



January 17, 2024

Via eFOIPA portal

Michael G. Seidel, Section Chief
Record/Information Dissemination Section
Records Management Division
Federal Bureau of Investigation
Department of Justice
200 Constitution Drive
Winchester, VA 22602

Freedom of Information Act Request: Scott McMillion

Dear Mr. Seidel:

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 has over 197,000 followers on X, and our Founder and President has over 569,000 followers on X.

I. Introduction

Scott McMillion was the FBI's Chief Diversity Officer from April 2021 to April 2023.¹ As Chief Diversity Officer, Mr. McMillion directed the FBI's Office of Diversity and Inclusion.² Between FY 2018 and May 2023, during Mr. McMillion's tenure, the FBI increased "racial/ethnic diversity" by 5.4% and the proportion of female employees by 4.1%.³ While tracking these statistics, the FBI "prioritizes meeting diversity goals"

¹ *Scott McMillion*, LINKEDIN (last visited Jan. 17, 2024), <http://tinyurl.com/3xtfdtrv>.

² *Scott McMillion*, FBI (last visited Jan. 17, 2024), <http://tinyurl.com/45wdrw22>.

³ FBI, FBI DIVERSITY REPORT at 2 (2023) (available at <http://tinyurl.com/y3ywsy4u>).

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and states that “[t]here is still work to be done,” while highlighting that “Racial/Ethnic Minority Representation Across the FBI” is still lower than the 43.1% “Racial/Ethnic Minority Population” in the United States.⁴ Mr. McMillion has stated that “diversity, equity, inclusion and accessibility is literally within [the FBI’s] DNA.”⁵ He has stated that diversity is one of the FBI director’s priority initiatives.⁶ Under his tenure, the FBI has sought to do “a cultural shift.”⁷ Programs like the Beacon Project aim to recruit more minorities into the FBI.⁸

Mr. McMillion’s statements, combined with the FBI’s diversity goals and initiatives, show that the FBI likely engages in unlawful and unconstitutional racial balancing.

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against an employee or an applicant for employment because of race, color, religion, sex, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, or national origin; or to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.⁹

In addition, the Equal Protection Clause of the Fourteenth Amendment of the Constitution prohibits the government, including the FBI, from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”¹⁰

Therefore, AFL requests the following records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

II. Requested Records

All records of communications to and from Scott McMillion. The time frame for this request is April 1, 2021, to April 30, 2023.

⁴ *Culture and Commitment: Demographics*, FBIJOBS (last visited Jan. 17, 2024), <http://tinyurl.com/4shs6prf>.

⁵ Courtney Bubl , *FBI’s Scott McMillion on Advancing Diversity, Equity, Inclusion and Accessibility*, GOV. EXEC. (Dec. 6, 2021), <http://tinyurl.com/45fb7v6m>.

⁶ *Id.*

⁷ *Id.*

⁸ *Beacon Project Aims to Connect FBI and HBCUs*, FBI (last visited Jan. 17, 2024), <http://tinyurl.com/4addczh6>.

⁹ 42 U.S.C. § 2000e-2.

¹⁰ U.S. CONST. amend. XIV, § 1.

III. Fee Waiver

AFL requests a waiver of all search and duplication fees associated with this request under 5 U.S.C. § 552(a)(4)(A)(iii) and 28 CFR § 16.10(k). First, AFL is a qualified non-commercial public education and news media requester. Our officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others, and 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. Accordingly, AFL has been granted fee waivers by the Departments of Defense, Education, Energy, Health and Human Services, Justice, Interior, and Homeland Security, and the Office of the Director of National Intelligence. Second, the waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."¹¹

IV. Processing and Production

The agency must comply with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines.¹² If you have any questions or believe further discussions regarding search and processing will facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org.

AFL welcomes production on an agreed rolling basis to accelerate the release of responsive records. 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,
/s/ Michael Ding
Michael Ding
America First Legal Foundation

¹¹ 5 U.S.C. § 552(a)(4)(A)(iii).

¹² OFF. OF THE ATT'Y GEN., MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES (2022), <https://tinyurl.com/4duy4r5k>.