



March 15, 2024

VIA ONLINE PORTAL

Freedom of Information Act Request
Department of Homeland Security
Office of the Executive Secretary
2707 Martin Luther King Jr. Ave., SE
Washington, DC 20528-0525

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.¹ In a December 2023 hearing before the Committee on Homeland Security Subcommittee on Oversight, Investigations, and Accountability, two officials from the Department of Homeland Security (“DHS”) obfuscated in response to questions about the [agency’s alleged authority](#) to censor “misinformation.”² And for over a year, DHS has withheld the content of the memos that describe its supposed “MDM Authorities.”³

Therefore, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF therefore requests the following records:⁴

1. All internal and external email communications, including attachments, sent to or by the following DHS employees, including through any alias accounts:
 - a. Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans
 - b. Kelli Ann Burriesci, Deputy Under Secretary
 - c. Samantha Vinograd, Assistant Secretary for Counterterrorism and Threat Prevention
 - d. Chadwick Gilmer, Deputy Chief of Staff and Director, Executive Secretariat
 - e. Iranga Kahangama, Assistant Secretary for Cyber, Infrastructure, Risk and Resilience
 - f. Ricki Seidman, Advisor to the Secretary

Along with email, please search and provide records from any medium of communications used by DHS including but not limited to Microsoft Teams, text messaging, etc. Please limit your search and processing of records for the foregoing custodians to those records containing any of the following sets of keywords:

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited Feb. 6, 2024).

² *DHS still won’t reveal its alleged authorities to censor ‘misinformation’*, Ams. for Prosperity (Dec. 19, 2023), <https://bit.ly/3NUghoP>.

³ *Id.*

⁴ 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.”

- a. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Social media” OR “Google” OR “Meta” OR “Facebook” OR “TikTok” OR “YouTube” OR “Instagram” OR “Microsoft” OR “Twitter” OR “X.com”)
- b. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Authority” OR “Authorities” OR “free speech” OR “First Amendment”)
- c. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Americans for Prosperity” OR “AFP”)

The time period for this request is July 1, 2023 to the present.⁵

For all items of this request, AFPF 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 DHS identifies responsive records it deems outside its legal control (*e.g.*, personal records), AFPF requests the agency inform AFPF that such records exist and provide a detailed control analysis that justifies their treatment.

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that DHS 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.”⁶ In this case, the requested records unquestionably shed light on the “operations or activities of the government” because they relate to the agency’s alleged authority to censor “misinformation.”

AFPF intends to educate the public with the results of its request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. AFPF’s staff has significant experience and relevant expertise; these 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. Finally, AFPF is a non-profit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, and it therefore 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.⁷ 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.⁸ 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

⁵ The term “present” should be construed as the date on which DHS begins its search for responsive records. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

⁶ 5 U.S.C. § 552(a)(4)(A)(iii); *see* 6 C.F.R. § 5.11(k)(1)(ii)–(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).

⁷ 5 U.S.C. § 552(a)(4)(A)(ii); 6 C.F.R. § 5.11(b)(6).

⁸ *See Cause of Action*, 799 F.3d at 1121.

work product, including press releases, blog posts, reports, and other informative materials.⁹ These distinct works are distributed to the public through various online outlets, such as websites, X.com, 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.”¹⁰

Record Production and Contact Information

To facilitate document review, please provide non-exempt responsive records in an electronic format in lieu of a paper production. If a portion of responsive records can be produced more readily, AFPF requests that those records be produced first with any remaining records released on a rolling basis as circumstances permit. If you have any questions about this request, please contact me at KSchmidt@afphq.org. Thank you for your attention to this matter.

Kevin Schmidt

KEVIN SCHMIDT
DIRECTOR OF INVESTIGATIONS, AFPF

⁹ See, e.g., *DHS still won't reveal its alleged authorities to censor 'misinformation'*, Ams. for Prosperity (Sept. 26, 2023), <https://bit.ly/3NUghoP>; *New federal memos raise concern over social media censorship and free speech online*, Ams. for Prosperity (Sept. 26, 2023), <https://bit.ly/3HeMIL3>; *AFP Foundation Files Suit for ANWR Lease Sale Cancellation Documents*, Ams. for Prosperity (Oct. 31, 2023), <https://bit.ly/3vxsZ6S>; *4 outstanding questions the federal government needs to answer about its Disinformation Governance Board*, Ams. for Prosperity (July 26, 2023), <https://bit.ly/3TUSkBE>; *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/3Zrjpg7>; *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>.

¹⁰ 5 U.S.C. § 552(a)(4)(A)(ii).