



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 5.400, 3CON Building
175N Street, NE
Washington, DC 20530

(202) 252-6020

July 17, 2023

Sent via email: foia@aflegal.org

Reed Rubinstein
American First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003

Request Number: EOUSA-2022-000037
Subject of Request: The Attorney General's October 4, 2021, Memo

Dear Reed Rubenstein:

This letter is the second interim response to your Freedom of Information Act/Privacy Act (FOIA/PA) request that is now the subject of a FOIA lawsuit.¹ The Executive Office for United States Attorneys (EOUSA) is currently processing your request. The EOUSA is the official record-keeper for all records located within EOUSA and the various United States Attorneys' Offices.

To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes. The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released or considered appropriate for release as a matter of discretion, available to you. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

Enclosed please find a total of 11 pages. Of those pages, one (1) page is released in full and 10 pages are released in part. **The withheld information was reviewed to determine if any information could be segregated for release.** The exemptions cited for withholding records or portions of records are 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)C.²

Additionally, we located records that originated with different components of the Department of Justice: the Office of the Attorney General (OAG) and the Office of the Deputy Attorney General (ODAG). We referred those records to the Office of Information Policy (OIP).

¹ America First Legal Foundation v. Anthony Coley, et.al, Civil Action No.: 1:21-cv-03024 (TSC)

² An enclosure to this letter explains the exemptions in detail.

OIP is the FOIA Requester Service center for OAG and ODAG. OIP will review the records and issue a direct response to you.

As this matter is in litigation, an administrative appeal is moot. Therefore, we have omitted our standard paragraph concerning administrative appeal procedures.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin Krebs", is placed over a light pink rectangular background.

Kevin Krebs
Assistant Director

Enclosures

Cc: Michael Gerardi, Assistant United States Attorney

EXPLANATION OF EXEMPTIONS

FOIA: TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by and Executive order to be kept secret in the in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

PRIVACY ACT: TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to Executive Order 12356 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability eligibility, or qualification for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.

Weekly Report of Legal Program/Policy Activities
October 18, 2021

What to report:

(b) (6), (b) (7)(C), (b) (5)

DOJ Priority Initiatives

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

Threats Against School Officials. On October 13, Legal Programs participated in an ODAG meeting concerning the [October 4 AG Memo](#) directing USAOs to hold meetings with district law-enforcement officials to gauge the extent of harassment, intimidation, and threats to school officials. The AG Memo also directed USAOs to consider whether federal prosecution is warranted to address such threats. The deadline for USAOs to hold these threat-assessment meetings is November 3. During the meeting, ODAG provided additional guidance about what is expected from the USAO meetings, including assessing the extent of the threats, underscoring that the AG's directive is not designed to police constitutionally protected speech, considering a host of applicable federal statutes, as well as which forum would be most appropriate for addressing such threats. ODAG requested EOUSA issue a memo conveying that guidance to the USAOs as soon as possible; the memo is underway. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Weekly Report of Legal Program/Policy Activities
October 25, 2021

What to report:

(b) (6), (b) (7)(C), (b) (5)

DOJ Priority Initiatives

(b) (6), (b) (7)(C), (b) (5)

Threats Against School Officials. Legal Programs drafted a memorandum for dissemination to the USAO community entitled, "[Guidance on Implementing the Attorney General's Memorandum on Addressing Threats against School Administrators, Board Members, Teachers, and Staff](#)." The memorandum reiterated ODAG's request for USAOs to convene meetings on this effort by November 3 with appropriate district law enforcement leaders, and to notify EOUSA when the meetings are completed, and note any other significant issues for ODAG. The memorandum also provided guidance on partners to include in the meetings, format of meetings, and possible discussion topics.

(b)(6); (b)(7)(C)

(b) (6), (b) (7)(C), (b) (5)

School Board Training Overview

7:00 p.m. Wednesday, February 23, 2002

On ZOOM

Sponsoring organizations:

- San Diego City Attorney's Office
- U.S. Attorney's Office
- California School Boards Association
- San Diego County Office of Education

Additional participants:

- National Conflict Resolution Center
- Institute for Civil Civic Engagement

Invitees (from all San Diego County school districts):

- School board members
- Superintendents
- Assistant superintendents
- Communications Officers

Program (75 minutes):

- Welcome - San Diego City Attorney Mara W. Elliott (5 minutes)
- Update on Department of Justice 2021 partnership - U.S. Attorney Randy Grossman (5)
- Strategies for Promoting Civility and De-Escalating Incidents – (b) (6), (b) (7)(C) NCRC (25)
- Overview of Laws, Public Meetings – (b) (6), (b) (7)(C) City Attorney's Office (15)
- *Potential Additional Content* – (b) (6), (b) (7)(C) Institute for Civil Civic Engagement
- Questions and Answers (b) (6), (b) (7)(C) (20)
- Close – Elliott (5)

Dear (b) (6), (b) (7)(C)

Attached is the draft outline for the San Diego County School Boards training on disruptions and threats at public meetings, which will be conducted on February 23, 2022, and to which U.S. Attorney Randy Grossman is invited. He discussed this event yesterday with City Attorney Mara Elliott.

As you can see, we have reserved a five-minute slot for the U.S. Attorney to talk about Attorney General Garland's October 4, 2021, partnership to address threats against schools, and the role the U.S. Attorney's Office might play in any local occurrence. However, he does not need to speak, or to speak that long, and we are happy to have him participate in whatever manner he decides is most appropriate. Our goal in our law enforcement presentations is to eliminate the mystery of who does what, as many school board members have little experience in that area.

Please let me know if the U.S. attorney can participate, and feel free to contact me if you have any questions about the training.

(b) (6), (b) (7)(C)

hnhWeekly Report of Legal Program/Policy Activities
January 18, 2022

What to report:

(b) (6), (b) (7)(C), (b) (5)

DOJ Priority Initiatives

(b) (6), (b) (7)(C), (b) (5)

Threats of Violence Briefing for Attorney General. On January 7, OAG requested EOUSA and other DOJ components to prepare to brief the AG on January 14 on cases and activities addressing threats of violence related to four targeted groups: election officials and workers; members of Congress; judges and law enforcement; flight attendants and crew; and school personnel and school board members. Since June 2021, threats to these groups have been a focus of the AG's and a priority for the Department. On January 10, Legal Programs sent a data call to all USAOs seeking information on pending matters and cases involving threats to these groups and inquiring whether they have seen recent increases in related matters, cases, or other

activities. The response rate was excellent: at least 91 of the 94 USAOs provided responses reflecting at least 515 pending cases or matters. Legal Programs compiled this reported information into a spreadsheet database and used it to also prepare talking points for the Director's briefing of the AG. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), (b) (5)

Obtained by America First Legal Foundation

From: (b)(6); (b)(7)(C) (USAEO)
To: (b)(6); (b)(7)(C) (USAEO)
Cc: (b)(6); (b)(7)(C) (USAEO)
Subject: Norm Report.
Date: Thursday, October 14, 2021 7:08:00 PM

(b)(6);
(b)(7)(C)

I don't have one of (b)(6), (b)(7)(C) weekly reports emails handy, so I'm not sure section this would go under:

- **ODAG Threats to School Officials Task Force.** On 10/13/2021, Legal Programs staff participated in an ODAG meeting concerning the AG's 10/4/2021 memorandum directing USAOs to hold meetings with district law-enforcement officials to gauge the extent of harassment, intimidation, and threats to school officials. The AG also directed USAOs to consider whether federal prosecution is warranted to address such threats. The deadline for USAOs to hold these threat-assessment meetings is 11/3/2021. ODAG provided additional guidance about what is expected from the USAO meetings, including assessing the extent of the threats, underscoring that the AG's directive is not designed to police constitutionally protected speech, and considering a host of federal statutes that might apply to, and which forum would be most appropriate for addressing, such threats. ODAG requested that EOUSA issue a memo conveying that guidance to the USAOs by 10/15/2021. Legal Programs sent a draft guidance memo to ODAG for review late on 10/14/2021. (b)(6); (b)(7)(C)

(b) (6), (b) (7)(C)

National Violent-Crime and Narcotics Coordinator
Executive Office for United States Attorneys
175 N St., NE – Room 4.107
Washington, DC 20530
Phone: (b) (6), (b) (7)(C)
Fax: 202-252 5861

(b)(6);
(b)(7)(C)

From: (b)(6); (b)(7)(C) (USAINN)
To: (b)(6); (b)(7)(C) (USAEQ)
Cc: (b)(6); (b)(7)(C) (USANAC); (b)(6); (b)(7)(C) (USANAC)
Subject: RE: Survey Questions_final.docx
Date: Tuesday, November 2, 2021 8:48:22 AM
Attachments: [Survey Questions_final.docx](#)

Hi-was hoping for an external link for the few questions we have and a way to tabulate the response.

(b)(6); (b)(7)(C)
Law Enforcement Coordinator
Public Information Officer
US Attorney's Office
Northern District of Indiana

(b)(6); (b)(7)(C) (cell)

From: (b)(6); (b)(7)(C) (USAEQ) <(b)(6); (b)(7)(C)>
Sent: Tuesday, November 2, 2021 7:45 AM
To: (b)(6); (b)(7)(C) (USAINN) <(b)(6); (b)(7)(C)>
Subject: RE: Survey Questions_final.docx

Morning, (b)(6); (b)(7)(C) Can you send me the survey questions? I want to check in with ODAG this morning. Were you hoping include the link to the survey in the announcement?

I'll wait for the NAC response about whether they are able to help with the survey before weighing in.

Brandy

From: (b)(6); (b)(7)(C) (USAINN) <(b)(6); (b)(7)(C)>
Sent: Tuesday, November 2, 2021 8:10 AM
To: (b)(6); (b)(7)(C) (USAEQ) <(b)(6); (b)(7)(C)> (USANAC)
(b)(6); (b)(7)(C) (USANAC) <(b)(6); (b)(7)(C)>
Subject: FW: Survey Questions_final.docx

Good Morning,

I hope this finds you well.

Before our School Board meeting our office wanted to poll the 600 agencies to see if there was a problem anywhere and what they were. My USA asked me to reach each of you due to the below response. We would like to get our announcement out today or tomorrow.

Thank you

(b)(6); (b)(7)(C)

Survey Questions

1. Name of Law Enforcement Agency:
2. In what County is this agency located:
3. Since 1/1/2021 has your agency investigated or received any complaints regarding criminal law violations involving harassment, intimidation, threats of violence and/or actual violence against school officials, teachers, or school employees?
 - a. No
 - b. Yes
 - c. If Yes, please describe:
4. Since 1/1/2021 has your agency, based on any such investigations or **complaints** involving harassment, intimidation, threats of violence and/or actual violence against school officials, teachers, or school employees, referred any matter for criminal prosecution under state law?
 - a. No
 - b. Yes
 - c. If Yes, please describe:
5. Since 1/1/2021 has your agency, based on any such investigations or **complaints** involving harassment, intimidation, threats of violence and/or actual violence against school officials, teachers, or school employees, referred any matter for criminal prosecution under federal law?
 - a. No
 - b. Yes
 - c. If Yes, please describe:

Sorry that they weren't able to help with this.

(b)(6); (b)(7)(C) - do you want to reach out to the above suggested contacts or use another method to collect this information?

Thanks,

(b)(6); (b)(7)(C)

From: (b)(6); (b)(7)(C) (USAINN) (b)(6); (b)(7)(C)
Sent: Monday, November 1, 2021 12:53 PM
To: Johnson, Clifford (USAINN) (b)(6); (b)(7)(C) (USAINN)
 (b)(6); (b)(7)(C) (USAINN) (b)(6); (b)(7)(C)
Subject: FW: Survey Questions_final.docx

I kind of mentioned in the email to the large group but will explain a bit more---If techone doesn't provide a link for registration the attached format could change as I might have to announce it as a calendar invite, that was what I was waiting to see.

(b)(6); (b)(7)(C)

Law Enforcement Coordinator
 Public Information Officer
 US Attorney's Office
 Northern District of Indiana

(b)(6); (b)(7)(C) (cell)

From: (b)(6); (b)(7)(C) (USAINN)
Sent: Monday, November 1, 2021 12:46 PM
To: (b)(6); (b)(7)(C) (USAINN) (b)(6); (b)(7)(C) >; Johnson, Clifford (USAINN)
 (b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C) (USAINN) (b)(6); (b)(7)(C)
Subject: RE: Survey Questions_final.docx

(b)(6); (b)(7)(C)

I will attempt to answer that. I ideally would like to send the survey by the end of this week with a return date by November 17, 2021. Mike said techone usually takes 48 hours, so I am hoping they can provide me a registration type link in the today or tomorrow.

(b)(6); (b)(7)(C) -The format I would use would be something like what is attached, basically out press release header with our standard training title, date and description along with how to register. The about may need adjusted.

Weekly Report of Legal Program/Policy Activities
November 15, 2021

What to report:

(b) (6), (b) (7)(C), (b) (5)

DOJ Priority Initiatives

(b) (6), (b) (7)(C), (b) (5)

Threats to School Officials. On November 10, Legal Programs briefed ODAG on the analysis from the meetings the USAOs had with law enforcement related to the directive from the Attorney General. Legal Programs will be meeting with a Civil Division attorney on November 16 to better understand the lawsuit filed against the Department in response to the directive. (b)(6); (b)(7)(C)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)