



August 11, 2021

VIA EMAIL: FOIARequest@state.gov

U. S. Department of State
Office of Information Programs and Services
2201 C Street N.W., Suite B266
Washington, D.C. 20520-0000

Freedom of Information Act Request: Records Regarding the Biden Administration's Knowing and Intentional Submission of a False PLO Commitments Compliance Act Report to the Congress.

Dear FOIA Officer:

America First Legal Foundation ("AFL") is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. AFL's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, all to educate the public. Whether the President and the agencies he directs, including the U.S. Department of State, respect the Constitution and faithfully execute the laws passed by the Congress, is one of our core institutional concerns.

The PLO Commitments Compliance Act of 1989, Title VIII of Public Law 101-246 (1990) directs the President to report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate if the Palestine Liberation Organization and the Palestinian Authority (collectively the "PLO"), and all "constituent groups related thereto" have, *inter alia*, ceased supporting terrorism and recognized Israel's right to exist, specifically including actions or statements contending the declared "Palestinian state" encompasses all of Israel; repudiated the "strategy of stages" whereby it seeks to use a state in the West Bank and Gaza as the first step in the total elimination of the state of Israel; called on any Arab state to recognize and enter direct negotiations with Israel or end its economic boycott of Israel; or threatened Palestinians who oppose violence against Israel. See PLO Commitments Compliance Act §§ 804(b)(1), (4), (5), and (8).

Subsequently, the PLO Compliance Report provision of Public Law 107-115 (2002), § 566, directed the President:

[T]o submit a report to the Congress assessing the steps that the Palestine Liberation Organization (PLO), or the Palestinian Authority, as appropriate, has taken to comply with its 1993 commitments to renounce the use of terrorism and all other acts of violence and to assume responsibility over all PLO or Palestinian Authority elements and personnel in order to assure their compliance, prevent violations, and discipline violators, including the arrest and prosecution of individuals involved in acts of terror and violence. The President should determine, based on such assessment, whether the PLO or the Palestinian Authority, as appropriate, has substantially complied with such commitments. If the President determines based on the assessment that such compliance has not occurred, then the President should, for a period of time of not less than six months, impose... sanctions...

Public Law 107-115 § 566(a). Congress required the President to “update the report submitted pursuant to subsection (a)” of this section as part of the report “required under [§ 804 of] the PLO Commitments Compliance Act of 1989 (title VIII of Public Law 101-246).” *Id.* at § 566(c).

The PLO has manifestly failed to honor the commitments specified by Congress in both the PLO Commitments Compliance Act of 1989 and in the PLO Compliance Report provision of Public Law 107-115. For example, as Senate Foreign Services Committee Ranking Member Sen. James E. Risch has documented, the PLO continues to incentivize and celebrate violence against Jews through an egregious “pay to slay” program. Specifically:

In 2019 alone, the Palestinians spent \$151 million to support imprisoned terrorists and their families. In addition to these prisoner payments, the PA and PLO maintain a “martyrs’ fund” that supports the families of terrorists killed while committing acts of violence.

In addition to Palestinian policies that incentivize violence, the legal requirements under the 1987 Anti-Terrorism Act (ATA), and the 2019 Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) are clear. The 1987 ATA specifically states that “the PLO and its affiliates are a terrorist organization and a threat to the interests of the United States, its allies, and to international law and should not benefit from operating in the United States.”

There is also the matter of Palestinian elections. Originally scheduled for May, Mahmoud Abbas has sought yet another delay over fears Hamas would defeat his Fatah party at the polls. Hamas remains a designated foreign terrorist organization, and the potential for it to fully take over Palestinian governance remains a compelling reason to avoid opening an office in the United States.

The United States is rightly skeptical of the PA's and PLO's compliance with its commitments, and the American people deserve transparency on this important issue.

See [Letter from Sen. James E. Risch to the Hon. Joseph R. Biden \(June 9, 2021\)](#).

Accordingly, we are concerned by the credible allegations Biden Administration's political appointees knowingly and willfully expunged derogatory information from the State Department's most recent § 804 report, prepared, we believe, by a career official, to fit broader political narratives. In particular, we are concerned by attempts to conceal material facts regarding the PLO's support for terrorism, commitment to the destruction of the State of Israel and the concomitant murder and/or expulsion of the Jews now resident there, and ongoing efforts to block peace treaties between Israel and the Arab states from Congress. Allegedly:

The Biden State Department's latest report to Congress, issued under a mandatory reporting statute. . .omits specific references to the Palestinian government's ongoing calls for violence, as well as its support for the Boycott, Divestment, and Sanctions movement, which wages economic warfare on Israel. Both issues, which are being closely tracked in Congress, were included in the outgoing Trump administration's October report, according to copies of both reports viewed by the Washington Free Beacon....The Free Beacon obtained copies of both reports and found the Biden administration deleted information about terror incitement and Palestinian support for the BDS movement. The State Department declined to comment on the changes.

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In the latest report, the Biden State Department removed a section of text detailing how Palestinian schools and media outlets routinely employ violent rhetoric.

"Some PA schools and media outlets continue to promote the idea that Israel does not have a right to exist and support the elimination of Israel on maps that show 'Palestine' covering over Israel with indication

'Palestine' will be 'liberated' in the future," the Trump administration's October report stated in a now-removed section.

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Another portion on the Arab League's boycotts of Israel omits an entire paragraph detailing how the Palestinian government is undermining regional peace with Israel.

"The PA expressed its strong disapproval of Arab states normalizing relations with Israel," the October report stated in a now-deleted paragraph. "Referring to the [United Arab Emirates'] diplomatic normalization agreement with Israel, [Palestinian president Mahmoud] Abbas said, 'We consider this a stab in the back and we absolutely reject it.'"

The Trump administration's report also stated: "PA diplomats also worked [to] encourage statements, including from the Arab League, condemning normalization. The PA also expressed support for the Boycott, Divestment, and Sanctions movement against Israel."

These findings are omitted from the Biden administration's version of the report.

Adam Kredo, [*Biden Admin Deletes References to Palestinian Terror Incitement From Congressional Report; State Dept silent on removing references to malign Palestinian behavior in congressionally mandated report*](#), The Washington Free Beacon (July 6, 2021).

FOIA's purpose is to ensure an informed citizenry, which is vital to the functioning of a democratic society, needed to check against corruption, and required to hold the governors accountable to the governed. 5 U.S.C. § 552; *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). The Department of State's lawful discharge of its statutorily mandated reporting obligations is obviously a matter of pressing public concern. Accordingly, pursuant to FOIA, AFL hereby requests the following records within twenty business days.

I. Special Definitions

"Free Beacon article" means: Adam Kredo, *Biden Admin Deletes References to Palestinian Terror Incitement From Congressional Report; State Dept silent on removing references to malign Palestinian behavior in congressionally mandated report*, The Washington Free Beacon (July 6, 2021) available at

<https://freebeacon.com/biden-administration/biden-admin-deletes-references-to-palestinian-terror-incitement-from-congressional-report/>

“Section 804 report” means the report required to be transmitted to Congress by § 804(c) of the PLO Commitments Compliance Act, Public Law 101-246 as amended, including the information specified in § 566 of Public Law 107-115.

“Biden Administration Section 804 report” means any draft or final Section 804 report prepared, published, or transmitted after January 20, 2021.

II. Requested Records

- A. All records of, referring, regarding, related to, used, or relied upon in the preparation of a Section 804 report between January 1, 2019, and August 15, 2021.
- B. All records of, referring, regarding, or relating to the (1) Free Beacon article and (2) the edits and/or deletions referenced therein. The time frame for this request is January 20, 2021, to the date this request is processed.
- C. All records sufficient to identify the person(s) who reviewed, directed, and/or approved modifications, edits to or deletions of text contained in the October 2020 Section 804 report but absent from the Biden Administration Section 804 report referenced in the Free Beacon article.
- D. All records sufficient to identify every person who reviewed, approved, or contributed to a Biden Administration Section 804 report.
- E. All records of, referring, regarding, or relating to the reasons that facts, circumstances, conditions, or statements in the Section 804 report submitted to Congress in or about October 2020, were omitted from the Biden Administration Section 804 report, as reported in the Free Beacon article. Such facts, circumstances, conditions, or statements include, but are not limited to, the following:
 - 1. Some PA schools and media outlets continue to promote the idea that Israel does not have a right to exist and support the elimination of Israel on maps that show ‘Palestine’ covering over Israel with indication ‘Palestine’ will be ‘liberated’ in the future.
 - 2. The PA expressed its strong disapproval of Arab states normalizing relations with Israel. . Referring to the [United Arab Emirates] diplomatic normalization agreement with Israel, [Palestinian president Mahmoud] Abbas said, ‘We consider this a stab in the back and we absolutely reject it.’”

3. PA diplomats also worked [to] encourage statements, including from the Arab League, condemning normalization. The PA also expressed support for the Boycott, Divestment, and Sanctions movement against Israel.

The time frame for this request is January 1, 2020, to the date this request is processed.

- F. All records created, received, or transmitted by Naz Durakoglu regarding, referring, or related to a Biden Administration Section 804 report.
- G. All records of, referring, regarding, or related to the processing of this request.

III. Redactions

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then Department of State must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, you should produce email attachments.

In connection with this request:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and

procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

IV. Fee Waiver

Per 5 U.S.C. § 552(a)(4)(A)(iii) and your regulations, AFL requests a waiver of all search and duplication fees associated with this request. First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities.

In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public’s understanding of your policies and practices will be enhanced through AFL’s analysis and publication of the

requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, waiver is proper as disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii). The public has a significant interest in the Department of State's compliance with and faithful execution of the laws, in its respect for Congressional prerogative and the separation of powers, and, as Ranking Member Reich stated, in transparency regarding the PLO's/PA's failure to comply with their promises, over the course of decades, to eschew terrorism and support peace, particularly when the Biden Administration has seen fit to subsidize both with hundreds of millions of U.S. taxpayer dollars.

Other federal agencies, including the Departments of Education, Energy, and Interior, have acknowledged AFL is entitled to a fee waiver and granted our request.

V. Expedited Processing

AFL requests and is entitled to expedited processing of this request under 22 CFR 171.11(f). First, the matter of PLO support for terrorism, the apparent attempt by Biden political officials to cover up such support, and the knowing and willful submission of a false report to Congress pursuant thereto, is a “breaking news story” of significant and general public interest. Second, AFL is a nonprofit with a public education mission, and we have a compelling need for the requested records. Among other things, the requested information is urgently needed by AFL to inform the public concerning actual or alleged Department of State activity that may violate Public Law 101-246, Public Law 107-115, and/or 18 U.S.C. § 1001.¹ Critically, the information we seek has a particular value that will be lost if not disseminated

¹ 18 U.S.C. § 1001(a) states:

Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

With respect to matters within the jurisdiction of the legislative branch, § 1001(a) applies to “a document required by law, rule, or regulation to be submitted to the Congress...”. 18 U.S.C. § 1001(c). The report mandated by Title VIII of Public Law 101-246, including the additional information specified by § 566 of Public Law 107-115, would appear to be a “document required by law...to be submitted to the Congress”.

quickly, particularly given the Biden Administration's express determination to transfer hundreds of millions of dollars to the PLO and its related entities and enterprises. Finally, as our website makes clear, our primary activity involves publishing or otherwise disseminating information to the public in general, not just to a particular segment or group.

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at foia@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you.

Reed D. Rubinstein
Senior Counselor and Director of Oversight and
Investigations
America First Legal Foundation