

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

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

Plaintiff,

v.

UNITED STATES FEDERAL TRADE
COMMISSION,
600 Pennsylvania Avenue NW
Washington, DC 20850

Defendant

Civil Action No.: 23-2765

COMPLAINT

(For Violation of the Freedom of Information Act)

Parties

1. The Plaintiff, America First Legal Foundation (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 filed the Freedom of Information Act request at issue in this case.

2. The Defendant, the Federal Trade Commission, is an agency under 5 U.S.C. § 522(f), headquartered at 600 Pennsylvania Avenue, NW, Washington, DC

20580. It has possession, custody, and control of the requested records and has not produced a single page to date.

Jurisdiction and Venue

3. The Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201.

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

Facts

5. On March 7, 2023, the United States House of Representatives Committee on the Judiciary and Select Subcommittee on the Weaponization of the Federal Government released an interim staff report on the Federal Trade Commission's harassment of Twitter after Elon Musk acquired the company. *See* COMMITTEE ON THE JUDICIARY AND THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT U.S. HOUSE OF REPRESENTATIVES, THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER (March 7, 2023) (the "Report"), available at <https://bit.ly/3yvb8vD>.

6. The Report's findings and conclusions include:

- Elon Musk completed his acquisition of Twitter on October 27, 2022. Two weeks later, the Federal Trade Commission launched the first of over a dozen demand letters to the company. "These demand letters often followed shortly after Musk took a step that was controversial" to leftist activists. Report at 4.
- On December 2, 2022, journalist Matt Taibbi published the first edition of the Twitter Files, a series of reports documenting how Twitter was previously used by government actors to censor speech online. On December 10, Musk tweeted that "Twitter is both a social media company and a crime scene." Three days later, on December 13, the

Federal Trade Commission demanded details of Twitter’s interactions with journalists, including “Bari Weiss, Matt Taibbi, Michael Shellenberger, Abigail Shrier,” and the identities of all other journalists to whom Twitter had potentially provided access of its internal records. Report at 7

- The Federal Trade Commission demanded Twitter’s explanation for firing Jim Baker, a former FBI General Counsel who helped to censor the Hunter Biden laptop story. Report at 11.
- On October 27, 2022, Musk completed his purchase of Twitter and began to reshape Twitter’s focus and its workforce. A few days later, Twitter announced the roll-out of its new subscription service, Twitter Blue. On November 10, the Federal Trade Commission sent two demand letters asking for voluminous information about Twitter’s personnel actions—terminations and resignations—and about the Twitter Blue service. On November 10, the Federal Trade Commission sent two demand letters asking for voluminous information about Twitter’s personnel actions—terminations and resignations—and about the Twitter Blue service. Report at 9.
- The Federal Trade Commission has “inappropriately stretched its regulatory power to harass Twitter,” misusing a revised consent decree “to justify its campaign of harassment” for partisan political purposes. Report at 11–12, 14.

7. On April 14, 2023, AFL submitted a Freedom of Information Act request to the Federal Trade Commission regarding these matters and requested a fee waiver. Exhibit A at 8–12.

8. On April 17, 2023, AFL received an acknowledgment from the Federal Trade Commission assigning the request case number 2023-00927. Exhibit A at 14.

9. On June 7, 2023, AFL received a denial letter stating:

In response to item 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission’s law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to items 2 through 7 of your request, our search of the FTC’s records did not identify any record that would respond to your request.

Exhibit A at 16–18.

10. On August 10, 2023, AFL timely filed an appeal under 5 U.S.C. § 552(a)(6)(A)(ii) and 16 C.F.R. § 4.11(a)(3). Exhibit A.
11. On September 12, 2023, the Federal Trade Commission denied AFL's appeal. Exhibit B.
12. AFL has exhausted its administrative remedies.

Claims for Relief

Count I: Categorical Denial of Item 1

13. AFL repeats paragraphs 1–12.
14. The Defendant's categorical denial of Item 1 is unlawful. Specifically:
 - A. Item 1 seeks policy statements and interpretations of general applicability, not “witness statements.” These records are not exempt from disclosure under 5 U.S.C. § 552(b)(7)(A).
 - B. The Court in *Robbins Tire & Rubber Co. v. NLRB* found that “witness statements in pending unfair labor practice proceedings are exempt from FOIA disclosure at least until completion of the Board's hearing.” 437 U.S. 214, 236 (1978). AFL's FOIA Request No. 1 is for policy statements, and further, there is no pending “Board hearing” at all relevant time periods. *Id.*
 - C. The Defendant's regulations provide initial determinations to deny “active investigatory files” must be made by the “Director or the Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation” rather than the “deciding official (as designated by the General Counsel).” 16 C.F.R. § 4.11(a)(1)(iii)(B).
 - D. The Defendant's regulations provide that it “will only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law.” 16 C.F.R. § 4.11(a)(1)(iii)(A). The Defendant's regulations further provide that it must “take reasonable steps to segregate and release nonexempt information.” *Id.* It has failed both to undertake the requisite analysis and to segregate and release nonexempt information.

- E. The Defendant has a non-discretionary duty to publish its standards justifying re-opening the Twitter investigation. It has not done so.
- F. The Defendant is not a “law enforcement agency” because Federal Trade Commission commissioners are not subject to the President’s removal power. *See Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2198–99 (2020). Also, the term “law enforcement agency” in § 552(b)(7)(A) must be construed according to its ordinary public meaning at the time of enactment. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539, 202 L. Ed. 2d 536 (2019). The ordinary understanding of “law enforcement” includes the investigation and prosecution of offenses and proactive steps to prevent criminal activity and maintain security. *Milner v. Dep’t of Navy*, 562 U.S. 562, 582 (2011) (Alito, J., concurring). The Federal Trade Commission does not have such authority.
- G. Even if the Federal Trade Commission is a law enforcement agency under FOIA, and Item 1 includes records such as witness statements, the Federal Trade Commission’s denial is still erroneous. A “law enforcement purpose” does not include investigatory activities wholly unrelated to law enforcement agencies’ legislated functions of preventing risks to national security and violations of criminal laws and of apprehending those who do violate the rules. *Pratt v. Webster*, 673 F.2d 408, 420-21 (D.C. Cir. 1982).
- H. To pass the FOIA Exemption 7 threshold, the Federal Trade Commission must establish that its investigatory activities are realistically based on a legitimate concern that federal laws have been or may be violated or that national security may be breached. *Id.* Either of these concerns must have some plausible basis and a rational connection to the object of the agency’s investigation. *Id.*; (see also *Jefferson v. Dep’t of Just., Off. of Pro. Resp.*, 284 F.3d 172, 178 (D.C. Cir. 2002)). It has failed to do this.
- I. The Federal Trade Commission’s regulations require that it must “take reasonable steps to segregate and release nonexempt information.” 16 C.F.R. § 4.11(a)(1)(iii)(A) (emphasis added).

15. AFL should be granted declaratory and injunctive relief under 5 U.S.C.

§ 552(a)(4)(B).

Count II: Items 2 through 7

16. AFL repeats paragraphs 1–15.

17. For Items 2 through 7, the Defendant has failed to make an adequate search, explain its search process in a relatively detailed and non-conclusory way, and/or produce responsive records.

18. This is unlawful. See U.S. DEP'T OF JUST., *Guide to the Freedom of Information Act Procedural Requirements* at 42 (Aug. 20, 2021), <https://bit.ly/3ytafVq>; *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978).

19. AFL should be granted declaratory and injunctive relief under 5 U.S.C. § 552(a)(4)(B).

Relief Requested

WHEREFORE, AFL respectfully requests this Court:

A. Declare that the records sought by the request, as described in the foregoing paragraphs, must be disclosed pursuant to 5 U.S.C. § 552.

B. Order the Defendant, the Federal Trade Commission, to conduct genuine searches immediately for all records responsive to AFL's FOIA request and demonstrate that they employed search methods reasonably likely to lead to the discovery of responsive records.

C. Order the Defendant to produce, by a date certain, all non-exempt records responsive to AFL's FOIA request.

D. Award AFL attorneys' fees and costs pursuant to 5 U.S.C. §552(a)(4)(E).

E. Grant AFL such other and further relief as this Court deems proper.

Dated: September 21, 2023

Respectfully submitted,

/s/ Michael Ding

Juli Z. Haller (DC Bar No. 466921)

Michael Ding (DC Bar No. 1027252)

AMERICA FIRST LEGAL FOUNDATION

611 Pennsylvania Ave SE #231

Washington, DC 20003

(202) 964-3721

juli.haller@aflegal.org

michael.ding@aflegal.org

Counsel for America First Legal Foundation



August 10, 2023

VIA email: FOIAAppeal@ftc.gov
Freedom of Information Act Appeal
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Freedom of Information Act Appeal: FOIA-2023-00927

Dear Ms. Dasgupta:

I. Introduction

On April 14, 2023, America First Legal Foundation (“AFL”) submitted a FOIA request to the United States Federal Trade Commission (“FTC”) and requested a fee waiver. Exhibit 1. On April 17, 2023, AFL received an Acknowledgment Letter from the FTC assigning the request case number 2023-00927. Exhibit 2. On June 7, 2023, AFL received a denial letter stating:

In response to item 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission’s law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to items 2 through 7 of your request, our search of the FTC’s records did not identify any record that would respond to your request.

Exhibit 3.

The FTC’s categorical denial of Item 1 is unlawful because (1) the FTC has a non-discretionary duty to publish its standards justifying re-opening the investigation; (2) the FTC is not a “law enforcement agency”; (3) the Request made no request for witness statements in pending or current materials; (4) denials of materials contained in active investigatory files must be made by the proper “responsible official” under 16 C.F.R. § 4.11(a)(1)(iii)(B); (5) the FTC failed to make a “reasonable harm” determination and attempt to segregate non-exempt information in

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

compliance with 16 C.F.R. § 4.11(a)(1)(iii)(A); and (6) even if the FTC is a “law enforcement agency” it has failed to demonstrate compliance with the two-part test of *Pratt v. Webster*, 673 F.2d 408, 420 (D.C. Cir. 1982). Also, the FTC’s search of Items 2 through 7 is legally inadequate. Accordingly, AFL appeals under 5 U.S.C. § 552(a)(6)(A)(ii) and 16 C.F.R. § 4.11(a)(3).

II. Grounds for Appeal

A. The categorical denial of Item 1 is unlawful

Item 1 seeks:

All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.

Exhibit 1 at 2. The FTC’s categorical denial of this Item is unlawful for the following reasons.

1. The FTC failed to carry out a non-discretionary duty

The FTC had a non-discretionary duty to publish its standards for re-opening the Twitter investigation. The FOIA’s prefatory language states:

Each agency shall make available to the public information as follows: (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public ... (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each amendment, revision, or repeal of the previous. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.

5 U.S.C. § 552(a). The FTC’s standards must be made public, not kept secret; the Commission’s denial of Item 1, therefore, was without competent legal grounds.

2. The FTC is not a “law enforcement agency”

The FTC is not a “law enforcement agency” because it is not an executive agency, and the president does not have unilateral removal power over its commissioners. *See Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2198–99 (2020) (“The Court identified several organizational features that helped explain its characterization of the FTC as non-executive. Composed of five members—no more than three from the same political party—the Board was designed to be ‘non-partisan’ and to ‘act with entire impartiality.’”) (citing *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 624 (1935)). Also, the term “law enforcement agency” must be construed according to its ordinary public meaning at the time of enactment. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539, 202 L. Ed. 2d 536 (2019). The ordinary understanding of law enforcement includes not just the investigation and prosecution of offenses that have already been committed but also proactive steps designed to prevent criminal activity and maintain security. *Milner v. Dep’t of Navy*, 562 U.S. 562, 582 (2011) (Alito, J., concurring).

3. Request 1 is for policy statements, not witness statements

The FTC bears the burden of demonstrating that *all* records covered by Request 1 are law enforcement records. *See Jefferson v. Dep’t of Just., Off. of Pro. Resp.*, 284 F.3d 172, 179 (D.C. Cir. 2002). The Court in *Robbins Tire & Rubber Co. v. NLRB* found that “witness statements in pending unfair labor practice proceedings are exempt from FOIA disclosure at least until completion of the Board’s hearing.” 437 U.S. at 236. However, FTC Docket No. C-4316 culminated in an Order on May 26, 2022, and, as such, is not a currently pending matter. Request No. 1 made no request for pending or current materials but is limited in its time frame from April 26, 2022, to November 30, 2022. Even if the records from Docket No. C-4316 from that time frame were part of pending proceedings, Request No. 1 is for *policy statements and interpretations of general applicability* not “witness statements.” Therefore, Exemption 7(A), which is limited to records that could “reasonably be expected to interfere with enforcement proceedings” cannot possibly apply.

4. The denial violates the FTC’s regulations

The FTC’s regulations require that initial determinations to deny “active investigatory files,” must be made by the “Director or the Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation,” rather than the “deciding official (as designated by the General Counsel).” 16 C.F.R. § 4.11(a)(1)(iii)(B). The Denial Letter contains no evidence showing that the determination denying item 1 was made by such an official; instead, the Denial Letter is signed off by the Acting Assistant General Counsel. *See Exhibit 3 at 3.*

5. The FTC failed to find reasonable harm or segregate and release nonexempt information

The FTC's regulations provide that it "will only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law." 16 C.F.R. § 4.11(a)(1)(iii)(A). Even then, it must "take reasonable steps necessary to segregate and release nonexempt information." *Id.* There is no evidence that the FTC either made a reasonable harm determination or attempted to segregate and release nonexempt information.

6. The FTC fails the *Pratt* test

The FTC is not a law enforcement agency under FOIA, and Item 1 seeks policy statements and interpretations of general applicability, not witness statements. But even if the FTC is a law enforcement agency under FOIA, and Item 1 includes records such as witness statements, the FTC's denial is still erroneous. To begin with, a "law enforcement purpose" does not include investigatory activities wholly unrelated to law enforcement agencies' legislated functions of preventing risks to national security and violations of criminal laws and of apprehending those who do violate the laws. *Pratt v. Webster*, 673 F.2d 408, 420–21 (D.C. Cir. 1982). To pass the FOIA Exemption 7 threshold, the FTC must establish that its investigatory activities are realistically based on a legitimate concern that federal laws have been or may be violated or that national security may be breached. Either of these concerns must have some plausible basis and a rational connection to the object of the agency's investigation. *Id.*; *see also Jefferson v. Dep't of Just., Off. of Pro. Resp.*, 284 F.3d 172, 178 (D.C. Cir. 2002). The FTC, however, has failed to demonstrate that Item 1 triggers Exemption 7.

B. The FTC failed to conduct an adequate search for Items 2 through 7

The FTC is obligated to conduct a search that is "reasonably calculated to uncover all relevant documents." U.S. DEP'T OF JUST., GUIDE TO THE FREEDOM OF INFORMATION ACT PROCEDURAL REQUIREMENTS at 42 (Aug. 20, 2021), <https://bit.ly/3ytafVq> (citing *Campbell v. SSA*, 446 F. App'x 477, 480 (3d Cir. 2011); *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)). It has the burden of establishing that the search was adequate. *Havemann v. Colvin*, 629 F. App'x 537, 539 (4th Cir. 2015), *see also Aguiar v. Drug Enf't Admin.*, 865 F.3d 730, 738 (D.C. Cir. 2017); *Weisberg v. DOJ*, 705 F.2d 1344 (D.C. Cir. 1983). To do this, it must explain its search process in a way that is relatively detailed and non-conclusory. *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978).

A one-sentence line stating that no responsive records were found is legally inadequate. The FTC owes AFL an explanation of how an adequate search resulted in no responsive documents when the requests, limited to certain custodians, sought

records based on the FTC's own findings; on its face, it appears that the FTC's position is that it handled the Twitter case without internal communications or policy input. Notably, AFL cited a congressional report that referenced the FTC's documents that were attached as Exhibits to "the Committee Report." Exhibit 1 at 2 (citing STAFF OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., INTERIM STAFF REPORT ON THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER (Mar. 7, 2023) (available at <https://bit.ly/3yvb8vD>) [hereinafter COMMITTEE REPORT]). Specifically:

- Item 2 asked for records related to certain individuals during the specified time, including Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. Request No. 2 is limited from April 26, 2022, to November 30, 2022. See Exhibit 1 at 1.
- Item 3 sought records underlying the FTC's determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter. Exhibit 1 at 3.
- Item 4 sought communications referring or relating to "Open Markets Institute." Exhibit 1 at 3. This organization sent a letter urging the FTC to block Elon Musk's acquisition of Twitter. Barry Lynn, *OMI Statement on Elon Musk and Twitter*, OPEN MARKETS INSTITUTE (Apr. 26, 2022) (attached to the COMMITTEE REPORT as App. 10); see also Barry Lynn, *Open Markets Institute Statement in Response to Elon Musk Buying Twitter*, OPEN MARKETS INSTITUTE (Oct. 27, 2022) (attached to the COMMITTEE REPORT as App. 12). Nevertheless, the FTC's search did not pick up this letter much less any agency communications about it.
- Item 5 sought communications referring or relating to the Center for American Progress, Common Cause, MoveOn, or Public Citizen. Exhibit 1 at 4. Reportedly, these organizations demanded the FTC to investigate. AMERICAN PROGRESS, *The FTC, Congress, and Advertisers Must Hold Elon Musk and Twitter Accountable, Say Progressive Groups* (Dec. 21, 2022) (attached to the COMMITTEE REPORT as App. 14).
- Item 6 sought "records concerning FTC's determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5 above, did not constitute prohibited *ex parte* communications." Exhibit 1 at 4. Again, is the FTC taking the position that there are no such communications?
- Item 7 sought "communications" specifically "between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, above, or any member of the Commission." *Id.* (emphasis added).

The FTC's claim that it found nothing at all in response when it searched for these items lacks credibility; it appears an adequate search still needs to be done. There needs to be an explanation of how an adequate search resulted in no responsive documents when the requests themselves relied on FTC findings cited in the Requests. Accordingly, AFL appeals the FTC's denial and that the Commission conduct a legally competent search as its regulations require.

III. Conclusion

Thank you in advance for considering this appeal. Please do not hesitate to contact us if you have any questions.

Sincerely,

/s/ Juli Haller

Juli Z. Haller

America First Legal Foundation

EXHIBIT 1



April 14, 2023

Via Online Portal

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

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

Dear Ms. Dasgupta,

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 63,300 unique addresses, our Twitter page has 69,200 followers, the Twitter page of our Founder and President has over 429,900 followers, our Facebook page has 122,000 followers, and we have another approximately 31,800 followers on GETTR.

I. Background

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

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

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

II. Records Requested

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

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

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

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

⁴ Committee Report, *supra* note 1 at 1.

3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates:
 - a. November 10, 2022 (4 letters),⁵
 - b. November 15, 2022,⁶
 - c. November 21, 2022,⁷
 - d. November 30, 2022,⁸
 - e. December 6, 2022,⁹
 - f. December 9, 2022,¹⁰
 - g. December 13, 2022,¹¹
 - h. January 3, 2023,¹²
 - i. January 18, 2023,¹³
 - j. January 23, 2023,¹⁴ and
 - k. February 1, 2023.¹⁵

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Custodians

Suggested custodians for subparts 1-6 of this request include the following:

1. The Chair and all Commissioners on the Federal Trade Commission.
2. All political appointees and detailees assigned to the Office of the Chair.
3. The General Counsel and all Deputy General Counsels in the Office of the General Counsel.
4. The Director, all the Deputy Directors, and the Chief of Staff of the Bureau of Consumer Protection (BCP).
5. All employees at a GS-14 level and above in BCP's Division of Enforcement.
6. All employees at a GS-14 level and above in BCP's Division of Privacy and Identity Protection.
7. The Regional Director and Assistant Regional Director of BCP's Western Region (San Francisco).

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), 16 C.F.R. § 4.8(e), AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the FTC, including how it has managed and reopened a matter on its docket. Because there are concerns about violations of statutory requirements and the potential suppression of protected First Amendment speech, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public;¹⁶ AFL's

¹⁶ As demonstrated in recent press releases, AFL frequently creates original works with its editorial skills to disseminate information disclosed from released records to the public. *E.g.*, Press Release, *America First Legal's Investigation Reveals the Biden White House Was Involved With the Mar-a-Lago Raid and that NARA Misled Congress; AFL Launches Additional Investigation* (Apr. 10, 2023), <http://bit.ly/3MDRJku>; Press Release, *America First Legal Releases Documents Revealing the FBI's*

status as a representative of the news media has been recognized by other agencies for granting fee waivers, including this Department in prior requests, as well as the Departments of Defense, Education, Energy, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please get in touch with us immediately upon making that determination.

V. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines. If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Finally, to accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

Counterterrorism Division Wanted the DOJ to "Reconsider" AG Garland's Infamous Memo Targeting American Parents (Mar. 23, 2023), <http://bit.ly/3nZfDMK>.

EXHIBIT 2



AFL FOIA <foia@aflegal.org>

#FOIA-2023-00927 Acknowledgment Letter

1 message

Robinson, Lindsay <lrobinson@ftc.gov>
To: "foia@aflegal.org" <foia@aflegal.org>

Mon, Apr 17, 2023 at 9:51 AM

Dear Requester,

This correspondence acknowledges the receipt of your Freedom of Information Act (FOIA) request dated April 17, 2023 seeking documents regarding documents re: Twitter.

You may check the status of your FOIA request by visiting <http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/track-your-foia-request>. This report is updated at the end of each month. If you should have any questions regarding your request, please contact me at lrobinson@ftc.gov. In any call or future correspondence concerning the request, please refer to the following case number 2023-00927.

Lindsay A. Robinson (she/her)

General Attorney

Federal Trade Commission

Office of the General Counsel, FOIA

600 Pennsylvania Ave. NW, Washington, DC 20580

(202) 326-3401 | lrobinson@ftc.gov



EXHIBIT 3



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

June 7, 2023

Sent via Email

Reed Rubinstein
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003
Email: foia@aflegal.org

Re: FOIA-2023-00927

Dear Reed Rubinstein:

This is in response from the Federal Trade Commission (“FTC”) to your Freedom of Information Act (“FOIA”) request dated April 14, 2023, seeking access to:

1. All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.
2. All records relating to the FTC’s need under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, for information concerning Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. The time frame for this item is April 26, 2022, to November 30, 2022.
3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates: November 10, 2022 (4 letters), November 15, 2022, November 21, 2022, November 30, 2022, December 6, 2022, December 9, 2022, December 13, 2022, January 3, 2023, January 18, 2023, January 23, 2023, and February 1, 2023. The time frame for this item is April 26, 2022, to February 1, 2023.
4. All communications referring or relating to “Open Markets Institute.” The time frame for this item is April 26, 2022, to November 30, 2022.
5. All communications referring or relating to Center for American Progress, Common Cause, MoveOn, or Public Citizen. The time frame for this item is April 26, 2022, to November 30, 2022.

#FOIA-2023-00927

Reed Rubinstein

America First Legal Foundation

June 7, 2023

Page 2

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

In accordance with the FOIA and agency policy, we have searched our records on April 17, 2023 and May 22, 2023. In response to item 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission's law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to items 2 through 7 of your request, our search of the FTC's records did not identify any record that would respond to your request. If you believe that you have additional information that may help locate responsive records or if you would like to amend your request, please submit a new FOIA request with further details.

If you have any questions about the way we have handled your request or about the FOIA regulations or procedures, please contact Lindsay Robinson at lrobinson@ftc.gov. If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

#FOIA-2023-00927

Reed Rubinstein

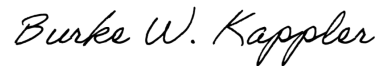
America First Legal Foundation

June 7, 2023

Page 3

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison's role relates to comments, questions, or concerns that a FOIA Requester may have with or about the FOIA Response. The FOIA Public Liaison's role does not relate to acting in matters of private controversy nor can they resolve individual complaints.

Sincerely,



Burke W. Kappler

Acting Assistant General Counsel



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the General Counsel

~

Kathleen Daffan
Acting Deputy General Counsel for Legal Counsel

September 12, 2023

Sent via E-mail

Juli Haller
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003
foia@aflegal.org

Re: Freedom of Information Act (“FOIA”) Appeal | FOIA Request No. 2023-00927

Dear Juli Haller:

I am writing as the official designated to review FOIA appeals for the Federal Trade Commission (“FTC”).

On April 14, 2023, you submitted a request to the Federal Trade Commission (“FTC”) FOIA Unit seeking access to the following records:

1. All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.
2. All records relating to the FTC’s need under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, for information concerning Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. The time frame for this item is April 26, 2022, to November 30, 2022.
3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates:
 - a. November 10, 2022 (4 letters)
 - b. November 15, 2022
 - c. November 21, 2022
 - d. November 30, 2022

- e. December 6, 2022
- f. December 9, 2022
- g. December 13, 2022
- h. January 3, 2023
- i. January 18, 2023
- j. January 23, 2023, and
- k. February 1, 2023.

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

- 4. All communications referring or relating to “Open Markets Institute.” The time frame for this item is April 26, 2022, to November 30, 2022.
- 5. All communications referring or relating to Center for American Progress, Common Cause, MoveOn, or Public Citizen. The time frame for this item is April 26, 2022, to November 30, 2022.
- 6. All records concerning FTC’s determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5, *above*, did not constitute prohibited *ex parte* communications. The time frame for this item is April 26, 2022, to November 30, 2022.
- 7. All communications between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, *above*, or any member of the Commission. The time frame for this item is April 26, 2022, to February 1, 2023.¹

On June 7, 2023, Acting Assistant General Counsel Burke W. Kappler issued a final response to America First Legal Foundation (“AFL”) partially denying this request and stating:

In response to [I]tem 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission’s law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to [I]tems 2 through 7 of your request, our search of the FTC’s records did not identify any record that would respond to your request. If you believe that you have additional information that may help locate responsive records or if you would like to amend your request, please submit a new FOIA request with further details.²

On August 10, 2023, AFL submitted a timely appeal of the FTC FOIA Unit’s final decision. AFL argues that “[t]he FTC’s categorical denial of Item 1 is unlawful” and “[t]he FTC failed to conduct an adequate search for Items 2 through 7.”³

¹ Initial Request re: FOIA 2023-00927 dated Apr. 14, 2023.

² Final Response re: FOIA 2023-00927 dated June 7, 2023.

³ AFL Appeal re: FOIA 2023-00927 dated Aug. 10, 2023 (hereinafter “AFL Appeal”).

1. *Application of FOIA Exemption 7(A)*

First, AFL argued that the FTC’s categorical denial of Item 1 under FOIA Exemption 7(A) is unlawful based on the following assertions:

- a. [T]he FTC has a non-discretionary duty to publish its standards justifying re-opening the [Twitter] investigation;
 - b. [T]he FTC is not a “law enforcement agency;”
 - c. [T]he [initial request] made no request for witness statements in pending or current materials;
 - d. [D]enials of materials contained in active investigatory files must be made by the proper “responsible official” under 16 C.F.R. § 4.11(a)(1)(iii)(B);
 - e. [T]he FTC failed to make a “reasonable harm” determination and attempt to segregate non-exempt information in compliance with 16 C.F.R. § 4.11(a)(1)(iii)(A); and
 - f. [E]ven if the FTC is a “law enforcement agency,” it has failed to demonstrate compliance with the two-part test of *Pratt v. Webster*, 673 F.2d 408, 420 (D.C. Cir. 1982).⁴
- a. **Claim 1: The FTC has a non-discretionary duty to publish its standards justifying re-opening the Twitter investigation.**

AFL argued that the FTC had a non-discretionary duty to publish its standards for re-opening the Twitter investigation;⁵ hence, because the agency failed to do so, its denial of Item 1 was without competent legal grounds.⁶

The FOIA requires agencies to “proactively disclose certain categories of nonexempt records or information to the public” by either publishing nonexempt records in the Federal Register or posting them online.⁷ Specifically, subsection (a)(1) of the FOIA requires agencies to post or publish the following categories of information:

- descriptions of agency organization and the established places and methods for obtaining information,
- general statements regarding the agency’s methods of operation,
- rules of procedure and descriptions of forms, and
- substantive agency rules and policies of general applicability.⁸

The purpose of this provision is “to guide the public in determining where and by whom decisions are made, as well as where they may secure information and make submittals and requests.”⁹

⁴ *Id.*

⁵ *In the Matter of Twitter, Inc., A Corp.*, FTC File No. 202-3062, Dkt No. C-4316 (F.T.C. 2022).

⁶ See AFL Appeal at 2.

⁷ 5 U.S.C. § 552(a)(1), (a)(2); see also *OIP Guidance: Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request* (posted Mar. 16, 2015) (stating that the FOIA has two proactive disclosure provisions, contained in subsections (a)(1) and (a)(2)).

⁸ *OIP Guidance: Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request* (posted Mar. 16, 2015) (citing 5 U.S.C. § 552(a)(1)(A-E)).

⁹ *Attorney General’s Memorandum on the Public Information Section of the Administrative Procedure Act*, 4 (June 1967).

Details about a particular investigation are not the type of general information covered by section (a)(1). In particular, records related to the re-opening of the Twitter investigation do not fit within the enumerated categories. Also, their publication would not align with the purpose of subsection (a)(1) as they would not allow the public to “gain access to the information necessary to deal effectively and upon equal footing with the Federal agencies.”¹⁰ As such, the agency is not required to post specific details regarding standards for re-opening the Twitter investigation as a proactive disclosure.

Additionally, even if the records were subject to the FTC’s proactive disclosure requirements – which they are not – the FOIA’s nine exemptions can be applied to any such records.¹¹ As explained below, FOIA Exemption 7(A) was correctly applied to Item 1 of the initial request.

b. Claim 2: The FTC is not a law enforcement agency.

AFL argued that the FTC is not a law enforcement agency “because it is not an executive agency, and the president does not have unilateral removal power over its commissioners” and the term “must be construed according to its ordinary public meaning.”¹²

AFL’s argument is unavailing because the FTC is indeed a federal law enforcement agency, created by Congress and empowered “to prevent persons, partnerships, or corporations ... from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.”¹³ An investigation into potentially anticompetitive, deceptive, or unfair practices falls within the FTC’s law enforcement authority under the FTC Act.¹⁴ Courts have held that such investigations do constitute “law enforcement” investigations for purposes of FOIA Exemption 7(A).¹⁵

c. Claim 3: Request 1 is for policy statements, not witness statements.

AFL argued that the FTC bears the burden of demonstrating that “all records covered by Request 1 are law enforcement records” and that their request for policy statements and interpretations

(quoting S. Rep. No. 88-1219, at 11 (1964)).

¹⁰ *Id.*

¹¹ *OIP Guidance: Proactive Disclosure of Non-Exempt Agency Information: Making Information Available Without the Need to File a FOIA Request* (posted Mar. 16, 2015); see also *Fed. Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 360 n.23 (1979) (applying FOIA Exemption 5 to subsection (a)(1) record and recognizing that subsection (a)(2) records likewise may be protected by FOIA exemptions in determining that (a)(2) document could still be withheld pursuant to work-product privilege); see also *Renegotiation Bd. v. Grumman Aircraft Eng’g Corp.*, 421 U.S. 168, 184 n.21 (1975) (acknowledging that subsection (a)(2) records may be protected by FOIA exemptions).

¹² See AFL Appeal at 3.

¹³ 15 U.S.C. 41 *et seq.*; see also *FTC v. Neiswonger*, 494 F. Supp. 2d 1067, 1070 (E.D. Mo. 2007), *aff’d*, 580 F.3d 769 (8th Cir. 2009) (explaining that “the FTC is a federal law enforcement agency created by Congress.”).

¹⁴ 15 U.S.C. § 45(a).

¹⁵ See, e.g., *Carter, Fullerton & Hayes v. FTC*, 637 F. Supp. 2d 1, 9–10 (D.D.C. 2009) (holding FTC’s investigations of “possible anticompetitive effects of state liquor control board regulations” qualify as law enforcement proceeding for Exemption 7(A)); *Fedders Corp. v. FTC*, 494 F. Supp. 325, 327–28 (S.D.N.Y. 1980) (concluding that FTC investigation into allegations of unfair advertising and offering of equipment warranties constitutes law enforcement proceedings), *aff’d*, 646 F.2d 560 (2d Cir. 1980) (unpublished table decision).

– as opposed to “witness statements” – means that Exemption 7(A) should not apply.¹⁶ Although agencies are required to justify their withholding decisions on a document-by-document basis under the FOIA, this duty arises *only after* a requester has exhausted all administrative remedies and filed a lawsuit in federal district court.¹⁷ At the administrative stage, the agency’s response to a FOIA request need only provide “the reasons” for its determination,¹⁸ which includes, “most obviously, the specific exemptions that may apply.”¹⁹

Here, the final response letter explained the exemption that was applied to the records withheld in response to Item 1 and provided a brief explanation of that exemption.²⁰ A detailed description of the records is not required unless the requester pursues litigation in the federal district court. The requester has failed to exhaust all administrative remedies and, therefore, a *Vaughn* index is not required.²¹ Accordingly, the FOIA Unit met its burden and properly responded to AFL’s request.

d. Claim 4: The denial violates the FTC’s regulations.

AFL argued that FTC regulations “require that initial determinations to deny ‘active investigatory files’ must be made by the ‘Director or the Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation’” and not by the deciding official designated by the General Counsel.²²

AFL’s argument fails to acknowledge the full scope of the FTC regulations. FTC regulations state that the Commission may delegate certain functions to a division of the Commission or an employee.²³ The FTC Office of the General Counsel serves as the office to which FOIA and Privacy Act requests and appeals are filed and responses to those requests are administered.²⁴ Moreover, as the designated FOIA official, the FTC General Counsel may delegate a deciding official who will only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA Exemption.²⁵

Here, the final determination was submitted properly by the designated FOIA deciding official, Burke W. Kappler, who was delegated this task by FTC General Counsel Anisha Dasgupta. As the designated FOIA Official, Ms. Dasgupta has the authority to delegate duties relative to her position. Mr. Kappler acted within his designated duties as the deciding official regarding this FOIA request. In addition, the Director of the Bureau of Consumer Protection has concurred with Mr. Kappler’s determination.

¹⁶ See AFL Appeal at 3.

¹⁷ See, e.g., *Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 11 (D.D.C. 1995) (explaining that agencies need not provide a *Vaughn* Index until ordered by a court after the plaintiff has exhausted the administrative process).

¹⁸ 5 U.S.C. § 552(a)(6)(A)(i).

¹⁹ *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013).

²⁰ See Final Response at 2.

²¹ See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973); see also, e.g., *Judicial Watch, Inc.*, 880 F. Supp. at 11.

²² See AFL Appeal at 3 (citing 16 C.F.R. § 4.11 (a)(1)(iii)(B)).

²³ 16 C.F.R. § 0.7 (a) (2021).

²⁴ 16 C.F.R. § 0.11 (2021).

²⁵ 16 C.F.R. § 4.11 (a)(1)(iii)(A) (2021).

e. Claim 5: The FTC failed to find reasonable harm or segregate and release non-exempt information.

AFL asserted that the FTC can “only withhold information if the agency [can] reasonably foresee disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law.”²⁶ AFL also argued that the FTC failed to segregate and release non-exempt material.

Agencies must only confirm in the final response letter that foreseeable harm was considered when applying FOIA Exemptions. In the final response letter at issue here, the FOIA Unit stated that disclosing records that may be responsive to Item 1 of the initial request “could reasonably be expected to interfere with the conduct of the Commission’s law enforcement activities.”²⁷ Additionally, Exemption 7(A) contains a “built in” foreseeable harm standard as it explains, on its face, that the foreseeable harm is releasing material from an ongoing matter that could prematurely expose the case or chill witnesses and third parties from cooperating with the agency. An agency’s response to a FOIA request need only provide “the reasons” for its determination,²⁸ which includes, “most obviously, the specific exemptions that may apply.”²⁹ Accordingly, the FOIA Unit provided proper reasoning for its determination.

Although an agency does have a duty to justify its withholding decision on a document-by-document basis, this duty arises *only after* a requester has exhausted administrative remedies and filed a lawsuit in federal district court.³⁰ At this stage, the agency’s response to a FOIA request need only provide “the reasons” for its determination,³¹ which includes, “most obviously, the specific exemptions that may apply.”³²

With respect to AFL’s argument regarding the failure to segregate and release non-exempt material, the FOIA does require that “any reasonably segregable portion of a record shall be provided to any person requesting such a record after deletion of the portions which are exempt.”³³ Yet, an agency is not required to provide partially redacted documents, leaving only the factual information, if the document is “inextricably intertwined” with exempt portions that its disclosure would inevitably reveal the government’s deliberation.”³⁴

Moreover, because this is an open and ongoing matter, records related to this matter remain under the protection of FOIA Exemption 7(A). Attempting to perform a segregation analysis to respond to this FOIA request while this matter is ongoing would interfere with the agency’s ongoing

²⁶ See AFL Appeal at 4.

²⁷ See Final Response at 2; see also 5 U.S.C. § 552(b)(7)(a).

²⁸ 5 U.S.C. § 552(a)(6)(A)(i).

²⁹ *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180, 186 (D.C. Cir. 2013).

³⁰ See, e.g., *J.P. Stevens & Co. v. Perry*, 710 F.2d 136, 143 (4th Cir. 1983).

³¹ 5 U.S.C. § 552(a)(6)(A)(i).

³² See *Citizens for Responsibility & Ethics in Washington*, 711 F.3d at 186 (D.C. Cir. 2013).

³³ 5 U.S.C. § 552(b).

³⁴ *In re Sealed Case*, 121 F.3d 729,737 (D.C. Cir. 1997); see e.g. *Wilderness Soc’y v. U.S. Dep’t of Interior*, 344 F.Supp.2d 1, 18 (D.D.C. 2004) (quoting *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977)).

enforcement proceedings.³⁵ Accordingly, the FOIA Unit met its burden under the foreseeable harm standard and was not required to further segregate the responsive records withheld.

f. The FTC failed to demonstrate compliance with the two-part test of *Pratt v. Webster*.

AFL argued that the FTC's denial was erroneous because it failed "to pass the FOIA Exemption 7 threshold" where the agency must "establish that its investigatory activities are realistically based on legitimate concern that federal laws have been breached or may be violated or that national security may be breached."³⁶

FOIA Exemption 7(A) protects "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings."³⁷ In *Pratt v. Webster*, the court articulated a threshold test that "the agency's investigatory activities that give rise to the documents sought must be *related to the enforcement of federal laws* or to the maintenance of national security."³⁸

I find that the FOIA Unit was correct in its application of FOIA Exemption 7(A) to Item 1 of the initial request. FTC Docket No. C-4316 is currently a pending matter within the agency that concerns potential anticompetitive, unfair, or deceptive acts or practices. As such, the investigatory activities that gave rise to the documents sought have a clear nexus to the enforcement of federal laws, fully satisfying the threshold issue laid out in the *Pratt* decision. The release of investigatory records in this matter could cause a "chilling effect" and diminish the agency's ability to shape and control the ongoing investigation.³⁹ Therefore, the FOIA Unit correctly applied FOIA Exemption 7(A).

2. Adequacy of Search

Finally, AFL argued that the FTC failed to conduct an adequate search for Items 2 through 7 of the initial request. AFL asserted that that the FTC "owes AFL an explanation of how an adequate search resulted in no responsive documents when the requests...sought records based on the FTC's own findings."⁴⁰

Under the FOIA, an agency is required to perform a search that is "reasonably calculated to uncover all relevant documents."⁴¹ "[T]he adequacy of a FOIA search is generally determined...by the

³⁵ 5 U.S.C. § 552(b)(7)(a); *Jarvik v. CIA*, 741 F. Supp. 2d 106, 121 (D.D.C. 2010) (holding that agency satisfied its burden of establishing that no portion of withheld documents could be segregated because "giving any information regarding the results of its search . . . 'would reveal sensitive intelligence capabilities and interests (or lack thereof)'").

³⁶ AFL Appeal at 4 (citing *Pratt v. Webster*, 673 F.2d 408, 420 (D.C. Cir. 1982)).

³⁷ 5 U.S.C. § 552(b)(7)(a).

³⁸ *Pratt v. Webster*, 673 F.2d at 420 (emphasis added).

³⁹ See, e.g., *J.P. Stevens & Co. v. Perry*, 710 F.2d 136, 143 (4th Cir. 1983).

⁴⁰ See AFL Appeal at 4-5.

⁴¹ *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983); see also *Nation Mag. v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) (requiring a "good faith effort to conduct a search ... using methods which can be reasonably expected to produce the information requested").

appropriateness of the methods used to carry out the search.”⁴² Moreover, the issue turns on whether the methods used to conduct the search were reasonable.⁴³ Therefore, in order for an any agency to prevail, it must show they made “a good faith effort... [to]... search for the requested records, using methods which can be reasonably expected to produce the information requested.”⁴⁴

After review of the search methods performed in this request, I found that the FOIA Unit used all appropriate methods to search for responsive records. Upon receiving the initial request, and because of its complexity, the FOIA Unit immediately solicited assistance from the offices that were likely to house records responsive to this request.

In good faith, the FOIA Unit used all appropriate methods reasonably expected to locate responsive records, searching the locations that would be reasonably expected to produce the information requested. Accordingly, the FTC FOIA Unit conducted an adequate search for responsive records.

If you are dissatisfied with my action on your appeal, FOIA permits you to file a lawsuit in accord with 5 U.S.C. § 552(a)(4)(B), in a United States District Court in the district where you reside or have your principal place of business, or in the District of Columbia.

Finally, I note that the 2007 FOIA amendments created the Office of Governmental Information Services (“OGIS”) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. See <https://ogis.archives.gov>. Using OGIS services does not affect your right to pursue litigation. OGIS’s contact information is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
phone: 202-741-5770, or toll-free 1-877-684-6448
fax: 202-741-5769.

Sincerely,

KATHLEEN DAFFAN

Digitally signed by KATHLEEN
DAFFAN
Date: 2023.09.12 10:06:36 -04'00'

Kathleen Daffan
Acting Deputy General Counsel for Legal Counsel

⁴² *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003).

⁴³ *See id.*

⁴⁴ *Nation Mag. v. U.S. Customs Serv.*, 71 F.3d at 890 (quoting *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *see e.g. Morley v. CIA*, 508 F.3d 1108, 1114 (D.C. Cir. 2007) (“[t]he court applies a ‘reasonableness’ test to determine the ‘adequacy’ of search methodology, consistent with congressional intent tilting the scale in favor of disclosure” (quoting *Campbell v. DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998))).

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS AMERICA FIRST LEGAL FOUNDATION (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS UNITED STATES FEDERAL TRADE COMMISSION COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Michael Ding, Juli Z. Haller (AMERICA FIRST LEGAL FOUNDATION, 611 Pennsylvania Avenue SE #231, Washington, DC 20003, (202) 964-3721)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																								
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
	PTF	DFT		PTF	DFT																				
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4																				
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5																				
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6																				

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
---	--	--	--

<input type="radio"/> E. General Civil (Other)		OR	<input type="radio"/> F. Pro Se General Civil	
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Violation of FOIA, 5 U.S.C. § 552, failing to release responsive, non-exempt records

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: <u>09/21/2023</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Michael Ding</u>
-------------------------	---

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

UNITED STATES FEDERAL TRADE COMMISSIC

Defendant

)
)
)
)
)
)
)
)

Civil Action No. 1:23-cv-2765

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

UNITED STATES FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue NW
Washington, DC 20850

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:23-cv-2765

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

UNITED STATES FEDERAL TRADE COMMISSIC

Defendant

)
)
)
)
)
)
)
)

Civil Action No. 1:23-cv-2765

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Merrick Garland, Attorney General
DEPARTMENT OF JUSTICE
950 Pennsylvania Ave NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:23-cv-2765

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

AMERICA FIRST LEGAL FOUNDATION

Plaintiff

v.

UNITED STATES FEDERAL TRADE COMMISSIC

Defendant

Civil Action No. 1:23-cv-2765

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

DEPARTMENT OF JUSTICE
U.S. Attorney's Office for the District of Columbia
Civil Process Clerk
601 D Street NW
Washington, DC 20530
Email service to: USADC.ServiceCivil@usdoj.gov

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

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

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 1:23-cv-2765

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: