

Exhibit 3



January 3, 2022

Sent via Email

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
FOIA@ftc.gov

Re: FOIA Request: Records relating to President Biden's request that the FTC investigate oil and gas companies for rising energy prices.

Dear Freedom of Information Officer:

The Functional Government Initiative (FGI) submits this request (the "request") for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA) and the implementing regulations of the Federal Trade Commission ("FTC" or "the Commission"), 16 C.F.R. §§ 4.8 through 4.11. FGI, which is a non-partisan organization, engages in research, investigation, and education to promote transparency in government and support values that help to build a solid infrastructure for a bright American future.

Your prompt response pursuant to the requirements of FOIA, 5 U.S.C. § 522(a)(6)(A), is appreciated.

REQUESTED RECORDS

FGI requests from the Department all records from October 1, 2021, to the date FTC conducts the search meeting the following criteria:

1. All meeting requests, meeting memos, briefing documents, schedules, communications, and any other records related to the submission, consideration, approval, and scheduling of meetings discussing the letter issued by the President on November 17, 2021, or any topics or issues contained in the President's letter including the basis for opening the requested investigation.
2. All communications, documents, and other records to, from, or between any commissioner of the FTC or any employee of the FTC discussing actions the Commission may take as a result of the President's letter of November 17, 2021.
3. All communications, documents, and other records to, from, or between any



- commissioner of the FTC or any employee of the FTC discussing how to respond to the President's letter of November 17, 2021, and whether or not to begin a new investigation into oil and gas markets as requested by the President's letter.
4. All communications, documents, and other records to, from, or between any commissioner of the FTC or their senior staff or FTC employees in the Bureau of Competition, the Bureau of Consumer Protection, the Bureau of Economics, the Office of General Counsel, the Office of Policy Planning, and the Office of Public Affairs containing evidence of any alleged "anti-consumer behavior" by oil and gas companies that was considered in the development of the President's November 17th letter.
 5. All communications, including via email, text messages, and Microsoft Teams, between any FTC Commissioner or their senior staff or FTC employees in the Bureau of Competition, the Bureau of Consumer Protection, the Bureau of Economics, the Office of General Counsel, the Office of Policy Planning, and the Office of Public Affairs and employees the Department of the Interior, including but not limited to the Bureau of Land Management, Bureau of Ocean Energy Management, Office of the Solicitor, and Office of the Secretary.
 6. All communications between Commissioners of the FTC or their staff and outside (non-governmental) organizations concerning or discussing the President's letter requesting an investigation into oil and gas companies or any topics or issues contained in the President's letter including the basis for opening the requested investigation.

We ask that you please provide all records in an electronic format. To the extent practicable, we desire electronic documents in native file format, or, if not practicable, with full metadata for all fields. See, e.g., 5 U.S.C. § 552(a)(3)(B) ("an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").

Please provide records in either:

1. Load-ready format with a .csv file index or Excel spreadsheet, or
2. In .pdf format without any "portfolios" or "embedded files," and not in a single "batched". pdf file.

If you should seek to withhold or redact any responsive records, we request that you do the following:

1. Identify each such record with specificity (including date, author, recipient, and parties copied),
2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b),
4. Please correlate any redactions with specific exemptions under FOIA.



The term “all records” in this request refers to, but is not limited to, any and all documents, letters, correspondence, emails including attachments, facsimiles, memoranda, text messages, letters, notes, telephone records, telephone notes, minutes of meetings, agendas of meetings, databases, comments, files, presentations, consultations, biological opinions, drawings, diagrams, graphs, charts, assessments, evaluations, schedules and calendar entries, telephone logs, digital logs such as those produced by Microsoft Teams, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form that fall within the definition of “agency records” subject to FOIA.

This request is not meant to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, we ask that you indicate this fact and the reasons therefore in your response.

Agencies are prohibited from denying requests for information under the FOIA (per the FOIA Improvement Act of 2016) unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.¹

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes the following:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit.²

¹ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

² 5 U.S.C. § 552(b).



FGI is willing to receive records on a rolling basis.

FOIA’s “frequently requested record” provision, enacted as part of the 1996 Electronic Freedom of Information Act Amendments, requires all federal agencies to give “reading room” treatment to any FOIA-processed records that “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.”³ FOIA’s Rule of 3, enacted as part of the 2016 FOIA Improvement Act, requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.”⁴ Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records and records that have been requested three or more times.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552, we request a waiver of fees that FTC would otherwise charge for searching and producing the records described above, because this request satisfies both fee waiver requirements. FOIA provides for fee waivers when:

1. “[D]isclosure of the requested 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
2. Disclosure “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see 16 C.F.R. § 4.8(e)(2).

I. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, a party is entitled to a fee waiver when “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 [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The FTC FOIA regulations at 16 C.F.R. § 4.8(e)(2) establish a substantially similar standard.

Thus, FTC must consider four factors to determine whether a request is in the public interest:

1. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
2. Whether the disclosure is “likely to contribute” to an understanding of government operations or activities,

³ 5 U.S.C. § 552(a)(2)(D)(ii)(I).

⁴ 5 U.S.C. § 552(a)(2)(D)(ii)(I).



3. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and
4. Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

As shown below, FGI meets each of these factors.

A. The Requested Records Concern the Operations and Activities of the Federal Government.

The subject matter of this request concerns the operations and activities of the Federal Trade Commission. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁵ This request asks for the following: Information pertaining to the FTC’s actions taken pursuant to the President’s request that the FTC open a new investigation in “anti-consumer behavior by oil and gas companies.” Information provided would help the public understand whether there are such behaviors and how government actions themselves may impact prices in the oil and gas markets and for consumers. The threshold is met here because the records sought are possessed by the FTC or FTC staff and are by nature about the Commission’s work as part of the Federal Government.

Thus, FGI meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

In the case of this request, disclosure of the requested records is “likely to contribute” to an “increased public understanding” of government operations or activities. Disclosure of the requested information will enable the public to better understand how the Commission is exercising its statutory authorities and what impact potential actions or threats of investigation by the Commission could have on oil and gas markets. Also, it would further understanding of the processes the Commission takes to further its mission of “Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity.”⁶ Once the information is made available, FGI will evaluate the

⁵ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

⁶ <https://www.ftc.gov/about-ftc>



information and present it to its followers and the general public in a manner that will meaningfully enhance the public's understanding of this topic.

Thus, FGI meets this factor.

C. Disclosure of the Requested Records Will Contribute to the Understanding of a Reasonably Broad Audience of Persons.

The requested records will contribute to public understanding of the decision-making of FTC officials charged with protecting the public against anticompetitive, deceptive, and unfair business practices. As explained above, the records will contribute to public understanding of this topic.

Fulfilling duties to protect consumers should be done with careful consideration. Decisions on FTC investigation or potential enforcement actions resulting from those investigations into something as widely applicable to American families as the price of gasoline should be based on sound economic analysis. FGI will use the information it obtains from the disclosed records to educate the public at large about whether the decisions made by the FTC further its mission to protect consumers.

FGI has the ability and intention to effectively convey this information to the public (by means discussed in Section II, below) and disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern the Commission's response to the President's request of November 17, 2021. We also are unaware of these records having been released to date.

Disclosure of these records is not only "likely to contribute," but is certain to contribute, to public understanding of how investigations into oil and gas markets could impact all Americans and what influences contributed to the development of the President's letter. The public is always well served when it knows how the government conducts its activities, particularly matters touching on ethics and potential misconduct questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about whether the agency has been making decisions in an objective and legal way.

Thus, FGI meets this factor.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

FGI is not requesting these records merely for their intrinsic informational value.



Disclosure of the requested records will significantly enhance the public's understanding of the soundness of decision-making of federal regulators with respect to a politically charged topic as oil and gas markets and the prices consumers are paying for gasoline, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be significantly increased as a result of disclosure because the requested records will help reveal more about this subject matter.

The records are also certain to shed light on FTC's compliance with its own mission and responsibility to protect consumers. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA.

Thus, FGI meets this factor as well.

II. FGI HAS THE ABILITY AND INTENT TO DISSEMINATE THE INFORMATION TO A REASONABLY BROAD AUDIENCE OF PERSONS INTERESTED IN THE SUBJECT.

FGI is a non-partisan organization that informs, educates, and counsels the public about government operations. FGI has robust mechanisms in place to share information obtained from the requested records with the general public and other interested organizations, including its website, social media channels, and other similar platforms. FGI intends to make use of these channels to publish the information from these requested records as well as expert analysis. FGI also has a broad network of reporters, bloggers, and media publications interested in its content and that have durable relationships with the organization. FGI intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Through these means, FGI will ensure that:

1. The information requested contributes significantly to the public's understanding of the government's operations or activities,
2. The information enhances the public's understanding to a greater degree than currently exists,
3. FGI possesses the expertise to explain the requested information to the public,
4. FGI possesses the ability to disseminate the requested information to the general public, and
5. The news media recognizes FGI as a reliable source in the relevant field.

Public oversight and enhanced understanding of FTC's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). FGI need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case



law require[s] such pointless specificity.”⁷ It is sufficient for FGI to show how it distributes information to the public generally. *Id.*

III. OBTAINING THE REQUESTED RECORDS IS OF NO COMMERCIAL INTEREST TO FGI.

Disclosure is in no way connected with any commercial interest of the requestors. FGI is a non-partisan organization with supporters and members of the public who seek information that promotes transparency in government and supports values that help to build a solid infrastructure for a bright American future. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. FGI QUALIFIES FOR A FULL FEE WAIVER

For all of the foregoing reasons, FGI qualifies for a full fee waiver. We hope that the Department will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

Thank you for your prompt attention to this request. If you have any questions, please contact me. All records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Stanley", is placed below the word "Sincerely,".

Chris Stanley
Policy Director
chris@functionalgovernment.org

⁷ *Judicial Watch*, 326 F.3d at 1314.