



February 2, 2023

**VIA E-MAIL**

Special Access/FOIA  
National Archives at College Park  
8601 Adelphi Road  
Room 5500  
College Park, MD 20740-6001

**Freedom of Information Act Request**

Dear FOIA Officer:

Federal law creates a presumption of public access to the records of our national government, including Congress. America First Legal Foundation (“AFL”) is a national, nonprofit organization working to promote the rule of law, prevent executive overreach, protect due process and equal protection, and educate Americans about the individual rights guaranteed under the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend 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 information to a national audience through traditional and social media platforms. For example, AFL’s employees regularly appear on radio and on cable and broadcast news programs; our email list contains over 45,000 unique addresses; our Facebook page has over 109,000 followers; our Twitter page has over 54,000 followers and the Twitter page of our Founder and President has over 400,000 followers; and we have another 31,600 followers on GETTR.

We seek access to agency records, as detailed below, under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

611 Pennsylvania Ave SE #231  
Washington, DC 20003

## I. Background

Congressional records are the property of the American people, they do not belong to Members of Congress individually.

In 2009, current President, then Senator and Vice President-elect Joe Biden admitted to dating a high school student after his having graduated from college.<sup>1</sup> Years later, Tara Reade, a former staffer of Senator Biden, disclosed that in 1993 Biden sexually assaulted her.<sup>2</sup> While former Senator Biden's records were transferred to the University of Delaware, reports have detailed that records evidencing Tara Reade's filing of a complaint against Biden have been transferred to the National Archives.<sup>3</sup>

Seeking information about those records, Judicial Watch and the Daily Caller News Foundation sued the University of Delaware in state court to access information about former Senator Biden's transfer of his Senate records. The Delaware Court of Appeals affirmed the Delaware Department of Justice's decision that the University of Delaware's records were not subject to disclosure under the Delaware Freedom of Information Act. While the court noted, "[t]he Papers are housed in the University's Morris Library", it did not explain whether personnel records relating to Tara Reade were part of that collection.<sup>4</sup>

If state law does not provide a remedy for access to federal records, certainly federal law must.<sup>5</sup> The "Morris Library" at the "University of Delaware" is a federal depository library. As the U.S. Government Publishing Office states:

[T]he U.S. Government Publishing Office (GPO) through the Federal Depository Library Program (FDLP) distributes certain classes of Government documents free of cost to designated libraries throughout the United States and its territories. These libraries are known as Federal depository libraries. Federal depository libraries **must offer free, public access to their Federal collections**, even if the depository library is part of a private academic institution. In addition,

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<sup>1</sup> E.g., CSPAN, Senator Biden Farewell Address (Jan. 20, 2009), <https://bit.ly/3HOTwiy> (recalling the time he went on a date with a girl from "visi", referring to Georgetown Visitation, which has always been a secondary school for young women).

<sup>2</sup> Katie Halper, *Tara Reade Tells Her Story*, CURRENT AFFAIRS (Mar. 31, 2020), <https://bit.ly/3RmPkec>.

<sup>3</sup> Marc Caputo, *Search for Tara Reade Complaint Threatens to Backfire on Biden*, POLITICO, (May 2, 2020), <https://politi.co/40e7TVQ>.

<sup>4</sup> *Judicial Watch Inc. v. Del. DOJ*, No. N20A-07-001 MMJ, 2021 Del. Super. LEXIS 4, at \*13 (Super. Ct. Jan. 4, 2021).

<sup>5</sup> 3 W. BLACKSTONE, COMMENTARIES 23 (1783). See also *Ashby v. White*, 1 Salk. 19, 21, 87 Eng. Rep. 808, 816 (Q. B. 1702) ("If a statute gives a right, the common law will give a remedy to maintain that right . . .").

information specialists are available at these libraries to assist the American public to locate Federal information.<sup>6</sup>

Federal law states, “[d]epository libraries shall make Government publications available for the free use of the general public”<sup>7</sup> and the courts have agreed.<sup>8</sup> While public access under the Freedom of Information Act does not apply to congressional records,<sup>9</sup> it does apply to records legally required to be transferred to a federal agency and subject to that agency’s disposition and control. In the case of Senate records, this is precisely what the law requires. The applicable law states, “[t]he Secretary of the Senate and the Clerk of the House of Representatives, acting jointly, shall obtain at the close of each Congress **all the noncurrent records of the Congress** and of each congressional committee and transfer them to the National Archives and Records Administration for preservation, subject to the orders of the Senate or the House of Representatives, respectively.”<sup>10</sup> Senate Resolution 474 makes clear that the National Archives controls these records, making them agency records, by authorizing the Archives’ to make these congressional records “available for public use”.<sup>11</sup>

## II. Requested Records

To help the American people better understand how members of Congress comply with federal law concerning the disposition of their personal office records, we request access to the following records under the FOIA, 5 U.S.C. § 552:

- a. All Senator Joe Biden records relating to Tara Reade.
- b. All records relating to the National Archives’ search for the records identified in Request No. 1, above.
- c. All communications from January 1, 2019 to the present between the National Archives and anyone at the White House, the Senate, the Biden-Harris Presidential Transition Team, or the Biden for President campaign, relating to the records described in Request No. 1, above.

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<sup>6</sup> E.g., GOVERNMENT PRINTING OFFICE, *Welcome to the Federal Depository Library Directory*, <https://bit.ly/3YjJtIX>, (emphasis added).

<sup>7</sup> 44 U.S.C. § 1911.

<sup>8</sup> *United States v. Caverly*, 408 F.2d 1313 (3d Cir. 1969).

<sup>9</sup> *Goland v. CIA*, 197 U.S. App. D.C. 25 (D.C. Cir. 1978).

<sup>10</sup> 44 U.S.C. § 2118 (emphasis added).

<sup>11</sup> S. Res. 474 96th Cong. (1980).

### III. Fee Waiver

We request a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency 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.”<sup>12</sup>

In this case, a fee waiver is appropriate because of current litigation concerning access to congressional records and the importance of understanding the federal obligations on both Congress and the National Archives. 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 addition, as American First Legal is a non-profit, tax-exempt organization as defined by the Internal Revenue Code, it has no commercial interest in making this (or any other) request.

### IV. Records 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.<sup>13</sup>

### V. Record Production and Contact Information

To facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, we request that those records be produced first, and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me via e-mail at FOIA@aflegal.org. Thank you for your attention to this matter.

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<sup>12</sup> 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).

<sup>13</sup> *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).

Sincerely,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation