



March 13, 2023

**Via Online Portal**

Freedom of Information Act Request  
c/o Anisha Dasgupta, General Counsel  
Office of General Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Freedom of Information Act Request: FTC Docket No. C-4316**

Dear Ms. Dasgupta,

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 49,000 unique addresses, our Twitter page has 56,300 followers, the Twitter page of our Founder and President has over 412,000 followers, our Facebook page has 109,000 followers, and we have another approximately 31,700 followers on GETTR.

**I. Background**

On March 7, 2023, the U.S. House of Representatives, Committee on the Judiciary and Select Subcommittee on the Weaponization of the Federal Government, released a staff report on the FTC's harassing behavior toward Twitter once Elon Musk took control of the social media platform.<sup>1</sup> The staff report accused the FTC of acting beyond its authority by seeking information about Twitter's personnel decisions, Elon

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<sup>1</sup> COMMITTEE ON THE JUDICIARY AND THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT U.S. HOUSE OF REPRESENTATIVES, THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER, (Mar. 7, 2023) (available at <https://bit.ly/3yvb8vD>) (hereinafter "Committee Report").

Musk-related communications, and communications with journalists, among other matters.<sup>2</sup> The FTC’s presumptive justification for these investigations is that they are necessary for the enforcement of its consent order with Twitter.<sup>3</sup> Yet according to the House Judiciary Committee, the FTC’s actions represent a gross abuse of government authority and a threat to the First Amendment.<sup>4</sup> Also, the Committee Report raises three additional concerns: (1) That the FTC violated the Paperwork Reduction Act in collecting information from Twitter between November 2022 through February 2023; (2) that the FTC violated *ex parte* rules established under the Administrative Procedure Act; and (3) that the FTC exceeded its authority because its consent order with Twitter did not authorize the subject investigations.

## II. Records Requested

Pursuant to 5 U.S.C. § 552(a), AFL requests the following records:

1. All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.
2. All records relating to the FTC’s need under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, for information concerning Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. The time frame for this item is April 26, 2022, to November 30, 2022.

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<sup>2</sup> Committee Report, *supra* note 1 at 1. See Committee Report, *supra* note 1 at 5 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)) (concerning access to journalistic communications); Committee Report, *supra* note 1 at 10 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 30, 2022)) (concerning communications relating to Elon Musk); Committee Report, *supra* note 1 at 9 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)) (concerning Twitter’s personnel decisions and other operational activities); Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 9, 2022)) (concerning Twitter’s termination of Jim Baker); Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement Regarding Twitter Blue and Resignations to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 10, 2022)); Committee Report, *supra* note 1 at 2, (citing Request 3(d), Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 21, 2022)) (requesting information about when Twitter “first conceived of the concept for Blue Verified”).

<sup>3</sup> Ryan Tracy, *FTC Twitter Investigation Sought Elon Musk’s Internal Communications, Journalist Names*, WALL STREET J. (Mar. 8, 2023), <https://on.wsj.com/41TPWN8>, (Statement from FTC Chair Lina Khan); *accord.* Twitter, Inc., Decision and Order, C-4316, FTC (2022); see also *United States v. Twitter, Inc.*, No. 3:22-cv-3070 (N.D. Cal. May 26, 2022), ECF No. 11 (Stipulated Order).

<sup>4</sup> Committee Report, *supra* note 1 at 1.

3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates:
  - a. November 10, 2022 (4 letters),<sup>5</sup>
  - b. November 15, 2022,<sup>6</sup>
  - c. November 21, 2022,<sup>7</sup>
  - d. November 30, 2022,<sup>8</sup>
  - e. December 6, 2022,<sup>9</sup>
  - f. December 9, 2022,<sup>10</sup>
  - g. December 13, 2022,<sup>11</sup>
  - h. January 3, 2023,<sup>12</sup>
  - i. January 18, 2023,<sup>13</sup>
  - j. January 23, 2023,<sup>14</sup> and
  - k. February 1, 2023.<sup>15</sup>

The time frame for this item is April 26, 2022, to February 1, 2023.

4. All communications referring or relating to “Open Markets Institute.” The time frame for this item is April 26, 2022, to November 30, 2022.

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<sup>5</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement Regarding Twitter Blue and Resignations to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 10, 2022)); Committee Report, *supra* note 1 at 2 (citing FTC Letter Regarding Twitter Blue and Resignations (Nov. 10, 2022), *supra* n.9; Request 1, Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter Regarding Terminations, Twitter, Inc., No. C-4316 (Nov. 10, 2022)).

<sup>6</sup> Committee Report, *supra* note 1 at 4 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 15, 2022)).

<sup>7</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 21, 2022) (request for when Twitter “first conceived of the concept for Blue Verified”)).

<sup>8</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 30, 2022)).

<sup>9</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 6, 2022)).

<sup>10</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 9, 2022)).

<sup>11</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)).

<sup>12</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Jan. 3, 2023)).

<sup>13</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Jan. 18, 2023)).

<sup>14</sup> Committee Report, *supra* note 1 at 10 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Twitter’s Head of Product, Legal, Twitter, Inc., No. C-4316 (Jan. 23, 2023)).

<sup>15</sup> Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Twitter’s Head of Product, Legal, Twitter, Inc., No. C-4316 (Feb. 1, 2023)).

5. All communications referring or relating to Center for American Progress, Common Cause, MoveOn, or Public Citizen. The time frame for this item is April 26, 2022, to November 30, 2022.
6. All records concerning FTC's determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5, *above*, did not constitute prohibited *ex parte* communications. The time frame for this item is April 26, 2022, to November 30, 2022.
7. All communications between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, *above*, or any member of the Commission. The time frame for this item is April 26, 2022, to February 1, 2023.

### III. Processing and Production

The requested documents will be made broadly available to the general public, and this request is not being made for commercial purposes. AFL broadly disseminates information to the public regarding the operations and activities of the federal government, and its requests for fee waivers have been routinely granted by numerous federal agencies.

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines. If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org. If AFL's request for a fee waiver is not granted in full, then please contact us immediately upon making that determination.

Finally, to accelerate your 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 to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation