

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICA FIRST LEGAL FOUNDATION,  
611 Pennsylvania Ave SE #231  
Washington, DC 20003

*Plaintiff,*

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY,  
2707 Martin Luther King Jr. Ave, SE  
Washington, DC 20528

U.S. DEPARTMENT OF HOMELAND  
SECURITY OFFICE OF INTELLIGENCE  
AND ANALYSIS,  
2707 Martin Luther King Jr. Ave, SE  
Washington, DC 20528

*Defendants.*

Civil Action No. 1:22-cv-986

**COMPLAINT**

1. Plaintiff America First Legal Foundation (“AFL”) brings this action against the Defendants U.S. Department of Homeland Security (“DHS”) and U.S. Department of Homeland Security Office of Intelligence and Analysis (“I&A”), to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. On June 15, 2021, the President released the “National Strategy for Countering Domestic Terrorism” (the “Domestic Surveillance Strategy”), an unprecedented fusion of the government’s national security apparatus with private technology companies to monitor the speech and associations of U.S. citizens. *See* Exhibit 1.

3. The Domestic Surveillance Strategy assures that the government’s monitoring and other activities will safeguard “constitutionally protected activity.” *Id.* at 7. But it says nothing about how it will do so, or who decides what is, or is not, “constitutionally protected activity” in any given case.

4. Instead, in an unprecedented fusion with private businesses, the government has weaponized the domestic security apparatus (DHS, the Justice Department, and the Federal Bureau of Investigation), as well as the Departments of Defense and State, the National Counterterrorism Center, and unnamed “others” (upon information and belief the Central Intelligence Agency and the National Security Agency) to monitor and “address” “misinformation” and “disinformation” – terms without a fixed or commonly understood legal meaning - without saying who will be the arbiter of what is correct or allowable. *See Id.* at 20.

5. “I&A is a member of the U.S. Intelligence Community (IC).” Inspector Gen., Dep’t of Homeland Sec., *I&A Identified Threats prior to January 6, 2021, but Did Not Issue Any Intelligence Products before the U.S. Capitol Breach (REDACTED)*, OIG-22-29 at 3 (Mar. 4, 2022), <https://www.oig.dhs.gov/sites/default/files/assets/2022-03/OIG-22-29-Mar22-Redacted.pdf> (citing <https://www.intelligence.gov/how-the-ic-works>). *See* Exhibit 2. It disseminates its products, *inter alia*, to “private sector partners.” *See Id.* at 3-6. A branch within I&A “is the lead for identifying and reporting threats made online via social media ... [and] collects threats based on intelligence requirements developed by the IC or [DHS].” *Id.* at 5.

6. Consistent with the Domestic Surveillance Strategy, DHS issued a National Terrorism Advisory Bulletin on February 7, 2022, affirming “[t]he United States remains in a heightened threat environment fueled by several factors, including an online environment filled with false or misleading narratives and conspiracy theories, and other forms of mis- dis- and mal-

information.” Dep’t of Homeland Sec., *Summary of Terrorism Threat to the U.S. Homeland* (Feb. 7, 2022), <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-february-07-2022>. Nowhere, however, does DHS or I&A define what is a “false or misleading narrative and conspiracy theory,” “misinformation,” “disinformation,” or “malinformation.”

7. Upon information and belief, I&A is actively reporting to and colluding with private sector companies against American citizens.

8. This is an existential threat to Americans’ civil liberties and to our election integrity. *Compare* Natasha Bertrand, “Hunter Biden story is Russian disinfo, dozens of former intel officials say”, Politico (Oct. 19, 2020), <https://www.politico.com/news/2020/10/19/hunter-biden-story-russian-disinfo-430276>; Ben Weingarten, “Hunter Biden Laptop Scandal Is the Ultimate American Information Operation,” Newsweek (Mar. 23, 2022), <https://www.newsweek.com/hunter-biden-laptop-scandal-ultimate-american-information-operation-opinion-1690293>; Kyle Smith, “How Dem officials, the media and Big Tech worked in concert to bury the Hunter Biden story”, The New York Post (Mar. 18, 2022), <https://nypost.com/2022/03/18/how-big-tech-media-and-dems-killed-the-hunter-biden-story/>; *see also* Nicholas Wade, “A Covid Origin Conspiracy?”, The City Journal (Jan. 23, 2022), <https://www.city-journal.org/covid-origin-conspiracy>. Supporting former President Trump, and opposing the Biden Administration, is not terrorism, and the theory that the COVID-19 virus was released from the Wuhan Institute of Virology is not a conspiracy or disinformation.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. It may grant declaratory relief under 28 U.S.C. § 2201, *et seq.*

10. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

## PARTIES

11. AFL is a 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 encourage public knowledge and understanding of the law and individual rights guaranteed under the United States Constitution and the laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. All records produced by Defendants will be made publicly available on AFL's website for citizens, journalists, and scholars to review and use. AFL's principal office is in the District of Columbia.

12. DHS is an agency of the federal government under 5 U.S.C. § 552(f) and has possession and control of records AFL seeks.

13. I&A, a component of DHS, is an agency of the federal government under 5 U.S.C. § 552(f) and has possession and control of records AFL seeks.

14. I&A is part of the federal Intelligence Community (IC) and is authorized to access, receive, and analyze law enforcement information, intelligence information, and other information from Federal, state, and local government agencies, and private sector entities, and to disseminate such information to those partners. I&A is the only IC member statutorily tasked with providing intelligence to state, local, and other non-federal officials.

15. I&A's authorizing statute is 6 U.S.C. § 121. It does not use the words "misinformation," "disinformation," "malinformation," or "conspiracy theories"; it does not authorize I&A to track American citizens for "misinformation," "disinformation," "malinformation," or "conspiracy theories"; and it does not authorize I&A to share information

about American citizens with private corporations for the sin of sharing, speaking, or thinking what Biden Administration political officials and corporate oligarchs have declared is “misinformation,” “disinformation,” “malinformation,” or “conspiracy theories,” at any given time.

### **AFL’S FOIA REQUEST**

16. To better understand the operation and execution of the Domestic Surveillance Strategy, AFL submitted a FOIA request to I&A on July 22, 2021. *See* Exhibit 3.

17. AFL submitted its FOIA request to I&A by e-mail, sending it to I&AFOIA@hq.dhs.gov (sic), and to DHS through the DHS FOIA Public Access Portal (“PAL”) at <https://foiarequest.dhs.gov/>. *See* Exhibit 4.

18. On July 22, 2021, AFL received an e-mail from DHS acknowledging receipt of the FOIA request and assigning it reference number 2021-IAFO-00244. *See* Exhibit 5.

19. On July 22, 2021, AFL received another email from DHS stating that the status of the FOIA request had been updated to ‘Received’ in the DHS PAL. *See* Exhibit 6.

20. At some time after July 22, 2021, the status of AFL’s FOIA request in the DHS PAL was updated to ‘Assigned for Processing’, but AFL received no email providing this information.

21. At some time after July 22, 2021, the ‘Estimated Delivery Date’ for the FOIA request in the DHS PAL was updated to ‘9/7/2021’, but AFL received no email providing this information.

22. To date, AFL has received no further updates or communications from the Defendants about its July 22, 2021, FOIA request.

23. The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).

24. By failing to respond to AFL’s request, the Defendants are depriving AFL and the public of vital information needed to determine whether DHS and I&A are unconstitutionally reporting on private citizens to other government agencies and/or private companies, under the guise of “monitoring” social media activity for “mal-information, mis-information or dis-information”, terms that DHS and I&A alone define and that, upon information and belief, are simply euphemisms for Americans who dissent from the false “narratives” decreed by the Biden Administration and its corporate allies, and who oppose the Biden policies.

**CLAIM FOR RELIEF**  
**Violation of FOIA, 5 U.S.C. § 552**

25. AFL repeats paragraphs 1-24.

26. The Defendants are agencies of the federal government within the meaning of 5 U.S.C. § 552(f).

27. By letter dated July 22, 2021, AFL submitted a FOIA request to I&A.

28. AFL’s FOIA request complied with all applicable statutes and regulations.

29. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b).

30. The Defendants have failed to respond to AFL’s request within the statutory time-period. *See* 5 U.S.C. § 552(a)(6).

31. Accordingly, AFL has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

32. By failing to release any responsive, non-exempt records, or otherwise offer a reasonable schedule for production, the Defendants have violated FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

**PRAYER FOR RELIEF**

WHEREFORE, AFL respectfully requests that this Court:

- i. Declare that the records sought in Exhibit 3 must be disclosed.
- ii. Order the Defendants to search immediately, demonstrating search methods reasonably likely to lead to the discovery of responsive records.
- iii. Order the Defendants to produce by a date certain all non-exempt records responsive to AFL's FOIA request.
- iv. Award AFL attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).
- v. Grant AFL such other and further relief as this Court deems proper.

April 11, 2022

Respectfully submitted,

/s/ Reed D. Rubinstein  
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