



July 6, 2021

VIA E-MAIL - MRUFOIA.Requests@usdoj.gov

ATTN: Bobak Talebian
Office of Information Policy
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Freedom of Information Act Request: Information Regarding Judicial Nominations

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law in the United States by preventing Executive Branch overreach, ensuring due process and equal protection for all Americans, and advancing public knowledge and understanding of individual rights guaranteed under the Constitution and laws of the United States. AFL’s mission includes gathering official information, analyzing it, and disseminating it through reports, articles, press releases, emails, and/or through electronic media, including social media platforms.

To ensure government transparency and accountability with respect to judicial nominees AFL requests the following documents within 20 business days:

I. Requested Records

1. All forms completed and submitted to the Federal Bureau of Investigation (“FBI”) or U.S. Department of Justice (“DOJ”) by Candace Jackson-Akiwumi upon her nomination to be a judge in the Seventh Circuit Court of Appeals.
2. Any “Oath of Office” form submitted by Candace Jackson-Akiwumi between March 25, 2021, and July 1, 2021.
3. All documents evincing Candace Jackson-Akiwumi’s residential address, or city in which she resided. This should include any forms she was required to complete that had an address field as an area to be answered by the individual

filling out the form. The time frame for this request is any document sent to, or received from Candace Jackson-Akiwumi between March 25, 2021, and July 1, 2021.

4. All versions of the form used to obtain Candace Jackson-Akiwumi's consent to authorize the Federal Bureau of Investigation (FBI) to conduct a background investigation for purposes of a potential judicial nomination. In the prior administration, this form was identified as "DOJ-OLP-1/12/10".
5. All versions of the form used to obtain Candace Jackson-Akiwumi's consent to authorize the FBI to disclose her background information file to the Senate Judiciary Committee Chair, Ranking Member, other members, or staff.
6. Office of Management and Budget-approved control numbers for all responsive records to Requests No. 4) or 5), *above*.
7. All communications with the Office of Management and Budget (OMB) concerning the applicability of or approval under the Paperwork Reduction Act to any form responsive to Requests No. 4) or 5), *above*.

II. 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 NASA 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, NASA 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.

III. Request for Expedited Processing

The federal judiciary is the nation's backstop to ensure the rule of law: it is the last resort that the American people have to ensure that the laws and regulations are applied the same to them as to everyone else. And the Circuit Court of Appeals is the

last court where the overwhelming majority of cases can be reviewed. It is therefore, of the utmost importance that federal judges, particularly those who sit on the Circuit Court, respect the rule of law and abide by the laws of the land. This is a straightforward and simple document request that should take very few resources to process. Given current media interest in the federal judiciary and the fact that the information sought involves possible questions about the government's integrity which affect public confidence, this request is of widespread and exceptional media and public interest.

IV. Fee Waiver Request

We request a waiver of all applicable fees. 5 U.S.C. § 552(a)(4)(A)(iii) provides you shall furnish requested records without or at reduced charge 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.”¹ Your regulations also provide, “Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested 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.”²

In this case, a fee waiver is appropriate because of the public’s right to obtain clarity as to the compliance by the current Administration, and its nominees, with applicable laws, regulations, and policies governing an individual’s ability to serve as a federal judge and with the Paperwork Reduction Act.³ To date, the information requested has not been released in any form to the public; its release in response to this request will therefore contribute significantly to public understanding of the operations of the government.

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 internal policies and practices with respect to judicial nominations 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.

¹ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

² 28 C.F.R. § 16.10

³ *See e.g., Am. Oversight v. United States HHS*, 380 F. Supp. 3d 45, 48 (D.D.C. 2019).

V. Record Preservation Requirement

We request that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.⁴

VI. 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.

VII. 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/ Andrew J. Block

Andrew J. Block

America First Legal Foundation

⁴ See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).