



November 14, 2023

**VIA EMAIL**

Freedom of Information Act Request  
Department of Commerce  
Office of Privacy and Open Government  
14th and Constitution Avenue NW Washington, DC 20230  
Email: efoia@doc.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 dedicated to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.<sup>1</sup> AFPF is seeking records regarding the Department of Commerce’s role in executing and enforcing President Biden’s Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (“Order”).<sup>2</sup> Given the broad, heavy-handed requirements included in the Order, AFPF is concerned about potential harms to innovation, free enterprise, and constitutional separation of powers.

Therefore, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF hereby requests:

1. Records reflecting the statutory authority to require AI developers to “provide the Federal Government, on an ongoing basis, with information, reports, or records” listed in Section 4.2 of the Order.<sup>3</sup>
2. All internal and external email communications sent to or by the following Commerce employees, including through any alias accounts:
  - Secretary Gina Raimondo
  - Deputy Secretary Don Graves
  - Deputy Assistant Secretary for Administration Jeremy Pelter
  - Director of Office for Civil Rights Larry J. Beat

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<sup>1</sup> See AMS. FOR PROSPERITY FOUND., [www.americansforprosperityfoundation.org](http://www.americansforprosperityfoundation.org) (last visited Nov. 14, 2023).

<sup>2</sup> Exec. Order No. 14110 of Oct. 30, 2023.

<sup>3</sup> For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.”

- Chief of Staff Chris Slevin
- Any person with supervisory responsibilities for implementing and executing the AI regulations listed in Section 4.2 of the Order.

Please limit your search and processing of records for the foregoing custodians to those records containing any of the following sets of keywords:

- a. (“artificial intelligence” OR “AI”) AND (“Defense Production Act” OR “DPA” OR “4555”)
  - b. (“artificial intelligence” OR “AI”) AND (“dhs.gov” OR “DHS”)
  - c. (“artificial intelligence” OR “AI”) AND [(“POTUS” OR “Biden”) OR (“White House” OR “WH”)]
  - d. (“artificial intelligence” OR “AI”) AND (“Barack” OR “Obama”)
  - e. (“artificial intelligence” OR “AI”) AND [(“Reed” OR “DCOS Reed”) OR (“Tristan Harris”) OR (“Aza Raskin”) OR (“Center for Humane Technology”)]
3. Any additional final memoranda, guidance documents, policy statements, etc. regarding AI not publicly posted or otherwise responsive to the previous request items.

The time period for this request is January 1, 2023, to the present.<sup>4</sup>

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 to this request. If the agency identifies responsive records it deems outside its legal control (*e.g.*, congressional records), AFPF requests the agency inform AFPF 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.”<sup>5</sup>

In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they relate to the implementation of new far-reaching regulations on an emerging technology imposed by an executive order invoking emergency powers.

AFPF intends to educate the public with the results of this FOIA request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. Its staff has significant experience and relevant expertise; AFPF

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<sup>4</sup> The term “present” should be construed as the date on which an agency begins its search for responsive records.

<sup>5</sup> 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).

professionals will analyze responsive records, if any, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public. AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it has no commercial interest in making this request.

### **Request to Be Classified as a Representative of the News Media**

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.<sup>6</sup> As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.<sup>7</sup> 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 not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct work product, including press releases, blog posts, reports, and other informative materials.<sup>8</sup> These distinct works are distributed to the public through various online outlets, such as websites, Twitter, and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>9</sup>

### **Record Production and Contact Information**

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, AFPF requests that those records be produced first, and the remaining records

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<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(l).

<sup>7</sup> See *Cause of Action*, 799 F.3d at 1121.

<sup>8</sup> See, e.g., *AFPF Obtains Over 400 Pages of Secretary Mayorkas Using Personal Email for Government Business*, AMS. FOR PROSPERITY (May 19, 2023), <https://bit.ly/3DdcqgZ>; *AFP Foundation investigates DHS secretary's use of private email while creating Disinformation Governance Board*, AMS. FOR PROSPERITY (Jan. 12, 2023), <https://bit.ly/3HTpOJe>; *New emails undermine official reason for cancelling key oil and gas lease*, AMS. FOR PROSPERITY (Sept. 8, 2022), <https://bit.ly/3te6boa>; *AFP Foundation launches FOIA investigation into Disinformation Governance Board*, AMS. FOR PROSPERITY (May 9, 2022), <https://bit.ly/3GRBgWn>; *More evidence the VA is improperly delaying or denying community care to eligible veterans*, AMS. FOR PROSPERITY (Jan. 28, 2022), <https://bit.ly/37mDnlX>; *AFP Foundation gets CMS to release state-level Medicaid improper payment data after years of stonewalling*, AMS. FOR PROSPERITY (Jan. 20, 2022), <https://bit.ly/34sz7A2>; AMS. FOR PROSPERITY FOUND., PERMISSION TO CARE: HOW CERTIFICATE OF NEED LAWS HARM PATIENTS AND STIFLE HEALTHCARE INNOVATION (Oct. 2021), available at <https://bit.ly/3Zrjpp7>; *Records confirm VA's use of inaccurate wait time numbers*, AMS. FOR PROSPERITY (Oct. 1, 2021), <https://bit.ly/3a9KGeL>; *Government documents reveal Export-Import Bank fails to protect taxpayers . . . again*, AMS. FOR PROSPERITY (Oct. 30, 2020), <https://bit.ly/3hD09Jn>; *Kansas Shut Down Businesses That Were Willing and Able to Comply with Safety Guidelines*, AMS. FOR PROSPERITY FOUND. (July 21, 2020), <https://bit.ly/3vbj7eC>; AMS. FOR PROSPERITY FOUND., ET AL., GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT (Mar. 2020), AMS. FOR PROSPERITY FOUND., available at <https://bit.ly/2zQOEKI>.

<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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be produced on a rolling basis as circumstances permit. If you have any questions about this request, please contact me at [TKimbrell@afphq.org](mailto:TKimbrell@afphq.org). Thank you for your attention to this matter.

*Thomas Kimbrell*

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