



September 17, 2020

VIA E-MAIL

FOIA Officer
National Telecommunications and Information Administration
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room 4713
Washington, DC 20230
E-mail: eFOIA@ntia.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonpartisan organization that drives long-term solutions to the country’s biggest problems.¹ Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF requests all communications sent to or from either National Telecommunications and Information Administration (“NTIA”) Senior Advisor Nathan Simington or Acting Assistant Secretary of Commerce for Communications and Information Adam Candeub that contain any of the following keywords or phrases:

- Section 230
- AT&T
- Federal Communications Commission or FCC
- Rick Lane
- Brendan Carr
- Mike Davis
- DCI
- Media Research Center or MRC
- Brent Bozell
- Rachael Bovard
- Dan Gainor
- Emily Covington

The time period for this request is September 1, 2019, to the present.²

¹ See AMERICANS FOR PROSPERITY FOUNDATION, www.americansforprosperityfoundation.org.

² For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means any medium of information storage (e.g., document, file, email, email chain, etc.) maintained by an agency in any format, including electronic format, at the time the agency begins its search. This request seeks the entirety of any record even if only a portion of that record contains responsive material. That is, the entire medium of information storage is responsive to this request.

For the purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. For all items of this request, if the agency uncovers responsive email records, AFPF's request specifically seeks the entirety of any email chain, any portion of which contains an individual email message responsive to this request, *i.e.*, the entire email chain is responsive. If the agency identifies responsive records it deems outside its legal control (*e.g.*, congressional records), AFPF requests the agency inform it that such records exist.

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that the agency shall furnish requested records without or at 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."³

In this case, the requested records unquestionably shed light on the "operations or activities of the government" as they relate to the NTIA's involvement in crafting the Trump Administration's "Executive Order on Preventing Online Censorship."⁴ Responsive records will significantly contribute to public understanding because they will give insight on what external parties coordinated with NTIA on the Executive Order and petition for rulemaking.

AFPF has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has experience and expertise in producing analysis of government decision making and policy. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the AFPF's regularly published blog posts or press releases.⁵ In addition, as AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request to Be Classified as a Representative of the News Media

As the D.C. Circuit recently held, the "representative of the news media" test is properly focused on the requestor, not the specific FOIA request at issue.⁶ AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although it is not required by the statute, AFPF gathers the news it regularly publishes from a variety of sources. It does not merely make raw information available to the public, but rather distributes distinct work products, including press releases, blog posts, policy briefs, reports, regulatory comments,

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁴ Exec. Order No. 13925: Preventing Online Censorship, 85 Fed. Reg. 34,079 (June 2, 2020) (E.O. 13925).

⁵ *See also Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

⁶ *See id.* at 1121.

coalition letters, and letters to Congress.⁷ These distinct works are distributed to the public through various media, including AFPP’s website, Twitter, and Facebook.

The statutory definition of a “representative of the news media” contemplates that organizations such as AFPP, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”⁸

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, AFPP requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (571) 329-4234 or by email at KSchmidt@AFPhq.org. Thank you for your attention to this matter.

Kevin Schmidt

KEVIN SCHMIDT
DIRECTOR OF INVESTIGATIONS

⁷ See, e.g., AFPP, GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT (Mar. 16, 2020), *available at* <https://bit.ly/2zQOEKI>; AFPP, AFPP ON EX-IM BANK: CORPORATE WELFARE BY ANY NAME IS CORPORATE WELFARE (June 2019), <http://bit.ly/2LmaclC>; AFPP, NEW REPORT WARNS SOCIAL SECURITY CRISIS IS NEARLY HERE (June 2019), <http://bit.ly/2NePKpG>; AFPP, AFPP ISSUES KEY VOTE ALERT AGAINST \$300+ BILLION “MINIBUS” SPENDING BILL (June 2019), <http://bit.ly/2FtwsXd>; AFPP, COALITION CALLS FOR MORE SUNSHINE IN DOJ (May 2019), <http://bit.ly/2XyL81k>; AFPP, MEMO: CBO’S GRIM BUDGET OUTLOOK UNDERSCORES THE NEED FOR CHANGE (Jan. 2019), <http://bit.ly/2NgDLrv>; AFPP, AFPP OFFICIAL COMMENT IN SUPPORT OF THE SAFER AFFORDABLE FUEL EFFICIENT (SAFE) VEHICLES PROPOSED RULE FOR MODEL YEARS 2021-2026 (Oct. 2018), <http://bit.ly/2YcYw8F>;

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).