



May 20, 2021

VIA ELECTRONIC MAIL – FOIA@sba.gov

Chief, Freedom of Information/Privacy Acts Office
U.S. Small Business Administration
409 Third St. SW, Eighth floor
Washington, DC 20416

Freedom of Information Act Request: Restaurant Revitalization Fund Race-Based Funding Priorities

Dear FOIA Officer:

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.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public. Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following records within twenty business days.

I. Requested Records

- A. All records regarding, referring, or relating to the development, selection, and implementation of priorities in awarding grants from the “Restaurant Revitalization Fund” established pursuant to the American Rescue Plan Act (ARPA) ([P.L. 117-2 § 5003\(c\)\(3\)](#)) and referenced at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18>. The time frame for this request is January 21, 2021, until the date the documents are produced.
- B. All records, including but not limited to electronic mail, texts, memoranda, and handwritten notes, regarding, referring, or relating to priorities in awarding grants from the “Restaurant Revitalization Fund” established pursuant to the American Rescue Plan Act (ARPA) ([P.L. 117-2 § 5003\(c\)\(3\)](#)) and referenced at

<https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18> from, to, or in the possession of each of the following SBA components:

1. Office of the Administrator
2. Office of Advocacy
3. Office of Capital Access
4. Office of Communications and Public Liaison
5. Office of Congressional and Legislative Affairs
6. Office of Diversity, Inclusion, and Civil Rights
7. Office of the General Counsel
8. Office of the National Ombudsman
9. Office of the Inspector General

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- C. All records, including but not limited to electronic mail, texts, memoranda, and handwritten notes, regarding, referring, or relating to priorities in awarding grants from the “Restaurant Revitalization Fund” established pursuant to the American Rescue Plan Act (ARPA) ([P.L. 117-2 § 5003](https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18)) and referenced at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18> from, to, or in the possession of each of the following individuals:

1. Isabella Casillas Guzman
2. Antwaun Griffin
3. Arthur Plews
4. Ann Lewis
5. Scott HarriFord
6. Major Clark
7. John Miller
8. Zina Sutch
9. Gaye Walker
10. Mark Madrid
11. Adriana Menchaca-Gendron
12. Stephen Kong
13. Cynthia Jasso-Rotunno
14. Han Nguyen
15. Stephanie King
16. Kevin Wheeler
17. Susan Sweetser

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- D. All records regarding, referring, or relating to the development, selection, and implementation of criteria used to verify an applicant's self-certification of eligibility for grant priority under the "Restaurant Revitalization Fund" established pursuant to the American Rescue Plan Act (ARPA) ([P.L. 117-2 § 5003\(c\)\(3\)](#)) and referenced at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18>. The time frame for this request is January 21, 2021, until the date the documents are produced.
- E. All records regarding, referring, or relating to the development, selection, and implementation of criteria used to define the meaning of the following terms referenced at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18>.
1. "subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities."
 2. "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."

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- F. All records regarding, referring, or relating to how the SBA will monitor, audit, or judge the integrity of applicants' self-selection—including on what basis it will determine that such a self-certified claim is invalid—of the following terms referenced at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/restaurant-revitalization-fund#section-header-18>.
1. "subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities."
 2. "socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged."

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II. Redactions and Search Terms

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then SBA must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, SBA should produce email attachments.

The search terms for our requests—and, in particular, for identified custodians—should include, but not be limited to, all the following:

1. “priority groups”
2. “socially disadvantaged”
3. “economically disadvantaged”
4. “presumption of”
5. Discrimination
6. Equality
7. Equity
8. Fair
9. Racist
10. Racism
11. EOP
12. WHCO
13. “White House Counsel”
14. DPC
15. “domestic policy”
16. Self-certify
17. Self-certification
18. Underlying Disparities
19. Disproportionate
20. Outsized
21. Particularly vulnerable
22. Underrepresented
23. Underrepresentation
24. Historic
25. Longstanding
26. Institutional
27. Systemic
28. Structural
29. Remedy Past Injustice
30. Remedy Past Discrimination
31. “EO 13985”

32. “E.O. 13985”

33. “Executive Order 13985”

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 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.

III. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 13 C.F.R. § 102.8, AFL requests a waiver of all search and duplication fees associated with this request.

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.

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 public has a significant interest in the enforcement of its laws, especially here where, it seems, SBA may be engaged in constitutionally prohibited racial discrimination. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the federal government, including whether and to what extent the Small Business Administration and/or the White House comply with the Constitution, applicable statutes and judicial decisions, respect the rule of law, and protect the civil liberties of all citizens of the United States.

IV. Production

To accelerate 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, please provide responsive 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.

V. 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 info@aflegal.org.

Thank you,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation