



February 27, 2023

Via Email: foia@aflegal.org
Michael Ding
America First Legal Foundation
611 Pennsylvania Ave SE #231
Washington, DC 20003

Re: Freedom of Information Act Request Nos.
NGC23-269, NGC23-270, NGC23-271, and NGC23-272

Dear Mr. Ding,

This is in response to your letter received by the National Archives and Records Administration (“NARA”) on February 16, 2023, requesting various records under the Freedom of Information Act (“FOIA”). NARA has determined that your letter requests records on four distinct topics, and we have therefore divided it into four FOIA requests, which NARA has assigned the following tracking numbers:

Subject Matter	Tracking Number
Parts A, B, C, D, F, and G	NGC23-269
Parts E, H, I, and J	NGC23-270
Part K ¹	NGC23-271
Part L	NGC23-272

Please use the tracking numbers listed above when communicating with NARA about your requests.

Requests for Expedited Processing

¹ Part K seeks records related to the retirement of former Archivist David Ferriero, with a time period of October 1, 2022, to January 13, 2022. October 2022 is after January 2022, and Mr. Ferriero retired in April of 2022. Please clarify the time period of this request.

You requested expedited processing of your FOIA requests.

NARA processes FOIA requests on an expedited basis if it is determined that the request meets one or more of the following criteria described in its FOIA Regulation, at 36 C.F.R. § 1250.28:

- (1) A reasonable expectation of an imminent threat to an individual's life or physical safety;
- (2) A reasonable expectation of an imminent loss of a substantial due process right;
- (3) An urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public); or
- (4) A matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity.

You requested expedited processing under 36 C.F.R. § 1250.28(a)(3) and (4), stating that:

As many federal agencies have acknowledged in granting AFL expedited processing, AFL is primarily engaged in disseminating information. Additionally, there is an urgency to inform the public regarding the circumstances surrounding the government's failure to secure classified records from a former Vice President and now-sitting President. This is a matter of pressing national importance.

You also state that:

The request also meets NARA's regulatory test for expedited processing based on a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. Both requirements are met here because there has been extensive public and congressional interest in the inconsistent processes undertaken by NARA to recover presidential records. Indeed, the revelation that classified documents were found in multiple unsecured locations has raised alarms from both sides of the political aisle. To argue that there is not widespread interest in these events, or that they do not pose questions about government integrity would border on the absurd. This request seeks to expose the circumstances of these monumental events to public inspection, before irreparable harm is done to the nation's interest, in violation of the law.

NARA has concluded that there exists a widespread and exceptional media interest in the discovery and return of classified documents and other presidential records at the Penn Biden Center, in the fall of 2022 and early winter of 2023. NARA has already received approximately 25 FOIA requests related to this subject matter, and we have granted these requests expedited process. Since NGC23-269 seeks records related to this precise subject, we are granting expedited processing for this request.

Please note that we are processing FOIA requests seeking records related to the return of Biden Vice-Presidential Records covered by the Presidential Records Act on a rolling basis, and posting any non-

exempt, releasable records at <https://www.archives.gov/foia/biden-vp-records-covered-by-pra>. We will provide you interim response letters when we make any releases responsive to your request.

We find that you have not demonstrated widespread and exceptional media interest or an urgent need to inform the public about the subject matter covered by the records sought in NGC23-270, NGC23-271, and NGC23-272. These requests pertain to subject matter that is conceptually much broader than and/or distinct from the discovery and return of Biden PRA records. Accordingly, your request for expedited processing, as it pertains to those tracking numbers, is denied.

If you are not satisfied with our action on your request for expedited processing, you have the right to file an administrative appeal in writing **by mail or email**. If by mail, please address your appeal to the Deputy Archivist (N), National Archives and Records Administration, 8601 Adelphi Rd., College Park, Maryland 20740. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." **If by email, please submit your appeal to FOIA@nara.gov addressed to the Deputy Archivist**. Your appeal should be received within 90 calendar days of the date of this denial, and it should explain why you think this response does not meet the requirements of the FOIA.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison Gary M. Stern for assistance via email at garym.stern@nara.gov.

You may also contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, which offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is noted below:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov Website: ogis.archives.gov
Tel: 202-741-5770 or 1-877-684-6448

Thank you for contacting the National Archives and Records Administration.

Sincerely,
Joseph A. Scanlon
Joseph A. Scanlon
Supervisor, FOIA & Privacy Act Officer
Office of General Counsel
National Archives and Records Administration
College Park, MD
foia@nara.gov