



October 21, 2024

Via email: MRUFOIA.Requests@usdoj.gov

FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 202530

Freedom of Information Act Request: Communications from Special Counsel Jack Smith's Office

Dear FOIA Officer:

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 X page has over 294,000 followers and the X page of our Founder and President has over 755,000 followers.

I. Background

Since the beginning, the Department and the Federal Bureau of Investigation's lawfare against President Trump has been clouded by political bias.¹ Multiple members of Special Counsel Mueller's team apparently "wiped" their cellphones after the Inspector General began his inquiry into how the Department mishandled

¹ See generally Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (June 1, 2023), <https://perma.cc/ZD4M-8ZU7>; Letter from Rep. Jim Jordan, Chairman, H. Comm. on the Judiciary, to Hon. Merrick B. Garland, Att'y Gen., U.S. Dep't of Just. (Aug. 29, 2023), <https://perma.cc/N6QC-5PUL>.

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Crossfire Hurricane.² To ensure public accountability and transparency regarding the integrity of the Department's investigation into former President Trump, members of Special Counsel Smith's team must retain all records in accordance with law.

The Department's regulation states:

Each component shall preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 14 of the National Archives and Records Administration. *Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.*

28 C.F.R. § 16.9 (emphasis added). Additionally, "disposal of a record subject to a FOIA request" constitutes an unlawful destruction of records under 36 C.F.R. § 1230.3. *See also* 18 U.S.C. §§ 641, 1519, 2071.

II. Records Request

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, AFL requests, for all individuals assigned to the Special Counsel Jack Smith's Office, all records on their government phones during their investigation of former President Trump, including calendar items and communications (*e.g.*, email, SMS, Signal,³ Telegram, WhatsApp, or other messaging applications).

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 C.F.R. § 16.10. 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

² Letter from Sen. Charles E. Grassley, Chairman, S. Comm. on Fin., to Hon. William Barr, Att'y Gen., U.S. Dep't of Just., and Hon. Christopher A. Wray, Director, Fed. Bureau of Investigation (Sept. 11, 2020), <https://perma.cc/ASY2-GNM8>.

³ *See* Transcript of Zoom Videotaped Deposition of Elvis Chan at 298, *Missouri v. Biden*, No. 3:22-cv-01213-TAD-KDM (W.D. La. filed Dec. 5, 2022), ECF No. 144-2 ("Signal is a self-deleting app. But based on guidance from FBI headquarters, we had to turn that functionality off because we needed to save all of that information. So we did. We took screen shots of all of the information on the Signal channel. We burned it to DVDs, and then we saved it as evidence.").

records. As a nonprofit organization, AFL does not have a commercial purpose, and releasing the requested information is not in AFL's financial interest.

IV. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at FOIA@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Sincerely,

/s/ Michael Ding

America First Legal Foundation