



September 8, 2023

Via Email

Lorraine A.G. Tarrow
Records Access Officer
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
agorecordsaccessofficer@state.ma.us

Public Records Request: Misinformation and Disinformation as “Law Enforcement Matters”

Dear Records Access Officer Tarrow,

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 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 X page has over 178,000 followers and the X page of our Founder and President has over 510,000 followers.

I. Background

On September 6, 2023, Assistant Attorney General Hanne Rush responded to AFL’s August 15, 2023, public records request. According to the response, the Office of the Attorney General (AGO) searched for records with the term “vaccine disinformation” and withheld the resulting records to not reveal “the AGO’s position with respect to this and other multistate *law enforcement* matters.” Exhibit A at 2 (Emphasis added).

II. Requested Records

Pursuant to the Massachusetts Public Records Law, MASS. GEN. LAWS ch. 66 § 10 *et seq.*, AFL requests the following records:

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

www.aflegal.org

1. All records sufficient to identify the existence of, and the number of, law enforcement investigations relating to “misinformation” or “disinformation.”

The timeframe of the request is March 31, 2020, to the date the request is processed.

III. Fee Waiver

Per 950 CMR 32.07(2)(k), AFL requests a waiver of all search and duplication fees associated with this request as disclosure of these records would “benefit the public interest” and is likely to “contribute significantly to public understanding of the operations or activities of the government.” Transparency in government was viewed by the founders of this country as a self-evident good. James Madison, the framer of our Constitution, opined that “a popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both.”¹ Americans, including many who call Massachusetts “home,” have grave concerns about seeming collusion between foreign NGOs, Big Tech, and Big Government. The public has a right to access the information requested, and your prompt production of it will help the American people gain a greater understanding of what occurred during the COVID-19 Pandemic.

In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL’s financial interest.

IV. Production

The Massachusetts Public Records Law requires a response within ten business days. If access to the records requested takes longer than expected, please provide information about the extenuating circumstances delaying the response. If any or all parts of this request are denied, please cite each specific exemption you feel justifies the refusal to release the records and provide notification of the appeal procedures available under the law.

To accelerate the 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.

¹ Letter from the Hon. James Madison to W.T. Barry (August 4, 1822) (available at <https://tinyurl.com/3yrchmrf>).

V. 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 is not granted in full, please contact us immediately upon making that determination.

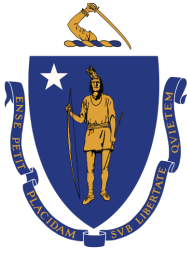
If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Thank you in advance for your cooperation.

Sincerely,

/s/ Michael Ding
Michael Ding
America First Legal Foundation

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

September 6, 2023

VIA E-MAIL ONLY

Michael Ding
America First Legal Foundation
foia@aflegal.org

Re: Your Public Records Request

Dear Michael Ding:

I write in further response to your August 15, 2023 public records request made to the Office of the Attorney General (AGO) for the following (verbatim):

1. All records related to the March 24, 2021 letter [from Connecticut Attorney General Willian Tong and eleven other attorney generals to Twitter and Facebook]
2. All records of communications between the custodians listed above¹ and the Center for Countering Digital Hate or Imran Ahmed, including any email address ending in the domain name "@counterhate.com."

The timeframe of the request is from March 31, 2020, to March 31, 2021.

Please be advised that a public records request must "reasonably describe" the records being sought so that a custodian "can identify and locate [the requested records] promptly." See M.G.L. c. 66 § 10(a)(i) and 950 CMR 32.06(b). In a Massachusetts Superior Court case where a public records requester sought all records "pertaining to" a particular governmental function, the Superior court found that "[t]he reasonable description requirement [of the Public

¹ The listed custodians are the following: 1. Then-Attorney General Maura Healey 2. Kim Driscoll 3. Gabrielle Viator 4. Kate Cook 5. April English 6. Gina Kwon 7. Mary Beckman 8. Terrence Reidy 9. Jillian Fennimore. Please note that Kim Driscoll and Terrence Reidy were not AGO employees during the requested time frame and therefore were excluded from our search for responsive emails.

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Records Law] contemplates that a requesting party will identify documents or categories of documents with sufficient particularity that government employees will be able to understand exactly what they are looking for, and then make a prompt production.” See Jaideep Chawla v. Dep't of Revenue, Suffolk. Sup. No. 1784CV02087, at 2 (January 23, 2019). The court further indicated “[r]equests for documents that are articulated with very broad language that calls upon non-lawyer administrative personnel to interpret the scope of what is sought, and then make fine judgments about what documents are and are not sufficiently 'related' to the category of materials requested, will *not* satisfy this statutory standard.” (emphasis in the original).

As written, part 1 of your request is unreasonable in that it is broad in scope and requires that we “make fine judgments” about whether particular records meet the broad parameters of your request. See Chawla, Suffolk. Sup. No. 1784CV02087, at 2. Your request for “All records related to the March 24, 2021 letter” is too broad in scope to assist us in focusing our search for responsive records. Additionally, for such a broad request, we would be unable to confirm that any records identified as responsive to your request constitute the entire universe of responsive records because, although we are able to search for electronic records, we are unable to review each and every piece of paper created, received and maintained by the AGO.

Notwithstanding our objections to the broad scope of your request as written, with respect to Part 1 of your request, we conducted a search for any email sent to or from the named custodians (excluding two individuals who were not AGO employees, as explained in footnote 1) with the search term “vaccine disinformation.” Following our review of the search results, we enclose sixty-two (62) pages of records that may be responsive to your request and are subject to disclosure under the public records law, M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, cl. 26. Please be advised that we are withholding in their entirety² additional records that may be responsive to your request in accordance M.G.L. c. 4, § 7, cl. 26 as they are (d) intra-agency (internal) and inter-agency (ie., between various state attorneys general offices) communications between and among Assistant Attorneys General and other AGO staff concerning the March 24, 2021 letter, including how public-facing inquiries/statements should be handled, which reflect an ongoing deliberative process, namely the AGO’s position with respect to this and other multistate law enforcement matters, the disclosure of which would taint this ongoing policymaking process primarily by inhibiting the candid thinking that results in reasoned and legally defensible courses of action in this and similar matters in the future; and (f) investigatory materials that reveal confidential investigative techniques, procedures, and

² Because the exempt information is so interwoven within the text of these records, proper redaction would render them meaningless and therefore, withholding them in their entirety is appropriate in this instance.

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sources of information that are necessarily compiled out of the public view, the disclosure of which would so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.³ Furthermore, some of the records constitute communications protected by the attorney-client privilege and the common interest doctrine consistent with the holdings in Suffolk Const. Co., Inc. v. Division of Capital Asset Management⁴ and Hanover Ins. Co. v. Rapo & Jepsen Ins. Services, Inc.⁵ as they are communications between state assistant attorneys general regarding a law enforcement matter handled jointly by various state attorneys general, including Massachusetts.

With respect to Part 2 of your request, we conducted a search for any email with a domain of “@counterhate.com” sent to or from any AGO email within the requested time frame, which rendered zero (0) results.

The public records law permits a custodian of public records to charge requesters for certain costs associated with responding to public records requests. See M.G.L. c. 66, § 10(d) and 950 CMR 32.07. However, M.G.L. c. 66, § 10(d)(ii)(B) provides that no fees shall be charged for the first four (4.0) hours of labor required to respond to a request. As no more than 4.0 hours were required to respond to your request, there are no fees to be paid in this instance.

You have the right to appeal this response to the Supervisor of Records pursuant to M.G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil action in the superior court under M.G.L. c. 66, § 10A(c).

Very truly yours,



Hanne Rush
Assistant Attorney General
General Counsel's Office

cc: Molly McGlynn, Deputy Communications Director

³ See also Rahim v. Dist. Att'y for Suffolk Dist., 486 Mass. 544, 551-552, FN13 (2020).

⁴ See 449 Mass. 444 (2007).

⁵ See 449 Mass. 609 (2007).