



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration

Washington, D.C. 20230

September 18, 2024

Reed Rubinstein
America First Legal
611 Pennsylvania Ave SE #231
Washington, DC 20003

foia@aflegal.org

Dear Mr. Rubinstein:

This letter serves as acknowledgment of your Freedom of Information Act (FOIA) request dated September 10, 2024, received by the International Trade Administration (ITA) on September 10, 2024. Your FOIA request has been assigned FOIA tracking number DOC-ITA-2024-000327. Please reference this number on all communications regarding this request.

In your request, on behalf of American First Legal, you sought copies of:

- A. All communications that mention or relate to Alexandre de Moraes.**
- B. All communications and records containing the terms “ X ” or “ X.” (including the spaces and punctuation in the search).**
- C. All records responsive to a Boolean search for: “Elon” OR “Musk” OR “Twitter” OR “Starlink,” AND “ban” OR “block” OR “censor.”**
- D. Any records or communications that mention “Diego de Lima Gualda” or “Diego Lima Gualda.”**
- E. All records or communications that mention “Rachel de Oliveira Vila Nova Conceição.”**
- F. All records responsive to a Boolean search for: “election” OR “electoral system” OR “voting machine” OR “sanctions” AND “Bolsonaro.”**
- G. All records or communications that mention or relate to the visit of CIA Director William Burns to Brazil in July 2021.**
- H. All records or communications that mention, relate, report, or discuss the subject matter of the conversations or discussions between CIA Director William Burns and Brazilian President Jair Bolsonaro, Augusto Heleno, Alexandre Ramagem, or Luiz Eduardo Ramos.**
- I. All records or communications that mention, relate, report, or discuss an article posted on the O Globo website by Scott Hamilton, the U.S. consul in Rio de Janeiro from 2018 to 2021, published on or about April 30, 2022, and titled “Defendendo a democracia,”**
<https://blogs.oglobo.globo.com/opinioao/post/defendendodemocracia.html>.

“Communications” include, but are not limited to, emails, diplomatic cables, demarches, and internal instant message logs, such as logs from Microsoft Teams. The relevant time for items A–E is January 1, 2024, to the date that this request is processed. The relevant time for items G and H is June 1, 2021, through September 1, 2021. The relevant time for item I is March 1, 2021, through June 30, 2021.

In addition, you sought expedited processing of your request under 15 C.F.R. § 4.6(f). The Department’s regulations require that a “requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.” In your paragraph addressing your compelling need of the requested records, you assert that the

“AFL hereby requests expedited processing pursuant to 15 C.F.R. § 4.6(f)(iii), (iv). Expedited processing is appropriate because this is a “matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” Additionally, AFL is a qualifying news media distributor, and there is an urgency to inform the public about alleged Federal Government activity. More than half a billion X users deserve to know what role, if any, the United States government played in the banning of X in Brazil. Department of Commerce regulations provide that “[t]he existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ‘urgency to inform’ the public on the topic.” 15 C.F.R. § 4.6(f)(3). The press has published extensively on this event, 29 and experts have alleged the U.S. government’s involvement.”

Your statement does not demonstrate

- (i) circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.
- (ii) the loss of substantial due process rights.
- (iii) that the records requested involve a matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.
- (iv) an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

Thus, your request for expedited processing is **denied**.

For the purpose of assessing fees on this FOIA request, you, on behalf of American First Legal, are being considered a News Media requestor. You may be charged \$0.00. ITA will attempt to produce the responsive records electronically. Should the fee to process your request exceed this amount, you will be promptly notified. If you have any questions regarding this response, please contact me at foia@trade.gov.

In your request, you are also seeking a fee waiver under 15 C.F.R. § 4.11(l). The FOIA directs agencies to furnish records without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester (5 U.S.C. § 552(a)(4)(A)(iii)).

Requests for fee waivers must be considered on a case-by-case basis and address the requirements for a fee waiver in sufficient detail for the agencies to make an informed decision. In determining whether the statutory requirements are met, agencies shall consider the following factors. *See* 15 C.F.R. § 4.11(l)(2).

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government. A request for access to records for their informational content alone does not satisfy this factor.
2. For the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.
3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. One's status as a representative of the news media alone is not enough.
4. The disclosure must contribute "significantly" to public understanding of government operations or activities.
5. The extent to which disclosure will serve the requester's commercial interest, if any.
6. The extent to which the identified public interest in the disclosure outweighs the requester's commercial interest.

The statement provided in your request for a fee waiver pursuant to 15 C.F.R. § 4.11(l) contains sufficient evidence to support a finding that such factors exist. Therefore, your fee waiver is **granted**.

If you have any questions or concerns or would like to discuss any aspect of your request, you may contact the analyst who processed your request, **Bianca Kegler**, at foia@trade.gov.

You may also contact ITA's FOIA Public Liaison, using the following information:

Bianca Kegler
FOIA Officer
International Trade Administration
1401 Constitution Avenue, N.W., Room 40003
Washington, D.C. 20230
Email: foia@trade.gov

Please refer to your FOIA request tracking number, **DOC-ITA-2024-000327** when contacting ITA.

In addition, you may seek FOIA mediation services offered by the National Archives and Records Administration, Office of Government Information Services (OGIS). You may contact OGIS using the following information:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov

In accordance with 15 C.F.R. §§ 4.10(a) and (b), you have the right to appeal this determination within 90 calendar days from the date of this letter. The Department deems appeals arriving after normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) as received on the next normal business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. The appeal should include a copy of the original request, this response, and a statement of the reasons why you consider the Department made this determination in error. Please mail written appeals to:

Assistant General Counsel for Employment, Litigation, and Information
U.S. Department of Commerce
1401 Constitution Avenue, N.W. Room 5896
Washington, D.C. 20230

You may send an appeal by e-mail to FOIAAppeals@doc.gov. Clearly mark “Freedom of Information Act Appeal”, in the email subject line, or on both the appeal letter and envelope.

Sincerely,

Bianca Kegler
FOIA Officer
International Trade Administration