022), available at <https://tinyurl.com/4jcddr5w>.

9. “The First Amendment bars the government from deciding for us what is true or false, online or anywhere. Our government can’t use private pressure to get

around our constitutional rights.” @ACLU, Twitter (Oct. 31, 2022, 5:43 PM), <https://tinyurl.com/3ejdfapu> (citing Klippenstein & Fang, *supra*).

10. More than 200 days after AFL filed its FOIA request, State officials continue to suppress information of great public interest and stonewall AFL’s request for records relating to their unconstitutional collaboration with social media companies to censor politically controversial speech.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

12. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

13. Plaintiff AFL is a 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 encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States.

14. 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,

all to educate the public. All the records AFL receives will be made publicly available on AFL's website for citizens, journalists, and scholars to review and use.

15. Defendant State is an agency of the federal government within the meaning of 5 U.S.C. § 552(f), with headquarters at 2201 C Street N.W., Washington, D.C., 20520, and has possession and control of the records AFL seeks.

AFL'S FOIA REQUEST

16. On April 4, 2022, AFL sent a FOIA request to State seeking records relating to its Global Engagement Center, certain policies and directives, certain records relating to the 2020 election, certain records relating to the Russia-Ukraine Conflict, and communications between certain State employees and specific private entities. Ex. A.

17. On April 6, 2022, State sent an e-mail to AFL acknowledging receipt of the request and assigning it reference number F-2022-06835. Ex. B.

18. In that response, State granted AFL's request for a fee waiver. *Id.*

19. On April 25, 2022, State sent an e-mail to AFL, stating that a "preliminary search was conducted for your request and yielded a high volume of responsive records. Ex. C at 6.

20. In that e-mail, State proposed limiting the search to the Global Engagement Center and narrowing the search terms for three of the items in AFL's initial request. *See id.* at 6–7.

21. On April 27, 2022, AFL replied to State, agreeing to limit the search to the Global Engagement Center, and agreeing to narrow two of the items in AFL's initial request *See id.* at 5–6.

22. On June 10, 2022, AFL sent an e-mail to State, requesting an update on the status of the FOIA request. *Id.* at 5.

23. On June 15, 2022, State replied, stating that the “request is in progress [and] you will be notified of the results of the Department’s search and review efforts in response to this request when that information becomes available.” *Id.* at 4–5.

24. On August 2, 2022, AFL sent another e-mail to State, requesting an update on the status of the FOIA request. *Id.* at 4.

25. On August 9, 2022, State replied, stating that “[t]he request remains in process.” *Id.* at 3.

26. On August 31, 2022, AFL sent another e-mail to State, requesting an update on the status of the FOIA request. *Id.* at 2–3.

27. On September 1, 2022, State replied, stating that “this request remains in process and there is no new information to report at this time regarding the status of your request.” *Id.* at 2.

28. On September 1, 2022, AFL replied to State, seeking clarification whether a search had been conducted, where the request was in State’s queue, and when State estimated it would make its first release of records. *Id.* at 2.

29. On September 8, 2022, State replied, stating that “[t]his request remains in process and a search for responsive records has been initiated.” *Id.* at 1.

30. In that response, State stated it would “follow-up with [AFL] to provide an estimated date of completion for this request.” *Id.*

31. As of the date of this Complaint, AFL has received no further response from State about its FOIA request.

CLAIM FOR RELIEF
Violation of FOIA, 5 U.S.C. § 552

32. AFL repeats paragraphs 1-31.

33. AFL properly requested records within the possession, custody, and control of Defendant.

34. Defendant failed to conduct a reasonable search for responsive records, and the requested records are not exempt from disclosure pursuant to any FOIA exemption. *See* 5 U.S.C. § 552(b).

35. Moreover, Defendants failed to disclose any segregable, non-exempt portions of responsive records. *See id.*

36. Defendants failed to respond to AFL’s request within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

37. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

38. Defendants have violated FOIA by failing, within the prescribed time limit, to (i) reasonably search for records responsive to AFL’s FOIA request; (ii) provide a lawful reason for the withholding of any responsive records; and (iii) segregate exempt information in otherwise non-exempt responsive records.

PRAYER FOR RELIEF

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought by AFL's April 4, 2022 request must be disclosed pursuant to 5 U.S.C. § 552;
- ii. Order Defendant to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records;
- iii. Order Defendant to produce by a date certain all non-exempt records responsive to AFL's FOIA request, accompanied by a Vaughn index of any responsive records or portions of responsive records being withheld under claim of exemption;
- iv. Award AFL attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- v. Grant AFL such other and further relief as this Court deems proper.

[signature page follows]

November 4, 2022

Respectfully submitted,

/s/ Michael Ding

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