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Via Online Portal and Email

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Freedom of Information Act Request: Connection between Attorney General's October 4, 2021, memo and the Loudoun County School Board

Dear Mr. Hibbard et al.:

America First Legal Foundation ("AFL") is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

Americans have a fundamental liberty interest in, and the Constitutional right to control and direct, the education of their own children.¹ Accordingly, beginning in 2020, parents in Loudoun County Virginia began speaking out against a variety of issues involving their public schools, including school closures, Critical Race Theory, transgender bathroom and locker room policies, and the politicization of the Loudoun County School Board as it related to those issues.

In March of 2021, the Loudoun County Sheriff's Office opened a criminal investigation into a private Facebook group called "The Anti-Racist Parents of Loudoun County" after members of the group suggested targeting members of the community for speaking out at school board meetings against school closures Critical Race Theory in Loudoun County Public Schools. Among the members of the group were six school board members, the Commonwealth Attorney, and a member of the Board of Supervisors. At some point, the Federal Bureau of Investigation launched a parallel probe into the matter.²

On May 28, 2021, a girl was sexually assaulted by a male student in a female restroom at Stone Bridge High School in Loudoun County. The school principal sent a message to the community informing them that there had been an incident in the front office and that there was no threat to students or staff. The principal's email referred to an incident involving the girl's father and did not mention that there had been a sexual assault. Later that evening, an FBI agent called the Loudoun County Emergency Communications Center to inquire about the incident at Stone Bridge. When informed that the incident involved a sexual assault under investigation by local law enforcement, the FBI agent stated that was not something that would require his assistance.

Relatedly, from the beginning of 2021 through at least the end 2022, members of the Loudoun County School Board and allied community members made numerous reports to local and federal law enforcement alleging that they had been threatened and harassed for their advocacy in support of school closures, critical race theory, and the district's transgender policies. Members of the community have also publicly discussed having a contact with the FBI that was monitoring local issues in Loudoun County.³

Notably, during this same timeframe (2021 through 2022), Barbara Jill McCabe, wife of Former FBI Deputy Director Andy McCabe, was appointed as a formal advisor to the Loudoun County School Board on December 17, 2020.⁴ Ms. McCabe advocated in

¹ See *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); see also *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (detailing the fundamental liberty for Americans to educate their children as guaranteed by the Fourteenth Amendment).

² *Loudoun County 'Anti-Racist Parents' Group Won't Face Criminal Charges: Cops*, FOX 5 DC (Aug. 2, 2021, 3:53 PM), <https://perma.cc/MW7T-EALT>.

³ See Appendix. AFL can make unredacted versions of the attached images available upon request.

support of the school board’s transgender policies during the public comment portion of the June 22, 2021, school board meeting.⁵ Ms. McCabe was also a candidate for Virginia Senate in 2015 and received over \$700k in campaign donations from entities controlled by then Governor and 2021 gubernatorial candidate Terry McAuliffe. Also during that timeframe, Andy McCabe served as a keynote speaker at a Loudoun County Public Schools event on cybersecurity.

On June 22, 2021, the Loudoun County School Board held a public meeting to debate proposed Policy 8040,⁶ which would allow students to use restrooms and locker rooms consistent with their claimed “gender identity.”⁷ While supporters of the proposed policy were allowed to speak by voicing their support of and even attacking the policy’s critics in the crowd for their religious beliefs, the school board ended public comment after members of the audience applauded a speaker who was critical of the board’s policies. Following the closing of the meeting, Scott Smith, whose daughter had been sexually assaulted in the school restroom on May 28, 2021, was arrested during a confrontation with a member of “The Anti-Racist Parents” of Loudoun County.

On September 29, 2021, the partisan “National School Boards Association” made public a “letter” demanding federal action under the PATRIOT ACT to stop parents from objecting to mask mandates and Critical Race Theory.⁸ The group demanded Federal action because, *inter alia*, parents were engaged in First Amendment activities including “posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.”⁹

⁴ Recording of December 17, 2020 Loudoun County School Board Meeting, <https://perma.cc/2TDF-E6KN> (click the “Meetings” tab; then navigate to the corresponding date and select “Watch Video”).

⁵ Recording of June 22, 2021 Loudoun County School Board Meeting, <https://perma.cc/2TDF-E6KN> (click the “Meetings” tab; then navigate to the corresponding date and select “Watch Video”).

⁶ *Policy 8040: Rights of Transgender and Gender-Expansive Students*, LOUDOUN COUNTY SCHOOL BOARD (2021), <https://perma.cc/Y666-A8X9>.

⁷ Agenda of June 22, 2021 Loudoun County School Board Meeting, <https://perma.cc/2TDF-E6KN> (click the “Meetings” tab; then navigate to the corresponding date and select “View the Agenda”).

⁸ Nat’l Sch. Bd. Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) (Sept. 29, 2021), <https://perma.cc/B2AT-U3R7>.

(This letter repeated union-approved talking points, including the fatuous claim that “critical race theory is not taught in public schools...” *Id.* at 1; Jessica Anderson, *Reading, Writing, and Racism: the NEA’s Campaign to Gaslight Parents*, NAT’L REV. ONLINE (July 10, 2021), <https://perma.cc/NEK7-8DRK>).

⁹ Nat’l Sch. Bd. Ass’n, *supra* note 8 at 5 (labeling First Amendment-protected political speech as “hate.” The letter also claimed as grounds for federal action the following: “In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity. This correspondence states that, ‘We are coming after you and all the members on the ... BoE [Board of Education].’ This hate mail continues by stating, ‘You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly.’ Among other incendiaries, this same threat also calls the

On October 4, 2021, Attorney General Merrick Garland issued a Memorandum to the Federal Bureau of Investigation, the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and all United States Attorneys purporting to address a “disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation’s public schools.”¹⁰ He promised the department would “protect all people in the United States from violence, threats of violence, and *other forms of intimidation and harassment*.”¹¹ The press release announcing the memo also encouraged people to report to the FBI’s National Threat Operations Center.

In March of 2022, McCabe was invited to speak at Loudoun County Public Schools.

On May 11, 2022, Ranking Member Jim Jordan of House Judiciary Committee sent a letter to the Attorney General revealing that whistleblowers had come forward with information that the FBI had labeled dozens of investigations into parents with a threat tag created by the FBI Counterterrorism Division to assess and track investigations related to school boards.

On May 21, 2023, the House Weaponization Committee released a report revealing that the FBI had opened 25 assessments with the threat tag “EDUOFFICIALS” and assigned seventeen of those investigations to the Criminal Investigative Division, six to the Counterterrorism Division and two to the Weapons of Mass Destruction Directorate. Of those 25 investigations, the FBI determined that only one warranted a full investigation. The Committee also revealed that the Attorney General’s memorandum was an attempt to silence parents critical of Democratic education policies (policies like school closures, Critical Race Theory, transgender bathroom and locker room policies) ahead of the 2021 Virginia Gubernatorial election between Glenn Youngkin and Terry McAuliffe. There was no place in Virginia where parents were more critical of those policies than Loudoun County.

school board member a ‘filthy traitor,’ implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19. These threats and acts of violence are affecting our nation’s democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms. Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.” (Cleaned up)).

¹⁰ Memorandum from the Att’y Gen. to the Dir. of the Fed. Bureau of Investigation, Dir. of the Exec. Off. for U.S. Att’y’s, Assistant Att’y Gen for the Crim. Div., and U.S. Att’y’s, titled, “Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” (emphasis added) (October 4, 2021) (available at <https://perma.cc/MNT7-XURY>).

¹¹ *Id.*

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States. The evidence suggests the Attorney General’s October 4 Memorandum is the byproduct of and/or a key Biden Administration “deliverable” in a collusive scheme, coordinated directly or indirectly with local actors in Loudoun County, Virginia (among other places), to injure, oppress, threaten, or intimidate parents in the free exercise or enjoyment of their rights or privileges secured by the Constitution or laws of the United States.

Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following department records. AFL certifies that it has a compelling need for expedited processing of its requests for the purposes of 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e).

I. Special Definitions

“Department” means the U.S. Department of Justice and its components.

“Garland Memorandum” means the Memorandum from the Attorney General, dated October 4, 2021, addressed to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, with the Subject line titled, “Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” found at <https://perma.cc/MNT7-XURY>.

“NSBA” means the National School Board Association

“NSBA Letter” means the document found at <https://perma.cc/B2AT-U3R7>.

“Person” means any legal or natural person.

II. Custodians

Relevant custodians include:

1. Attorney General Merrick B. Garland
2. The Attorney General’s Chief of Staff
3. All custodians in the Office of the Attorney General
4. All custodians in the Office of the Deputy Attorney General
5. All custodians in the Office of the Associate Attorney General
6. All custodians in the Department of Justice White House Liaison

7. The Office of Public Affairs
8. The Office of the Assistant Attorney General for the Criminal Division
9. The Office of the Assistant Attorney General for the Civil Rights Division
10. The Office of the Director of the FBI
11. The Executive Office for U.S. Attorneys
12. The Office of Legal Counsel
13. The FBI's Washington Field Office
14. The FBI's Northern Virginia Field Office

II. Requested Records

The timeframe for all requests is September 15, 2021, to the date this request is processed.

- A) All records of, concerning, or regarding (1) the Garland Memorandum and/or (2) the NSBA Letter and/or (3) Loudoun County Public Schools and mentioning or referring to Andy or Jill McCabe.
- B) All records of, concerning, or regarding (1) the Garland Memorandum and/or (2) the NSBA Letter and/or (3) Loudoun County Public Schools and with Andy or Jill McCabe)
- C) All records, including email communications, with correspondents using email addresses ending in “@LCPS.org”, including but not limited to scott.ziegler@lcps.org, john.clark@lcps.org, brenda.sheridan@lcps.org, atoosa.reaser@lcps.org, ian.serotkin@lcps.org, jeff.morse@lcps.org, john.beatty@lcps.org, denise.corbo@lcps.org, beth.barts@lcps.org, and harris.mahedavi@lcps.org.
- D) All records, including email communications and online submissions, from residents of Loudoun County alleging that they had received threats as a result of their advocacy for or against the Loudoun County School Board and its policies.

IV. Redactions

FOIA requires the department to disclose records freely and promptly. The department must liberally construe AFL's requests and make a good faith effort to search for requested records using methods “which can be reasonably expected to produce the information requested.” At all times, FOIA must be construed to carry out Congress's open government mandate according to the ordinary public meaning of its terms at the time of its enactment.¹²

¹² See 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); see also *Bostock v. Clayton Cty., Georgia*, 590 U.S. 644 (2020); see also *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *John Doe Agency*

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the department must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. Consequently, the department should produce email attachments.

In connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching

v. John Doe Corp., 493 U.S. 146, 151 (1989); *see also Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in PST files, outside of network drives, in paper format, or in personal email accounts.

- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

V. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its 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. 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 and the release of the information requested is not in AFL's financial interest. This has previously been recognized by this department and by the Departments of Defense Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

Second, 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 operations or activities of the government." The disclosure of records bearing on the department's fidelity to the rule of law and the apparent use of its law enforcement authorities to chill parents from contesting critical race theory and mask mandates

in their children's public schools will plainly contribute to public understanding of the federal government's activities.

VI. Expedited Processing

AFL certifies "compelling need" for expedited processing under 5 U.S.C. § 552(a)(6)(E).

First, as multiple federal agencies (including this department) have acknowledged, AFL is primarily "engaged in disseminating information." Second, the Garland Memorandum, as well as the department's plan to "protect all people" from "intimidation and harassment" are assuredly matters of "actual or alleged Federal Government activity." Third, the common public meaning of "urgency" at the time of § 552(a)(6)(E)(v)(II)'s enactment was "the quality or state of being urgent." The common public meaning of "urgent", in turn, was "requiring or compelling speedy action or attention." The department obviously believes the Garland Memorandum and its subject matter require or compel speedy action and attention, as evidenced by his direction for the FBI and the U.S Attorneys to meet with school leaders in each federal judicial district within the next 30 days. Accordingly, AFL should be granted expedited processing.

In the alternative, 28 C.F.R. § 16.5(e) is the department's expedited processing regulation. 28 C.F.R. § 16.5(e)(ii) repeats the statutory factors. Therefore, as explained above, AFL is entitled to expedited processing here as well. But as permitted by statute, the department has expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence. Chilling parents' exercise of their Constitutional rights, as the Garland Memorandum arguably does, facially threatens the "loss of substantial due process rights" under 28 C.F.R. § 16.5(e)(1)(iii). Additionally, the Garland Memorandum and its subject matter are self-evidently of urgent and intense public interest and concern in which there are possible questions about the government's integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).

Also in the alternative, the Circuit test for expedited processing requires the court to consider "at least three 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."¹³ AFL meets this test as well. Respecting factor one, as noted above, the Garland Memorandum and its subject matter are assuredly matters of public concern and media interest and central to a pressing issue of the day. Respecting factor two, if production is delayed, then both AFL and the

¹³ *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309–10 (D.C. Cir. 2001).

public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding election integrity, voting rights, and, critically, the Biden-Harris administration's unprecedented decision to use the department's massive coercive powers against American parents. Being closed off from the opportunity to debate the department's conduct here itself is harmful in an open democracy.¹⁴ The Garland Memorandum and its subject matter are urgent given its coverage in the media and the public's interest in the functioning of their government. And the possibility exists that extra-legal law enforcement action may be taken by the department against parents who oppose the indoctrination of their children. Disclosing relevant records months or even years from now will be of academic interest only—any damage will have been done, and stale information is of little value.¹⁵ Respecting factor three, AFL's requests manifestly concern "federal government activity."

Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing, in this case, would cause much delay to other requesters given the very specific nature of AFL's FOIA requests and the extremely limited time window.

VII. Production

To accelerate the 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, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

¹⁴ See *Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 299–300 (D.D.C. 2017) ("But do the requests touch on 'a matter of current exigency to the American public,' and would 'delaying a response...compromise a significant recognized interest,' *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide 'exigency': In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that 'the President's decision to initiate military action is of the utmost importance to the public,' and that 'whether the President has the legal authority to launch [such] a military strike' is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation's most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy's requests").

¹⁵ See *Payne Enters, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (reasoning that "there are no significant agency or judicial interests militating in favor of delay").

VIII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate 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 and for expedited processing is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Will Scolinos
Reed D. Rubinstein
America First Legal Foundation

Appendix

They took the perpetrators at their word and made no effort to communicate with the complainant.

I should know, the complainant was me.

The investigation should reopen.

████████████████████ @██████████ · 4h

Replying to @ProjectVirginia

I would blame Sheriff Chapass for not protecting

5:46 PM · 7/14/24 · 121 Views

 2   4  

Most relevant replies ▾



████████████████████ @██████████ · 7/14/24 ...

Well get it... and we'll get the names on Mike Chapman and Tom Julia's enemies list too... PS: If anything happens to me, please call @FBIWFO and mention the "feckless five" 😞

   3  60  



[Redacted]

4h ·



[Redacted]

[Redacted]

Author

[Redacted] agree. exploring all the options. thanks. I posted here because I trust this group. if we don't tell people it contributes to sweeping this under the rug.

3h Like Reply

[Redacted]

[Redacted]

I'm sorry that you both are dealing with this.

Second reaching out to the FBI. There is someone there familiar with Chapman's failure to protect some LoCo citizens.

I'll PM you the contact info to pass along.

4h Like Reply

4

[Redacted]

[Redacted]

Author

super helpful. sent to Amina.

3h Like Reply

1