UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICA FIRST LEGAL FOUNDATION,

Plaintiff,

v.

Case No. 1:21-cv-03024 (TSC)

ANTHONY COLEY, et al.,

Defendants.

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' PARTIAL MOTION TO DISMISS

INTRODUCTION

America First Legal Foundation ("AFL") has sued the Department of Justice ("DOJ") for failing to grant expedited processing of three Freedom of Information Act requests about the federal government's vetting (or lack thereof) of persons flown out of Afghanistan during the United States' retreat, the State of Georgia's election law, and the Attorney General's October 4, 2021 Memorandum targeting school parents for federal law enforcement action. In each case, DOJ denied expedited process using boilerplate language and without addressing AFL's justifications, then affirmed the denials on appeal in broad conclusory terms, again without addressing AFL's detailed justification statements. *See* ECF No. 1 ("Compl.") ¶¶ 4-6; *see also* ECF No. 1-2; ECF No. 1-5; ECF No. 1-8. AFL sued DOJ alleging both that the denials were unlawful and that "Defendants have engaged in an unlawful policy or practice of violating the

FOIA to keep AFL from obtaining and publicly disclosing politically derogatory information about the Biden Administration, its appointees, and its allies." Compl. ¶ 11; *see id.* ¶¶ 48-52.

Defendants move to dismiss AFL's policy-and-practice claim for relief, arguing that AFL's FOIA requests are "too few" and "too diverse" to establish this claim. ECF No. 6-1 ("Memo."), at 1. But a policy or practice does not require dozens of unlawful denials, and common features unite these requests. Each was submitted by AFL and they "seek records likely to cast the Biden Administration in a negative light on matters of intense public concern, media interest, and political consequence." Compl. ¶ 49. According to DOJ, "AFL does not allege that DOJ denied expedited processing to every FOIA request AFL has filed." Memo. 7. But the complaint alleges that "[s]ince the Biden Administration took office, Defendants have not fulfilled any FOIA requests from AFL." Compl. ¶ 10. And DOJ has denied expedited processing even when the Departments of Defense, Homeland Security, and State granted it for substantively identical requests. *Id.* ¶ 7. AFL's complaint plausibly alleges both that its requests meet the statutory and regulatory requirements for expedited processing and that Defendants' denial is part of an unlawful policy or practice. Defendants' motion to dismiss in part should be denied.

FACTS

AFL is a national, nonprofit organization committed to protecting constitutional rights through, *inter alia*, robust oversight of the Executive Branch using the FOIA. *See* Compl. ¶¶ 1, 17, 45; ECF No. 1-1, at 1, 6; ECF No. 1-3, at 1, 9;

ECF No. 1-6, at 1, 10; America First Legal, Oversight, https://www.aflegal.org/oversight. AFL's core mission includes informing and educating the public regarding the operations and activities of the federal government, and it intends to give the public access to the records it obtains via the FOIA on its website and to disseminate the requested records by making them broadly available to the public, scholars, and the media; and to use its editorial skills to turn raw materials into distinct work and distribute that work to an audience. Compl. ¶ 45; ECF No. 1-1, at 1, 14; ECF No. 1-3, at 1, 17; ECF No. 1-6, at 1, 4-5, 13.

AFL's email list includes over 65,000 unique addresses,[1] its Twitter page has nearly 10,000 followers, the Twitter page of its Founder and President has over 83,800 followers, and it has another 18,000 followers on the GETTR social media platform. Compl. ¶ 45. Although AFL is a new organization, the U.S. Departments of State, Homeland Security, and Defense, and the United States Centers for Disease Control and Prevention, have granted AFL expedited processing. *Id.*; ECF No. 1-3, at 21-57; ECF No. 1-6, at 70.

Three specific FOIA requests are at issue: vetting of Afghan nationals, Georgia's election law, and DOJ's targeting of parents exercising First Amendment rights at school board meetings. Each time, AFL justified expedited processing at length in the original request; Defendants denied it in boilerplate language without addressing AFL's justifications; AFL appealed, providing additional legal and factual

[1] As noted in the Complaint, later, for cybersecurity reasons, AFL reviewed and scrubbed its email list. AFL's email list contains about 25,000 valid unique addresses. Compl. ¶ 45(d).

bases for expedited processing; and, Defendants denied the appeals in broad, conclusory terms that again failed to address AFL's justifications—even while other federal agencies granted substantively identical requests.

A. Afghanistan: FOIA-2021-02103

On August 31, 2021, AFL submitted request number FOIA-2021-02103 seeking expedited processing of two items: 1) Records related to screening or vetting of evacuees held by six specified custodians, and 2) records related to DOJ's communications with other government partners related to the identity of people who boarded a U.S. operated aircraft leaving Afghanistan between August 10, 2021, and August 31, 2021. ECF No. 1-1, at 14. DOJ denied expedition on September 10, 2021, stating that the "Office cannot identify a particular urgency to inform the public about" the subject of the request, and there was no reason to believe lack of expedited processing poses a threat to life or safety. *Id.* at 18.

AFL appealed this decision on the merits, explaining why AFL's request met the standard for expedition under the FOIA, D.C. Circuit precedent, and DOJ's own FOIA regulations. *Id.* at 4-7. AFL also advised DOJ that the Departments of State, Defense, and Homeland Security had granted expedited processing of nearly identical requests. Compl. ¶ 7; *see* ECF No. 1-1, at 3, 21-57.

On November 1, 2021, DOJ denied AFL's appeal. Compl. ¶ 23, ECF No. 1-2. Without explanation, DOJ declared that AFL had not established the Biden Administration's Afghan retreat and the vetting of Afghans admitted to the United States are matters of "current exigency" to the American public and had not shown

that delaying a response would compromise a significant recognized interest. *Id.* at 2. Citing *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270 (D.D.C. 2012) and *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005), DOJ further declared that AFL had not demonstrated that it is "'primarily engaged' in disseminating information as a matter of law. ECF No. 1-2, at 2. But DOJ did not acknowledge, address, or distinguish the more recent cases (and the DOJ's litigating position) that AFL cited establishing that it does. *See* ECF No. 1-1, at 1, 14; *see, e.g.*, *Protect Democracy Project, Inc. v. Dep't of Justice*, 498 F. Supp. 3d 132, 139 (D.D.C. 2020) ("[P]ublishing information need not be the organization's sole occupation." (cleaned up)); *Protect Democracy Project, Inc. v. Dep't of Defense*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017) (similar); *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020) (holding that "a non-partisan law and public policy" qualified "as an organization 'primarily engaged in disseminating information'").

Additionally, and for the first time in the context of this request and appeal, the DOJ cited a determination by Defendant Coley, a political appointee, that AFL "failed to sufficiently demonstrate that subject of your request is '[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.'" ECF No. 1-2.

B. <u>The Voting Section: 21-00291-F</u>

The State of Georgia's election integrity measures have generated exceptional media, political, and public attention. *See* ECF No. 1-3, at 5. On June 11, 2021,

Attorney General Garland announced plans to "double" the Voting Section's head count on or before July 21, 2021. *Id.* at 10. Two weeks later, DOJ sued the State of Georgia. DOJ Office of Public Affairs, Justice Department Files Lawsuit Against the State of Georgia to Stop Racially Discriminatory Provisions of New Voting Law (June 25, 2021), https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-georgia-stop-racially-discriminatory.

On August 31, 2021, AFL filed Request 21-00291-F, and requested expedited processing, to obtain records related to these actions—in part because of longstanding concerns about the possibility of an inappropriate partisan taint in the Voting Section's activities and hiring. Compl. ¶ 24, ECF No. 1-3, at 9-18. On September 10, 2021, the Civil Rights Division's FOIA/PA Branch denied AFL's FOIA request on two grounds. First it asserted that "Items H, I and J regarding the Attorney General's June 11, 2021, policy address are not proper FOIA requests." *Id.* at 24. Second, the Civil Rights Division denied AFL's request for expedited processing because, it stated, AFL had "not demonstrated that your request meets the criteria necessary for expedited processing" and "[w]e have a limited number of staff dedicated to responding to FOIA requests and cannot always allow new requests to take precedence over the hundreds of previously submitted requests." *Id.*

AFL appealed on October 6, 2021, arguing that its requests were proper and it was entitled to expedition under the "compelling need" standard, the statutory test, and D.C. Circuit precedent. Compl. ¶ 26, ECF No. 1-3, at 2-7. AFL also objected because Civil Rights Division failed to explain why AFL failed to meet the applicable

criteria. *Id.* This appeal was assigned tracking number A-2022-00012 and denied, without reasoning, by email on October 27, 2021. Compl. ¶¶ 27-28, ECF No. 1-4, at 1-5.

C. <u>The October 4 Memorandum: FOIA-2022-00056 *et al.*</u>

Request number FOIA-2022-00056 *et al.* concern the Attorney General's Memorandum of October 4, 2021, targeting protesting parents. The Memorandum directs all ninety-three U.S. Attorneys, the FBI, the Criminal Division, Civil Rights Division, and other components to address alleged threats, harassment, and violence by parents at school board meetings. ECF No. 1-6, at 12. The Attorney General's Memorandum came just four days after the National School Boards Association had sent a letter to the President asking for precisely what the Attorney General did. *Id.*

The order of events, the proximity in timing, and the substance of the Attorney General's Memorandum caused deep concern for many, including AFL. *See, e.g.*, Chuck Ross, *Cardona Requested School Board Letter That Called Parents 'Domestic Terrorists*, The Washington Free Beacon (Jan. 11, 2022), https://freebeacon.com/biden-administration/cardona-requested-school-board-letter-that-called-parents-domestic-terrorists/. Thus, on October 7, 2021, AFL requested records from the Office of Information Policy (OIP) (covering custodians within the Office of the Attorney General, the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the White House Liaison, and the Office of Public Affairs), the Office of Legal Counsel (OLC), the Criminal Division, the Civil Rights Division, the

Executive Office of U.S. Attorneys (EOUSA), and the FBI. Compl. ¶¶ 29-43; ECF No. 1-6, at 10. AFL requested expedited processing from each component. *Id.* at 11-19.

OIP denied AFL's request for expedited processing, asserting that AFL's primary purpose was not disseminating information, that there was no threat or loss of due process rights, and that the Director of the Office of Public Affairs had decided this was not a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. ECF No. 1-6, at 1, 21-23. OLC denied AFL's request on identical grounds. *Id.* at 25-27. The Criminal Division denied expedited processing, essentially on the same grounds but without explanation, stating simply that AFL's request did not "fit[] within any of the four Department of Justice standards for expedited treatment." *Id.* at 29. The EOUSA denied AFL's FOIA request entirely, asserting AFL did not reasonably describe the requested records and that a search would be unduly burdensome. *Id.* at 32. The Civil Rights Division did not adjudicate AFL's fee waiver or expedited processing requests. *Id.* at 35. FBI did not respond.

AFL appealed the denials by a single letter filed October 19, 2021. Compl. ¶ 38; ECF No. 1-6. These appeals were broken out by component, and all were denied in summary fashion by October 29, 2021. Compl. ¶¶ 39-43; ECF Nos. 1-7 through 1-16.

D. <u>Subsequent Events</u>

On October 13, 2021, AFL submitted request FOIA-2022-00083. This request, which is not now part of this case, concerned the Attorney General's potential conflict of interest issues from his son-in-law's financial interest in the Attorney General's

October 4 Memorandum. *See* Exhibit 1. On October 22, 2021, DOJ denied expedited processing on the grounds that AFL does not primarily disseminate information. *See* Exhibit 2. It left open the issue of the public interest question. *Id.*

On November 15, 2021, AFL filed this action. According to Defendants' motion, one day later, "DOJ's Public Affairs Office determined that all FOIA requests related to the October 4, 2021, memorandum were to be granted expedition pursuant to § 16.5(d)(1)(iv) [sic]. As a result, [AFL's] FOIA request will receive expedited handling." Memo. 4 n.1. This footnote in Defendants' motion is the first and only indication AFL has received that DOJ had reversed itself as to the October 4 Memorandum FOIA request, and AFL has received no other such communications, much less results. Thus, when this action was filed and to this day, "[s]ince the Biden Administration took office, Defendants have not fulfilled any FOIA requests from AFL." Compl. ¶ 10.

A couple of weeks after this lawsuit was filed, on November 30, 2021, Defendant Coley determined that AFL's new FOIA request (FOIA-2022-00083) involved a matter of public interest and granted AFL expedition. *See* Exhibit 3.

LEGAL STANDARD

Under Fed. R. Civ. P. 12(b)(6), Defendants have moved to dismiss AFL's second claim for relief, which alleges a policy or practice violation of the FOIA. Fed. R. Civ. P. 8(a)(2) provides that a complaint must provide a short and plain statement of the claim showing that the pleader is plausibly entitled to relief. Accordingly, AFL "need not set forth the elements of a prima facie case," *Sparrow v. United Air Lines, Inc.*,

216 F.3d 1111, 1113 (D.C. Cir. 2000), and its complaint "does not need detailed factual allegations." *Bell A. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Instead, AFL need only plead "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up).

A claim should not be dismissed under Rule 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Sparrow*, 216 F.3d at 1114 (cleaned up); *see Iqbal*, 556 U.S. at 678. Along with the allegations made within the four corners of the complaint, the court may also consider "any documents either attached to or incorporated in the complaint" and matters of which it may take judicial notice. *Equal Emp't Opportunity Comm'n v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997). And AFL is entitled to the benefit of all inferences that can be derived from the facts alleged. *See Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994); *Francis v. Internal Revenue Serv.*, 2020 WL 3129030, at *5 (D.D.C. June 12, 2020).

Judicial review should be faithful to the statutory text and purpose and harmonize and give full effect to all relevant provisions. *See Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 666 (2007); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000). The FOIA is the critical means by which citizens may learn "what their Government is up to," "a structural necessity in a real democracy," and it should be construed in a manner promoting government transparency. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171-72 (2004); *see, e.g.*, *NLRB v. Robbins*

Tire & Rubber Co., 437 U.S. 214, 242 (1978); *Quick v. Dep't of Commerce*, 775 F. Supp. 2d 174, 179-80 (D.D.C. 2011). Congress included nine exemptions permitting agencies to withhold information from FOIA disclosure. 5 U.S.C. § 552(b). These exemptions are explicitly made exclusive and must be "narrowly construed." *Milner v. Dep't of the Navy*, 562 U.S. 562, 565 (2011).

Apart from claims seeking relief for specific FOIA requests, requesting parties may also assert a claim that an agency "policy or practice" "will impair the party's lawful access to information." *Judicial Watch, Inc. v. Dep't of Homeland Security,* 895 F.3d 770, 777 (D.C. Cir. 2018); *see also CREW v. Dep't of Hous. & Urb. Dev.*, 415 F. Supp. 3d 215, 224 (D.D.C. 2019); *Payne Enters., Inc. v. United States*, 837 F.2d 486, 491 (D.C. Cir. 1988); *Nat'l Sec. Counselors v. Cent. Intelligence Agency*, 960 F. Supp. 2d 101, 132 (D.D.C. 2013).

District courts have reached a consensus on several points about these claims—a consensus that undermines the government's uncited assertion here that "the threshold for pleading a 'policy or practice' claim" is "high." Memo. 6 (capitalization omitted). First, "a plaintiff need not point to a regulation that establishes the policy or practice, and the agency need not concede the policy's existence." *CREW*, 415 F. Supp. 3d at 224 (cleaned up). Second, "the alleged policy may be informal and need not have been published or written anywhere." *Id.* Third, "a plaintiff cannot state a valid claim arising out of a single incident—there must be a pattern—but a single plaintiff does not need extrinsic evidence." *Id.* Finally, "the

plaintiff must allege agency conduct consistent with the alleged illegal policy or practice." *Id.* at 225.

ARGUMENT

Defendants argue that "AFL has not pled 'factual content that allows the court to draw the reasonable inference that' DOJ has a policy or practice of denying expedited processing to AFL because it wishes to protect the Biden Administration." Memo. 14. First, citing *ACLJ v. FBI*, 470 F. Supp. 3d 1, 7 (D.D.C. 2020), Defendants claim that three denied requests are not enough. Memo. 12. Second, Defendants claim the three requests are "not sufficiently similar" to conclude that there is a common policy or practice. *Id.* Third, Defendants argue the complaint contains "nothing…that would push AFL's assertion that DOJ is 'stonewalling the release of politically derogatory and harmful information about the Biden Administration' beyond rank speculation." Memo. 13. None of these arguments, however, justifies dismissal. *See CREW,* 415 F. Supp. 3d at 225-26.

First, *ACLJ*, cited for the proposition that three is not enough, does not so hold. There, the requestors' grievances stemmed from repeated delays by the government in addressing their FOIA requests. *ACLJ,* 470 F. Supp. 3d at 6-8. The court examined the record and explained that the complaint did not sufficiently allege facts to make it plausible that those three specific delays were a part of a policy or practice instead of isolated, or at least uncoordinated, shortcomings on the government's part. *Id.* Here, by contrast, AFL has alleged and explained the similarities across the three denials and how they are connected to each other. *See* Compl. ¶¶ 1-13, 45-52. Though

the government argues that "AFL does not allege that DOJ denied expedited processing to every FOIA request AFL has filed," Memo. 7, the complaint alleges that "[s]ince the Biden Administration took office, Defendants have not fulfilled any FOIA requests from AFL." Compl. ¶ 10.[2]

The defendants also cite *Judicial Watch, Inc. v. Dep't of Homeland Security*, 895 F.3d 770 (D.C. Circ. 2018). Memo. 11. But *Judicial Watch* does not deal with the improper invocation of exemptions; it is about the promptness with which agencies address FOIA requests. *Judicial Watch*, 895 F.3d at 779. It also does not set a certain number of requests as a bar to a policy or practice claim as a matter of law. In fact, no court has ever held that more than three requests is required to successfully plead a policy and practice claim.[3] And, as the court in *ACLJ* noted, *Judicial Watch* expands the policy or practice standard set in *Payne*. 470 F. Supp. 3d at 5. Far from representing a limitation or a threshold, *Judicial Watch* represents the application of the policy or practice claim to a new set of facts.

Next, the notion that a policy or practice claim *must* be based on a single subject or single type of request is not supportable. The D.C. Circuit "has never articulated a 'single subject' or 'single type of request' requirement for a policy-or-practice claim." *ACLJ,* 470 F. Supp. 3d at 6. Rather, the similarity of the underlying

[2] If there is any question "about the exact nature of the pattern or policy at issue," leave to amend or dismissal without prejudice would be warranted. *ACLJ*, 470 F. Supp. 3d at 8.
[3] "Once is happenstance, twice is coincidence, the third time it's enemy action." Ian Fleming, Goldfinger (Thomas Mercer, 2012).

requests is one factor courts consider, as it suggests the agency's behavior stems from a considered decision rather than isolated mistakes. *See id.* at 6-7.

Here, the core of AFL's complaint is precisely that DOJ's behavior stems from a considered decision to prevent the disclosure of "records likely to cast the Biden Administration in a negative light on matters of intense public concern, media interest, and political consequence." Compl. ¶ 49. Defendants repeatedly denied AFL expedited processing using boilerplate language and failed to address AFL's justifications. *Id.* ¶ 50. Then, they affirmed the denials on appeal in broad conclusory terms that failed to address AFL's subsequent detailed justification statements. *Id.* ¶ 51. And, given the high-profile composition of AFL's board and staff, the matters on which the requests touched, and that Defendant Coley specifically made the decision as a political appointee to deny expedited processing, AFL has pled a facially plausible claim. *Cf. CREW,* 415 F. Supp. 3d at 225 (denying summary judgment to the government where CREW had pled that the "disclosure of the requested documents is likely to cast the agency or HUD Secretary Ben Carson in a negative light.").

Defendants' third argument—that AFL's allegations do not go beyond "rank speculation" (Memo. 9)—is ultimately rooted in an admission that DOJ has never adequately explained its denial of expedited processing for AFL. In each request, AFL articulated multiple ways in which it met the statutory, regulatory, and judicial tests for expedited processing, with abundant citations. Defendants have not articulated a factual or legal basis for their justifications, other than that a political appointee

disagrees. Right after this lawsuit was filed, Defendants abruptly altered course, again without explanation. *See supra* p. 9. Based on the summary nature of the denials, Defendants' failure to address AFL's arguments on appeal, and even their unexplained reversal after being sued, AFL (and this Court) *cannot* know precisely *why* expedited processing was denied in any given case. But AFL has alleged enough facts to make a policy-or-practice claim plausible. *Cf. CREW*, 415 F. Supp. 3d at 224 ("[A] plaintiff need not point to a regulation that establishes the policy or practice." (cleaned up)); *Muttitt v. U.S. Cent. Command*, 813 F. Supp. 2d 221, 231 (D.D.C. 2011) ("[A] formal policy or regulation is not required to sustain a claim for relief enjoining a pattern or practice of violating FOIA.").

Defendants argue that they are not bound by the processing decisions of other agencies and that the disparate outcomes between agencies suggests "that something other than political considerations motivated the [defendants'] decisions" to deny expedited processing. Memo. 13. But *Defendants* processed AFL's requests quite consistently, denying each of AFL's requests for expedited processing (at least until this lawsuit).

As then-Judge Garland held some twenty years ago, the FOIA applies government-wide:

> Were district courts required to defer to agency determinations of "compelling need," they would have to affirm disparate (albeit, reasonable) decisions reached by different agencies regarding the same request. As the government agreed at oral argument, however, Congress did not contemplate such a result. Indeed, it is precisely because FOIA's terms apply government-wide that we generally decline to accord deference to agency interpretations.

Al-Fayed v. CIA, 254 F.3d 300, 306-07 (D.C. Cir. 2001). If Defendant Coley is treating AFL's requests differently than the Departments of Homeland Security or Defense and not explaining the reasons, then it is fair to assume that political motivations are at least a plausible explanation for his determinations. Similarly, DOJ's abrupt reversal shortly after AFL filed this policy-or-practice lawsuit, and its decision to grant expedited processing with respect to AFL's request seeking more information relating to the Attorney General's potential conflicts of interest on the October 4 Memorandum, plausibly suggest that AFL's expedited processing requests were purposefully denied by the Biden Administration. *See supra* p. 9. Deposition testimony from Defendant Coley explaining the processing decisions would prove illuminating and, given DOJ's failure to articulate the reasons for denying expedited processing, the only way for AFL, the Court, and the public to learn why the Defendants chose to act as they did.

CONCLUSION

In *CREW,* the court denied the government's motion to dismiss by holding that the plaintiff had properly pled a policy or practice claim based on allegations in the complaint and its attached documents showing denials "shortly after receiving the requests, using boilerplate language and failing to address the requesters' justifications, and then affirmances of the denials on appeal in broad conclusory terms that [failed] to address the requesters' subsequent detailed justification statements." 415 F. Supp. 3d at 225. So too here. Given the facts above, and the

reasonable inferences drawn from them, AFL has alleged a policy or practice claim that is facially plausible. As in *CREW*, the government's motion should be denied.

Respectfully submitted,

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January 12, 2022

October 13, 2021

Via Online Portal and Email

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Freedom of Information Act Request: Merrick B. Garland, Alexander Tanner aka "Xan" Tanner, and Panorama Education, Inc.

Dear Mr. Hibbard:

America First Legal Foundation ("AFL") is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

I. Introduction

Panorama Education, Inc. (Panorama) is a closely held, self-described seller of software and services to K-12 schools.[1] It claims to help "state and district leaders build

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[1] Compare Panorama Education, Inc., *Commonwealth of Massachusetts Annual Report* (3/26/2021) https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearchViewPDF.aspx; Panorama Education,

capacity within their systems to drive strategic initiatives on equity and inclusion and plan next steps to cultivate equitable, culturally responsive schools" and to "provide key insights into gaps between teacher groups by gender, race/ethnicity, and other key indicators to ensure that professional development opportunities are impacting all teacher and staff groups equitably."[2] In simple terms, Panorama sells race-focused student and teacher surveys, data management tools, and training on systemic racism and oppression, white supremacy, implicit bias, and intersectionality, often under the rubric of "Social-Emotional Learning." The business model depends on the credulous willingness of school districts to embrace extreme Critical Race Theory and gender ideology indoctrination of America's K-12 schoolchildren, indoctrination paid for by unwitting local and federal taxpayers, all to generate return for Panorama's leftist billionaire corporate investors.

For example, according to public data, Panorama has had eight funding rounds totaling approximately $92.7 million since 2013.[3] Investors reportedly include technology and financial sector oligarchs Laurene Powell Jobs (Apple/Emerson Collective), Priscilla Chan Zuckerberg (Facebook/Chan Zuckerberg Foundation), Nick Pritzker (Hyatt Development Corporation/Tao Capital Partners) and others.[4] Notwithstanding these billionaire funding sources, Panorama promises school districts "most districts find funds for Panorama in the general budget" paid for by local taxpayers "or federal funding sources" paid for by federal taxpayers, while "several private, nonprofit, and corporate grants align with the work that Panorama supports in schools."[5]

Inc., *Commonwealth of Massachusetts Annual Report* (3/12/2020) https://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSearchResults.aspx. These summary reports show, among other things, the apparent disappearance of approximately 18,000,000 shares of stock between the 2020 and 2021 reporting years.

[2] Panorama Education, Inc., *Funding & Grants for Panorama* (accessed Oct. 11, 2021) https://www.panoramaed.com/funding.

[3] Crunchbase, *Panorama Education* (accessed Oct. 11, 2021) https://www.crunchbase.com/organization/panorama-education/company_financials; Adam Andrzejewski, *Panorama Education, Owned by U.S. AG Merrick Garland's Son-In-Law, Contracted with 23,000 Public Schools & Raised $76M From Investors*, FORBES (Oct. 12, 2021) https://www.forbes.com/sites/adamandrzejewski/2021/10/12/panorama-education-owned-by-us-ag-merrick-garlands-son-in-law-contracted-with-23000-public-schools-for-social--emotional-climate-surveys/?sh=35ece0314e60.

[4] *Id.*; *see e.g.* Emerson Collective XQ Institute, *Evolving the Common App: The First Step Toward Anti-Racist College Admissions* https://xqsuperschool.org/rethinktogether/common-app-anti-racist-college-admissions/ (accessed Oct. 11, 2021); Claire Cain Miller, *"Lauren Powell Jobs and Anonymous Giving in Silicon Valley",* THE NEW YORK TIMES (May 24, 2013) https://bits.blogs.nytimes.com/2013/05/24/laurene-powell-jobs-and-anonymous-giving-in-silicon-valley/?_r=0&mtrref=undefined&gwh=EEEBAF592664CAFD0853F049C9E86172&gwt=pay&assetType=PAYWALL; General Atlantic, *About Us*, https://www.generalatlantic.com/about-us/ (accessed Oct. 11, 2021). Notably, General Atlantic, a key Panorama investor that claims to invest responsibly, also invests in corporations tied to or instrumentalities of the Chinese Communist Party. *See id.,* https://www.generalatlantic.com/portfolio/ (accessed Oct. 11, 2021).

[5] Panorama Education, Inc., *Funding & Grants for Panorama* (last visited Oct. 11, 2021) https://www.panoramaed.com/funding.

Allegedly, Panorama's corporate secretary is Alexander Tanner, Attorney General Merrick B. Garland's son-in-law.[6] Upon information and belief, Tanner currently has an equity stake in and is paid by Panorama.

Americans have a fundamental liberty interest in, and the Constitutional right to control and direct, the education of their own children.[7] Accordingly, parents across the nation are speaking out against Critical Race Theory and other forms of anti-religious, anti-family public school indoctrination. And as prominent members of the Democrat party[8] currently campaign on the platform that parents should not have a say over what is taught in schools,[9] the President's top attorney is activating law enforcement to ensure that they do not. On October 4, 2021, the Attorney General issued a Memorandum to the Federal Bureau of Investigation, the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and all

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[6] According to Panorama's corporate filings, its officers and directors are Aaron Feuer, President, 24 School Street, 4th Floor, Boston, MA 02108; Alexander Tanner, Secretary (same address); Amit Patel, Director, 400 Pacific Avenue, 3d Floor, San Francisco, CA 94133; Ross Jensen, Director, 555 Bryant Street, #259 Palo Alto, CA 94301; and Alex Finkelstein, Director, 137 Newbury Street, 8th Floor, Boston, MA 02116.

[7] *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O'Connor, J.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

[8] The Virginia gubernatorial race is considered a "bellwether" for upcoming Congressional elections. *See*, Zach Montellaro and Stephanie Murray, *It's Go Time in Tight Virginia Race*, POLITICO (Oct. 11, 2021) https://www.politico.com/newsletters/weekly-score/2021/10/11/its-go-time-in-tight-virginia-race-798136 ("We are just 22 days away from Election Day in the Virginia gubernatorial race, which has long been considered a political bellwether"); Christopher Cadelago, *'People Are Going to Get Skittish:' White House Sweats Over McAuliffe*, POLITICO (Sep. 28, 2021) https://www.politico.com/news/2021/09/28/white-house-mcauliffe-514455 ("President Joe Biden can't afford Terry McAuliffe to lose the governor's race in Virginia – and the White House knows it"); Henry Gomez, *Obama to Campaign for McAuliffe in Tight Race for Virginia Governor*, NBC NEWS (Oct. 12, 2021) https://www.nbcnews.com/politics/elections/obama-campaign-mcauliffe-tight-race-virginia-governor-n1281321 ("Virginia holds its election for governor every four years in the year after a presidential election, making the contest both a referendum on the party in the White House and a bellwether for the following year's midterm races"). Moreover, the political importance of this election is demonstrated by the fact that the current President and most recent former president from the same party are campaigning for McAuliffe. *See*, Rachel Bade, *POLITICO Playbook PM*, POLITICO (Oct. 12, 2021) https://www.politico.com/newsletters/playbook-pm/2021/10/12/pelosi-floats-a-debt-ceiling-plan-b-494667?tab=most-read ("Former President Barack Obama is planning to rally for Terry McAuliffe next week … And despite all that has been made of McAuliffe's apparent distancing from President Joe Biden, the former governor said today that Biden will return to the campaign trail before voters go to the polls."); Tara Palmeri, *POLITICO Playbook PM: Does McAuliffe Have a Biden Problem?*, Politico (Oct. 6, 2021) https://www.politico.com/newsletters/playbook-pm/2021/10/06/does-mcauliffe-have-a-biden-problem-494600.

[9] *See*, Brittany Bernstein, *McAuliffe Argues Parents Shouldn't Have Control over Public School Curriculum*, NATIONAL REVIEW (Sep. 29, 2021) https://www.nationalreview.com/news/mcauliffe-argues-parents-shouldnt-have-control-over-public-school-curriculum/; Michael Lee, *McAuliffe Says He Doesn't Believe Parents Should Tell Schools What to Teach*, FOX NEWS (Sep. 28, 2021) https://www.foxnews.com/politics/mcauliffe-says-he-doesnt-believe-parents-should-control-what-schools-teach.

United States Attorneys apparently to chill parents from challenging both such indoctrination and the payments to firms such as Panorama needed to carry it out.[10] Given that his son in law has a direct financial interest in this agenda item, it raises questions as to the propriety of the Attorney General's order, and whether he stands to gain financially from it.[11]

AFL's 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, 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. We are concerned the Attorney General may have violated applicable conflict of interest laws and regulations because the department's regulations prohibit an employee from participating, without authorization, in a particular matter having specific parties that could affect the financial interests of his household. Therefore, pursuant to the Freedom of Information Act (FOIA)[12] we request the records specified below.

II. Custodians

A. The Office of the Attorney General

B. The Office of Professional Responsibility

C. The Office of Public Affairs

D. The Office of Legislative Affairs

E. The Office of the White House Liaison

F. The Justice Management Division

III. Requested Records

A. All Public Financial Disclosure Reports (Forms SF-278 and Forms 278-T) for Merrick B. Garland and records related thereto. This includes any waivers, or requests for waivers, pursuant to the federal financial conflicts of interests statute,

[10] https://www.justice.gov/ag/page/file/1438986/download; *see also* Sen. Ted Cruz, Sen. Mike Lee, and Sen. Marsha Blackburn, Letter to the Hon. Merrick Garland, Attorney General (Oct. 8, 2021) https://www.cruz.senate.gov/imo/media/doc/202110.08crtlettertoaggarland.pdf.

[11] Federal ethics regulations provide that, "where the employee determines that the circumstances would cause a reasonable person with knowledge of relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee…." 5 C.F.R. § 2635.502(a).

[12] 5 U.S.C. § 552(a).

18 U.S.C. § 208, or any authorizations, or requests for authorizations, pursuant to the federal impartiality regulations, 5 C.F.R. § 2635.502. The relevant time is January 1, 2017, to the date this Item is processed.

B. All records mentioning or referring to Alexander Tanner aka "Xan" Tanner. The relevant time is January 1, 2021, to the date this Item is processed.

C. All records mentioning or referring to Panorama. The relevant time is September 1, 2021, to the date this Item is processed.

D. All records of communications between the department and any person with an email address containing "eop.gov" regarding or referring to (1) Merrick B. Garland, or (2) Alexander Tanner aka "Xan" Tanner, and/or (3) Panorama. The relevant time is October 1, 2021, to the date this Item is processed.

IV. Redactions

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL's requests and make a good faith effort to search for requested records using methods "which can be reasonably expected to produce the information requested." At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment.[13]

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; a single record cannot be split into responsive and non-responsive bits. Consequently, the department 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" broadly, giving full effect to applicable law, including 44 U.S.C. 3301(a).

- 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,

[13] 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep't of the Army,* 920 F.2d 57, 68 (D.C. Cir. 1990).

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 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 take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold.

V. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

Fees should be waived "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." AFL's request concerns identifiable operations or activities of the government, and the information requested regarding the Attorney General's compliance with department ethics regulations is likely to contribute significantly to the public understanding such activities.

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. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. 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 previously has been acknowledged and recognized by this department and by the Departments of Defense, Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

VI. Expedited Processing

The department must grant expedited processing to requests involving an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.[14] By this test, AFL should be granted expedited processing on Items A, B, and C. First, the department and other federal agencies have acknowledged AFL is primarily engaged in disseminating information. Second, the Attorney General's compliance with ethic rules is assuredly a matter of "actual or alleged Federal Government activity." Third, the common public meaning of "urgency" at the time of § 552(a)(6)(E)(v)(II)'s enactment was "the quality or state of being urgent." The common public meaning of "urgent", in turn, was "requiring or compelling speedy action or attention."[15] The controversy regarding the Attorney General's Memorandum of October 4, 2021, continues to metastasize. The public's urgent interest in the Attorney General's ethical compliance, or lapses, with respect to the deployment of federal law enforcement resources against American parents speaking out at school board meetings cannot be gainsaid.

In the alternative, the department should grant AFL expedited processing of Items A, B, and C under the department's expanded regulatory test for matters of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence, even if it concludes AFL fails the statutory test. *See* 28 C.F.R. § 16.5(e)(1)(iv). The Attorney General's October 4,

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[14] 5 U.S.C. §§ 552(a)(6)(E)(i)(I), 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. §§ 16.5(e)(ii).

[15] The FOIA must be interpreted in accord with the ordinary public meaning of its terms at the time of enactment. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020).

2021, memorandum, and the issue of his family's economic interest in its subject matter, have become one of the most pressing of the day.[16] Accordingly, AFL's expedited processing request should be granted.

Also in the alternative, the Circuit test for expedited processing requires the department to weigh three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.[17] AFL meets this test as well. Respecting factor one, as noted above, the Attorney General's October 4, 2021, memorandum and his possible ethical violations are assuredly matters of public concern and media interest and central to a pressing issue of the day. Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding Critical Race Theory, gender ideology, and federal abuse and overreach. Being closed off from the opportunity to debate the department's conduct here, including its potential use of its various authorities against parents who speak out against racist propaganda and inappropriate sexual material itself is a harm in an open democracy.[18]

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[16] *See, e.g.*, Brittany Bernstein, *Parents Group Sounds Alarm Over AG Garland's Ties to Pro-CRT, Zuckerberg-Backed Consultancy*, NATIONAL REVIEW (Oct. 7, 2021) https://www.nationalreview.com/news/parents-group-sounds-alarm-over-ag-garlands-ties-to-pro-crt-zuckerberg-backed-consultancy/; Jerry Dunleavy, *GOP Senators Rise Conflict of Interest Concerns Over Garland's Son-In-Law's Education Company*, WASHINGTON EXAMINER (Oct. 10, 2021) https://www.washingtonexaminer.com/news/gop-senators-raise-conflict-interest-concerns-garland-son-in-law-company-panorama-education; Elizabeth Elkind, *Daughter of Attorney General Who Ordered DOJ to Probe Angry Parents for Domestic Terrorism is Married to Founder of Education Group that Promotes Critical Race Theory: Merrick Garland Accused of a Conflict of Interest*, DAILY MAIL (Oct. 7, 2021) https://www.dailymail.co.uk/news/article-10069425/Garland-accused-conflict-ties-education-group-promoting-Critical-Race-Theory.html.

[17] *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

[18] In *Protect Democracy Project*, the District Court reasoned:

> But do the requests touch on 'a matter of current exigency to the American public,' and would 'delaying a response…compromise a significant recognized interest,' *Al–Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide 'exigency': In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that 'the President's decision to initiate military action is of the utmost importance to the public,' and that 'whether the President has the legal authority to launch [such] a military strike' is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation's most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy's requests.

Protect Democracy Project, Inc. v. U.S. Dep't of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute "urgent" then certainly, then the Attorney General's conduct here and his role in chilling parents' speech do as well.

Disclosing relevant records months or even years from now will be of academic interest only, for any damage will have been done and stale information is of little value.[19] Respecting factor three, AFL's Items certainly involve "federal government activity."

Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL's FOIA requests and the extremely limited time window.

Finally, by way of this letter, AFL certifies its compelling need for expedited processing of Items A, B, and C for the purposes of 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(3).

VII. 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, 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.

VIII. 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 FOIA@aflegal.org. Finally, if AFL's request for a fee waiver and for expedited processing are not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Reed D. Rubinstein
Reed D. Rubinstein
America First Legal Foundation

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[19] *See Payne Enterprises, Inc. v. United States,* 837 F.2d 486, 494 (D.C. Cir. 1988).

U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

October 22, 2021

Reed Rubinstein
America First Legal
foia@aflegal.org

Re: FOIA-2022-00083
DRH:GMG

Dear Reed Rubinstein:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on October 13, 2021, in which you requested records of the Office of the Attorney General, Office of Public Affairs, and Office of Legislative Affairs concerning Alexander Tanner, Panorama Education, and concerning the financial disclosure reports of Attorney General Merrick Garland.

You have requested expedited processing of your request pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Courts have held that to qualify under this standard, an organization must be "primarily, and not just incidentally, engaged in information dissemination." *Landmark Legal Foundation v. EPA*, 910 F. Supp. 2d 70, 276 (D.D.C. 2012). Based on the information you have provided, I have determined that your request under this standard should be denied. The primary activity of your organization does not appear to be information dissemination, which is required for a requester to qualify for expedited processing under this standard.

You have also requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). Please be advised that as of the date of this letter, a decision on your expedition request is still pending. Once a determination has been made, we will promptly notify you. Nevertheless, please be advised that your request has been assigned to an analyst in this Office and our processing of it has been initiated.

To the extent that your request requires a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time

needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track, pending the expedition determination of the Director of Public Affairs. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Douglas R. Hibbard
Chief, Initial Request Staff

U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

November 30, 2021

Reed Rubinstein
America First Legal
foia@aflegal.org

Re: FOIA-2022-00083
DRH:ADF:GMG

Dear Reed Rubinstein:

This is to further acknowledge receipt of your Freedom of Information Act request dated and received in this Office on October 13, 2021, in which you requested records of the Office of the Attorney General, Office of Public Affairs, and Office of Legislative Affairs concerning Alexander Tanner, Panorama Education, and concerning the financial disclosure reports of Attorney General Merrick Garland.

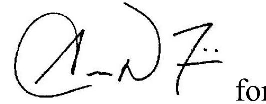
You have requested expedited processing of your request pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See id. § 16.5(e)(2). The Director has determined that your request for expedited processing should be granted.

Although your request has been granted expedited processing, we are required to advise you that the records you seek require a search in and/or consultation with another Office, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2018). Accordingly, we have not yet completed a search to determine whether there are records within the scope of your request. The time needed to process your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request. Your request has been assigned to the expedited track and will be processed as soon as practicable.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

 for

Douglas R. Hibbard
Chief, Initial Request Staff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

____

AMERICA FIRST LEGAL
FOUNDATION,

Plaintiff,

Case No. 1:21-cv-03024 (TSC)

v.

ANTHONY COLEY, et al.,

Defendants.
_________________________________/

[PROPOSED] ORDER DENYING
DEFENDANTS' PARTIAL MOTION TO DISMISS

Upon consideration of the parties' memoranda, it is on this ____ day of

_____________, 20___, **ORDERED** that Defendants' Partial Motion to Dismiss,

ECF No. 6, is hereby **DENIED**.

Dated: ________________

____
Tanya S. Chutkan
United States District Court Judge