



August 31, 2022

VIA ELECTRONIC MAIL

Office of Hearings and Appeals
Attention: Oreoluwa Fashola, FOIA Officer
409 3rd Avenue, SW – 8th Floor
Washington, D.C. 20416

Freedom of Information Act Appeal - SBA Strategic Voting Plan

Dear FOIA Officer,

This letter responds to your email and letter correspondence of June 24, 2022, related to America First Legal Foundation's ("AFL") Freedom of Information Act request, FOIA control number # No. SBA-2022-006641.

On June 10, 2022, America First Legal Foundation requested documents from the Small Business Administration (SBA) under the Freedom of Information Act. SBA assigned the request identification number No. SBA-2022-006641 ("Request"). On June 24, 2022, we received a response from the SBA Chief FOIA Officer that stated, "SBA has no records responsive to your request."

This letter serves as our appeal of SBA's response and asserts that SBA has not shown it conducted an adequate search for records. First, AFL reiterates that nearly all the information specified in the Request is easily obtainable. We seek a single document, one whose creation was ordered by the President of the United States. This document cannot be difficult to locate, and SBA has provided no explanation of its search methods or its failure to find the document.

SBA has the burden to show the adequacy of its search. *See e.g., Weisberg v. U.S. Dep't of Just.*, 705 F.2d 1344 (D.C. Cir. 1983); *accord Havemann v. Colvin*, 629 F. App'x 537 (4th Cir. 2015) ("A defendant agency has the burden of establishing the adequacy of its search"). Furthermore, SBA bears the burden to explain its search process in a way that is "relatively detailed' and nonconclusory." *Goland v. Cent. Intel. Agency*, 607 F.2d 339, 352 (D.C. Cir. 1978). A one sentence line stating that no responsive records were found does not meet this standard.

SBA's "strategic plan" apparently exists, and it should be located by a reasonably diligent search. The document, which was required by a presidential executive order, appears to have been received by the White House. *See* White House, *FACT SHEET: The Biden-Harris Administration is Taking Action to Restore and Strengthen American Democracy* (Dec. 8, 2021), <https://bit.ly/3pISgET> ("[SBA] became the first federal agency to request designation as a voter registration agency pursuant to the National Voter Registration Act, committing to offer Americans seeking services at the agency's District Field Offices the opportunity to register to vote."). Regardless, SBA has failed to carry its legal burden regarding the reasonableness of its search. The Chief FOIA Officer's determination should thus be reversed, a new search conducted, and the requested document provided.

Thank you,

/s/ Michael Ding

Michael Ding

America First Legal Foundation