



April 4, 2022

VIA DHS PAL

Cybersecurity and Infrastructure Security Agency
Department of Homeland Security
Mail Stop 0380
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528

Freedom of Information Act Request: CISA's Mis-, Dis-, and Malinformation (MDM) Team

Dear FOIA Officer:

America First Legal Foundation 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, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. 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 30,000 unique addresses, our Facebook page has over 18,000 followers, our Twitter page has over 11,000 followers, the Twitter page of our Founder and President has over 118,000 followers, and we have another 28,000 followers on GETTR.

I. Introduction

On February 7, 2022, the U.S. Department of Homeland Security (DHS) issued a bulletin entitled "Summary of Terrorism Threat to the U.S. Homeland" in which it lists "the proliferation of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions" as a major threat facing the United States.¹ To combat this threat, the "Mis-, Dis-, and Malinformation" (MDM)

¹ Dep't of Homeland Sec., *Summary of Terrorism Threat to the U.S. Homeland*, Feb. 7, 2022, <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022>.

team in the Cybersecurity and Infrastructure Security Agency (CISA) within DHS, formerly known as the Countering Foreign Influence Task Force (CFITF) prior to 2021, works “in close coordination with interagency and private sector partners, social media companies, academia, and international partners on a variety of projects to build resilience against malicious information activities.”² The MDM team highlights its “close collaboration with the FBI’s Foreign Influence Task Force, the U.S. Department of State, the U.S. Department of Defense, and other agencies across the federal government.”³ Particular areas of concern highlighted on its website include election disinformation and “COVID-19-related MDM activities [which] seek to undermine public confidence and sow confusion.”⁴

While DHS has characterized the “proliferation” of MDM as a major homeland security threat, and CISA’s MDM team has leveraged its partners in the national security apparatus and its relationships with social media companies to combat this threat, the results of this presumably legitimate government activity appear to many Americans as Orwellian political censorship that violates the Constitution.

On March 17, 2022, the New York Times revealed that “[Hunter] Biden’s laptop was indeed authentic, more than a year after ... much of the media dismissed the New York Post’s reporting as Russian disinformation.”⁵ When the story was first accused of being disinformation, Twitter suspended the New York Post’s account for seven days,⁶ and Facebook “reduc[ed]’ the story’s distribution on its platform while waiting for third-party fact checkers to verify it.”⁷ This was just one of many instances where social media companies censored politically controversial information under the pretext of combatting MDM even when the information later became verified.⁸

The American people have a right to know how the national security apparatus, including CISA’s MDM team, is being used to censor politically controversial content on social media platforms under the pretext of combatting MDM. It is not clear that such efforts by the government to cause content to be removed from social media are constitutional, even if the content itself is actually false.⁹

² Cybersecurity and Infrastructure Sec. Agency, *Mis, Dis, Malinformation*, <https://www.cisa.gov/mdm> (last visited Apr. 4, 2022).

³ *Id.*

⁴ *Id.*

⁵ Anders Hagstrom, “*He Doesn’t Work for the United States*”: *Psaki Deflects When Asked if She Stands by Calling Hunter’s Laptop Disinformation*, DAILY CALLER (Mar. 17, 2022), <https://dailycaller.com/2022/03/17/hunter-biden-laptop-new-york-post-psaki-ukraine-business/>.

⁶ *Id.*

⁷ Associated Press, *Twitter CEO Says It Was Wrong to Block Links to Hunter Biden Story*, L.A. TIMES (Oct. 16, 2020), <https://www.latimes.com/world-nation/story/2020-10-16/twitter-changes-hacked-content-rules-hunter-biden-story-furor>.

⁸ Jacob Siegel, *Invasion of the Fact-Checkers*, TABLET (Mar. 21, 2022),

<https://www.tabletmag.com/sections/news/articles/invasion-fact-checkers>.

⁹ See *United States v. Alvarez*, 567 U.S. 709, 723 (2012) (“Our constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth ... The mere potential for the exercise of that

Therefore, AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552:

II. Requested Records

Please note that AFL's requests do not include "daily clips" emails and press releases.

- A. All records containing the terms "misinformation," "disinformation," or "malinformation". The time frame for this item is January 20, 2021, to the date this request is processed.
- B. All records sufficient to identify the person(s) responsible for identifying or designating what is or is not "misinformation", "disinformation", or "malinformation." The time frame for this item is January 20, 2021, to the date this request is processed.
- C. All records of Directives, Instructions, policy statements, policies, guidelines, and memoranda that authorize, delegate authority, or otherwise govern CISA's activities relating to misinformation, disinformation, or malinformation.
- D. All records of Directives, Instructions, policy statements, policies, guidelines, and memoranda that authorize, delegate authority, or otherwise govern CISA's communications and interactions with social media companies.
- E. All records of communications, including emails and Microsoft Teams chats, to or from any CISA CFITF employee or contractor, between October 1, 2020 and January 20, 2021, referring to "Hunter", "laptop", "Devon", "Archer", "Burisma", "Bohai", "Rosemont Seneca", or "Ukraine".
- F. All records of communications, including emails and Microsoft Teams chats, to or from any CISA CFITF employee or contractor, between October 1, 2020 and January 20, 2021, referring to "election fraud", "voting irregularities", "alternate electors", "electoral college", or "stop the steal".
- G. All records of communications, including emails, to or from any CISA CFITF or MDM employee or contractor, from October 1, 2020 to the date this request is processed, with any email domain ending in: "@facebook.com", "@google.com", "@instagram.com", "@linkedin.com", "@meta.com", "@reddit.com", "@twitter.com", "@tiktok.com", or "@youtube.com".

power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.”).

- H. All records of communications, including emails, to or from any CISA CFITF or MDM employee or contractor, from October 1, 2020 to the date this request is processed, with any email domain ending in: “@factcheck.org”, “@fullfact.org”, or “@snopes.com”.
- I. All records of communications, including emails, to or from any CISA CFITF or MDM employee or contractor, from October 1, 2020 to the date this request is processed, with any email domain ending in: “@ap.org”, “@cnn.com”, “@latimes.com”, “@msnbc.com”, “@nypost.com”, “@nytimes.com”, “@reuters.com”, “@usatoday.com”, “@washpost.com”, or “@wsj.com”.

III. Processing

DHS must comply with the processing guidance in the Attorney General’s Memorandum on Freedom of Information Act Guidelines.¹⁰ This means, among other things, the following.

- The Department may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.
- Information that might technically fall within an exemption should not be withheld from AFL unless the Department can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If the Department determines that it cannot make full disclosure of a requested record, then the FOIA requires that it consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- The Department must properly apply the foreseeable harm standard. That means it must confirm and demonstrate to AFL that it has considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.
- 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

¹⁰ U.S. Dep’t Just. (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download>.

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 give full effect to all applicable authorities and broadly construe our Item and your obligations to provide responsive records.
- 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 prevent deletion by instituting a litigation hold or other appropriate measures.

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), AFL requests a waiver of all search and duplication fees. These authorities provide for fee waivers when, as here, “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 of how the federal government acts to suppress or not suppress information, often in coordination with the private sector, with which the administration disagrees. Knowing the reasoning, justification, and policy considerations behind such actions is in the public interest.

Also, 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. We distribute our work widely, posting government records for the benefit of the public, Congress, policymakers, and scholars, and creating and disseminating distinct work on media outlets of all sorts through the exercise of our editorial skills.

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 has been recognized by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

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, 611 Pennsylvania Avenue SE #231, Washington, D.C. 20003.

VI. 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.

Thank you,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation