



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

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January 31, 2023

Sent via email: [foia@aflegal.org](mailto:foia@aflegal.org)

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

Request Number: EOUSA-2022-000037  
Subject of Request: The Attorney General's October 4, 2021 Memo

Dear Reed Rubenstein:

This letter is the first interim response to your Freedom of Information Act/Privacy Act (FOIA/PA) request that is now the subject of a FOIA lawsuit.<sup>1</sup> The Executive Office for United States Attorneys (EOUSA) is currently processing your request. The EOUSA is the official record-keeper for all records located within EOUSA and the various United States Attorneys' Offices.

To provide you with the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes. The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act. 28 CFR § 16.81. We have also processed your request under the Freedom of Information Act and are making all records required to be released or considered appropriate for release as a matter of discretion, available to you. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

Enclosed please find a total of two (2) pages disclosed in part. For this release, 18 pages were denied in full. **The withheld information was reviewed to determine if any information could be segregated for release.** The exemptions cited for withholding records or portions of records are 5 U.S.C. § 552 (b)(6), (b)(7)C, and E.<sup>2</sup>

Additionally, we located records that originated with a different component of the Department of Justice, the Federal Bureau of Investigation and the Office of the Attorney General. We will refer these records to the appropriate components, and they will review the material and issue a direct response to you.

<sup>1</sup> America First Legal Foundation v. Anthony Coley, et.al, Civil Action No.: 1:21-cv-03024 (TSC)

<sup>2</sup> An enclosure to this letter explains the exemptions in detail.

As this matter is in litigation, an administrative appeal is moot. Therefore, we have omitted our standard paragraph concerning administrative appeal procedures.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Krebs', is written over a light pink rectangular background.

Kevin Krebs  
Assistant Director

Enclosures

Cc: Michael Gerardi, Assistant United States Attorney

## EXPLANATION OF EXEMPTIONS

### FOIA: TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by and Executive order to be kept secret in the in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual.
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

### PRIVACY ACT: TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to Executive Order 12356 in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability eligibility, or qualification for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his identity would be held in confidence.