



VIA EMAIL

August 19, 2022

Michael Ding
America First Legal Foundation
foia@aflegal.org

Dear Mr. Ding:

This letter responds to your request for expedited processing of your August 9, 2022 Freedom of Information Act (FOIA) request seeking all communications with Hunter and James Biden. The Archival Operations Division received your request on August 9, 2022, and we have assigned this request tracking number 2022-0119-F.

The National Archives and Records Administration (NARA) has promulgated regulations providing for expedited processing of requests if the requester demonstrates a compelling need (as defined in statute) or in any case the agency deems appropriate under its regulations. *See* 36 C.F.R. § 1250.28(a). To receive expedited processing under NARA's regulations, the requester must demonstrate at least one of the following:

- 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.

Your request raises the third and fourth grounds for expedited processing under NARA's regulations. Based on the argument and evidence presented, we find that your request does not satisfy either basis for expedition.

When evaluating whether a FOIA requester has demonstrated an urgent need to inform the public, courts have considered the following factors: "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." *Al-Fayed v. C.I.A.*, 254 F.3d 300, 310 (D.C. Cir. 2001). You have neither shown that your request involves a matter of current exigency to the American public, nor have you demonstrated that processing this request in the non-expedited queue would compromise a significant, recognized interest. President Biden's last term as Vice President concluded on January

20, 2017. Processing the request under NARA's regular timeline will not compromise the public's ability to learn about Biden's actions during the Obama administration.

Nor have you demonstrated widespread and exceptional media interest in communications between the Biden Office of the Vice President and Hunter and James Biden. The courts have found that FOIA requesters demonstrated widespread and exceptional media interest when the request pointed to news articles or other media coverage, from a variety of sources, focused on questions of integrity related to government actions. *See, e.g., Brennan Ctr. for Justice at NYU Sch. of Law v. Dep't of Comm.*, 498 F. Supp. 3d 87, 97-98 (D.D.C. 2020); *Citizens for Responsibility & Ethics in Wash. v. Dep't of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020). Conversely, a FOIA requester did not satisfy the media-related standard of expedited processing when the request failed to connect the requester's allegations of impropriety with the content of the news articles cited and the subject of the request. *See, e.g., Am. Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 508 (D.D.C. 2018); *Am. Civil Liberties Union of N. Cal. v. Dep't of Justice*, No. C 04-4447 PJH, 2005 U.S. Dist. LEXIS 3763, at *37 (N.D. Cal. Mar. 11, 2005).

Of the two news reports you cited, only the *New York Post* article specifically refers to Joseph Biden's actions, but only after his term as Vice President had concluded and before his 2020 presidential campaign began. By exclusively focusing on the actions Biden took as a private citizen, the *New York Post* article does not allege or imply improper government conduct. The *Washington Post* article focuses on the conduct of Hunter Biden, a private citizen who was not serving in any public office during the events depicted, and clearly states that the authors did not find any link between Hunter Biden's business dealings and the actions of Joseph Biden. For these reasons, you have not provided the number, variety, and content of media coverage needed to demonstrate a matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the *government's* integrity.

Nor have you connected the subject of your FOIA request with the allegations of improper government conduct raised and the media coverage you cited. Your request seeks then-Vice President Biden's communications and those of his staff and states that questions about government integrity arise from Joseph Biden's supposed involvement in Hunter and James Biden's business dealings. The news articles you cited do not, however, link those dealings with Joseph Biden's actions as Vice President.

If you have any questions regarding the status of your FOIA request, please contact me directly at 202-357-5403. If you have any questions or concerns about NARA's handling of this expedited request, please feel free to contact NARA's FOIA Officer Joe Scanlon at (301) 837-0583.

If you consider my response to be a denial of this request, you may appeal by writing to the Deputy Archivist of the United States, c/o the Archival Operations Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001 or email presidential.materials@nara.gov. Both the letter and the envelope or email subject line should be clearly marked "PRA/FOIA Appeal." To be considered timely, your appeal must be postmarked or electronically submitted within 90 calendar days from the date of this letter.

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 Stephanie Oriabure for assistance at: Archival Operations Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at libraries.liaison.nara@nara.gov; telephone at 202-357-5200; or facsimile at 202-357-5941.

You may also contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, for assistance. OGIS offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road – OGIS, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "S Oriabure".

STEPHANNIE ORIABURE
Director
Archival Operations Division

cc: Joe Scanlon
FOIA Officer, National Archives and Records Administration