



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

December 2, 2021

VIA EMAIL: FOIA@FTC.GOV

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

RE: Freedom of Information Act Request; Expedited Treatment Requested

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“the Chamber”) hereby requests the following information:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber’s request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

We further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

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, I request that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest as it is likely to contribute significantly to public understanding of the operations or activities of the government. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber's commercial interest because it seeks to use this information to educate itself and the public about the FTC's ongoing activities. *See* 16 C.F.R. § 4.8(e)(2). The FTC's activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC's recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

The Chamber also requests expedited treatment of this request because the Chamber's mission involves disseminating information—to both its membership and the public—regarding economic issues in the United States, especially as they relate to the Federal Government. The FTC's actions impact the Chamber's members and other members of the public. *See* 16 C.F.R. § 4.11(a)(1)(G). The Chamber must be able to provide information regarding the FTC's activities to its members given their significant impact—so its members may comply with new regulations and policies, so they may protect their rights, and so they may order their own affairs. The impact of these actions is far-reaching, requiring the urgent release of documents and information related thereto in order to understand the FTC's activities and their potential impact on the Chamber's members.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. *See* 5 U.S.C. § 552(a)(6)(A)-(B); *see also* 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,



Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
U.S. Chamber of Commerce
(202) 463-5368
SHeather@USChamber.com



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

January 14, 2022

Mary Carter
US Chamber of Commerce
1615 H Street, NW
Washington, DC 20062

Re: FOIA-2022-00323

Dear Ms. Carter:

This is in response to your request dated December 3, 2021 under the Freedom of Information Act seeking access to:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber's request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term records as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

Your request creates an undue burden on the agency because it creates an unreasonable hardship for the agency to process, even if the specificity requirements are met. *See Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 147 (D.D.C. 2013) (quoting *Am. Fed'n of Gov't Emps., Local 2782 v. U.S. Dept. of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990)). The courts have opined that even if a request reasonably describes the records being sought, the request can still be considered improper if the request is "so broad as to impose an unreasonable burden upon the agency." *Id.*

Overbroad and unreasonably burdensome requests are considered invalid because “FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Ass’n Archives & Research Ctr., Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989). Even if the request meets the FTC FOIA “precise description” requirement, it can still be unduly burdensome on the agency to process. Therefore, we are denying your request in full.

If you have any questions about the way we are handling your request or about the FOIA regulations or procedures, please contact Anthony Ellis at rellis@ftc.gov. If you are not satisfied with this response to your request, you may appeal by writing to Freedom of Information Act Appeal, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or via email at FOIAAppeal@ftc.gov, within 90 days of the date of this letter. Please enclose a copy of your original request and a copy of this response.

You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at Office of Government Information Services (OGIS), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison’s role relates to comments, questions or concerns that a FOIA Requester may have with or about the FOIA Response.

Sincerely,



Dione J. Stearns
Assistant General Counsel



January 21, 2022

VIA EMAIL (FOIAAppeal@ftc.gov)

Freedom of Information Act Appeal
Office of the General Counsel, Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Freedom of Information Act Appeal in Case No. FOIA-2022-00323

To Whom it May Concern:

Pursuant to 16 C.F.R. § 4.11, the Chamber of Commerce of the United States of America (“Chamber”) appeals the determination of Assistant General Counsel Dione Stearns (dated January 14, 2022) regarding the Freedom of Information Act (“FOIA”) request identified above (dated December 2, 2021). The Chamber filed a specific, tailored, and reasonable FOIA request, yet the Commission simply refused to process it. The FTC should promptly reverse this determination.

This is the third time in one month that the FTC has refused to comply with its obligations under FOIA. As detailed below, the Chamber sought the release of all records from a five-month period related to votes cast by a Former Commissioner over an eight-day period. This request is specific, seeking a clear and well-defined universe of documents. And this request is narrow on at least two levels, seeking only six months’ worth of records pertaining to votes cast over just eight days. Yet, once again, the Commission has refused to respond *at all*.

It is now clear that the FTC is simply trying to conceal its operations from the public for as long as possible. Rather than respond to our FOIA request within the twenty days that FOIA provides, the Commission unilaterally extended the deadline by claiming it needed to “search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.” Stearns Letter (January 3, 2022), at p. 2, Ex. A. But now, the Commission has exposed that justification as pure pretext for prolonging these proceedings as much as possible. Rather than produce a *single document*—much less “collect” records from “field facilities”—the Commission has refused to produce *anything*. Stearns Letter (January 14, 2022), at p. 1, Ex. B. That summary refusal exposes the Commission’s ten-day extension as unjustified, and the summary refusal has no legal basis regardless. The FTC is not above the law. It is obligated to provide the transparency that the law demands and the public deserves. If you do not correct the Commission’s course, we will have no choice but to seek judicial intervention.

In the Chamber’s December 2, 2021 FOIA request, we sought the following:

All records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021. This includes, but is not limited to, the specific votes he purported to take that have yet to be made public or might never be made public as of the date of this request; records related to any matter that was not publicly announced by the FTC prior to December 2, 2021; matters that were not yet voted on by all other Commissioners before October 8, 2021 but were voted on by Former Commissioner Chopra; legal analysis performed or received by the FTC; communications between the FTC and the White House; as well as press statements or drafts of press statements. The timeframe for the Chamber’s request is July 1, 2021 to the present. For purposes of this FOIA request, we seek as a priority and initial matter documents reflecting the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 30, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021, with additional records subject to this request provided on a rolling basis thereafter. The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

December 2, 2021 FOIA Request, Ex. C. As simply reading this request makes clear, the Chamber sought a discrete and straightforward category of records—those related to votes cast by former Commissioner Chopra in an eight-day period—over a limited time span of just five months.

* * *

The Commission’s refusal to process the Chamber’s request is unfounded and should be reversed. Without waiving any other bases for disclosure of the material that the Chamber requested, reversal is required because the Chamber’s request does not, as the Commission claimed, “create[] an undue burden on the agency because it creates an unreasonable hardship for the agency to process.” Stearns Letter (January 14, 2022). The Chamber requested records on a single topic in a date range of just five months. The bulk of these records—memoranda, press statements, internal and external emails, text messages, and the like—are almost certainly stored electronically and can thus be easily located through searches of computers and mobile phones.

FOIA is a vital statute that provides “a means for citizens to know what their Government is up to.” *Pub. Emps. for Env’t Resp. v. U.S. Env’t Prot. Agency*, 314 F. Supp. 3d 68, 73 (D.D.C. 2018) (cleaned up). It “was enacted to promote the broad disclosure of Government records by generally requiring federal agencies to make their records available to the public on request.” *Id.* To this end, FOIA requires that agencies make “promptly available to any person” records that are

not otherwise exempt in response to “any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed” 5 U.S.C. § 552(a)(3)(A).

FOIA imposes an extremely heavy burden on agencies that seek to deny FOIA requests because the requests are too burdensome to answer. Such agencies “bear[] the burden to provide [a] sufficient explanation as to why such a search would be unreasonably burdensome.” *Ayuda, Inc. v. FTC*, 70 F. Supp. 3d 247, 275 (D.D.C. 2014). This is a “substantial” burden for the agency to carry. *Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 455–56 (D.D.C. 2014).

Assistant General Counsel Stearns’s summary denial of the Chamber’s request provides no explanation for the Commission’s denial and thus comes nowhere close to carrying the agency’s significant burden of establishing an unreasonable burden. Courts have consistently refused to find that a request is unreasonably burdensome based on an agency’s “conclusory statements,” *Hall v. CIA*, 881 F.Supp.2d 38, 53 (D.D.C. 2012)—requiring instead that an agency “articulate its reasons for nondisclosure ‘with reasonably specific detail,’” *Shapiro v. Cent. Intelligence Agency*, 170 F. Supp. 3d 147, 156 (D.D.C. 2016) (citation omitted). But “conclusory statements” are all that Assistant General Counsel Stearns provided. For that reason alone, reversal is required.

Even if the Commission had tried to explain, though, it is clear that there would be no basis to deem the Chamber’s request unduly burdensome. *First*, the Chamber’s request seeks nothing close to an unreasonable volume of documents. The “dominant objective of FOIA is disclosure,” and courts are accordingly “skeptical that a FOIA request may be denied based on sheer volume of records requested alone.” *Keeping Gov’t Beholden, Inc. v. Dep’t of Just.*, 2021 WL 5918627, at *6 (D.D.C. Dec. 13, 2021) (citing *Yeager v. DEA*, 678 F.2d 315, 322, 326 (D.C. Cir. 1982)). Again, the Chamber’s request seeks a discrete set of documents related to the narrow topic of “votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021.” December 2, 2021 FOIA Request, Ex. C. That request is unlikely to yield an avalanche of records and is well within the norms of FOIA—a statute that, in any event, “puts no restrictions on the quantity of records that may be sought.” *Tereshchuk*, 67 F. Supp. 3d at 454; *see also, e.g.*, Dep’t of Justice, Office of Info. Privacy, *FOIA Update Vol. IV, No. 3*, at 5 (1983) (“The sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records”).

Second, the Chamber’s request seeks documents that are almost certainly stored electronically—another reason the request is not unduly burdensome. Performing electronic searches of computers and mobile phones is much less time consuming than digging through dusty boxes for paper files. Courts have recognized as much, rejecting claims of an unreasonable burden where “emails and their attachments can be searched using an eDiscovery tool without needing to open each email and its attachments individually.” *Leopold v. National Security Agency*, 196 F. Supp. 3d 67, 75 (D.D.C. 2016).

Finally, a legion of judicial decisions have rejected agency attempts to deny FOIA requests as unreasonably burdensome in circumstances involving requests that were far more burdensome than the Chamber's. For example, courts have found that requests are not unduly burdensome when processing them would require:

- searching documents for “roughly 2,200 hours,” *Kwoka v. Internal Revenue Serv.*, 2018 WL 4681000, at *5 (D.D.C. Sept. 28, 2018);
- reviewing 24,840 pages of information, *Tereshchuk*, 67 F. Supp. 3d at 455;
- reviewing 1,212 pages of manuals, *Brown v. Washington Metro. Area Transit Auth.*, 2020 WL 806197, at *10 (D.D.C. Feb. 18, 2020); or
- searching through nearly 17,0000 hard-copy file folders. *Hall v. C.I.A.*, 881 F. Supp. 2d 38 (D.D.C. 2012).

The Chamber's request is far more limited than any of these.

* * *

The “basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989) (citation omitted). The FTC's categorical refusal to comply with that vital transparency statute—and thus enable the public to hold it accountable for how it exercises its official power—is astonishing and inconsistent with the rule of law. We trust that you will promptly remedy this error.

Sincerely,



Daryl Joseffer
Executive Vice President and Chief Counsel
U.S. Chamber Litigation Center
U.S. Chamber of Commerce
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UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the General Counsel

~

Elizabeth Tucci
Deputy General Counsel for Legal Counsel

February 22, 2022

Sent via E-mail

Daryl Joseffer
U.S. Chamber of Commerce
1615 H Street NW
Washington, DC 20062-2000

Re: Freedom of Information Act (“FOIA”) Appeal | FOIA Request No. 2022-00323

Dear Mr. Joseffer,

I am writing as the official designated to review FOIA appeals for the Federal Trade Commission (“FTC”).

On December 2, 2021, Mr. Sean Heather submitted a FOIA request seeking “all records related to votes cast by Former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021” including, but not limited to:

- Specific votes [Former Commissioner Chopra] purported to take that have yet to be made public or might never be made public as of the date of this request;
- Records related to any matter that was not publicly announced by the FTC prior to December 2, 2021;
- Matters that were not yet voted on by all other Commissioners before October 8, 2021, but were voted on by Commissioner Chopra;
- Legal analysis performed or received by the FTC;
- Communications between the FTC and the White House; and
- Press statements or drafts of press statements.¹

¹ Initial Request re: 2022-00323 dated Dec. 2, 2021 (hereinafter “Heather Initial Request”).

The timeframe for this request was July 1, 2021 to the present.² Mr. Heather expressed “priority for records containing the subject matter and dates of votes that Former Commissioner Chopra purported to take between September 20, 2021 and October 8, 2021 on any or all matters that had not been voted on by all other Commissioners before October 8, 2021,” with a request for other records to be provided on a rolling basis.³ Additionally, Mr. Heather defined “records” to include any or all of the following: “emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.”⁴

On January 3, 2022, a 10-day extension letter was issued to the requester due to the FOIA Unit’s need to “search for and collect the requested records from field facilities or other establishments... separate from the office processing the request.”⁵ On January 14, 2022, Assistant General Counsel Dione Stearns denied the request in full and determined that the fulfilling the request would create “an undue burden on the agency” and cause “an unreasonable hardship for the agency to process.”⁶

On January 21, 2022, you – on behalf of Mr. Heather and the U.S Chamber of Commerce (“Chamber”) – submitted a timely appeal of the FOIA Unit’s decision arguing that the FTC FOIA Unit’s “refusal to process the Chamber’s request is unfounded and should be reversed.”⁷ You argue that because the Chamber requested “records on a single topic in a date range of five months,” fulfilling the request does not create an undue burden on the agency to produce because the bulk of records are stored electronically.⁸ Moreover, you argue that the unreasonable burden must be invoked with a corresponding “sufficient explanation” to apply to any request because of the “substantial” burden an agency is required to meet before withholding requested records.⁹

Conversely, you argue that even if the FOIA Unit’s explanation is sufficient and meets the “substantial” standard, this request is not unduly burdensome to process because:

- 1) the request will not produce an unreasonable volume of documents;
- 2) responsive records are almost certainly stored electronically; and
- 3) a “legion” of judicial decisions have rejected agency attempts to deny FOIA requests as unreasonably burdensome in circumstances involving requests far more burdensome than the Chamber’s request.¹⁰

² *Id.*

³ Heather Initial Request.

⁴ *Id.*

⁵ Extension Letter re: 2022-00323 dated Jan. 3, 2022.

⁶ Final Response Letter re: 2022-00323 dated Jan. 14, 2022 (hereinafter “Final Response Letter”).

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.* at 3.

¹⁰ Joseffer Appeal at 3-4.

First, I find that the FOIA Unit provided a sufficient explanation for the full denial of the Chamber's request at the administrative level.¹¹ While, once a matter is in litigation, "[c]ourts often look for a detailed explanation by the agency regarding the time and expense of a proposed search in order to assess its reasonableness,"¹² at the administrative level, it is sufficient for the agency to determine "whether to comply with such request" and to notify the requester of, *inter alia*, the reason for the determination.¹³

Here, Ms. Stearns' denial of the Chamber's FOIA request explained that the request was improper because it would be unreasonably burdensome on the agency to process. In addition to providing this specific reason for the request's denial, the letter also provided legal background to support this decision. At this stage of the appeal process, the explanation provided was sufficient. Accordingly, the FTC FOIA Unit met its obligation in the final response letter.

Second, in response to your argument that the FOIA Unit improperly categorized the Chamber's request as an undue burden,¹⁴ I find that the FOIA Unit properly categorized and denied your request in full as imposing an undue burden. The FOIA states that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees, and procedures to be followed, shall make the records promptly available to any person."¹⁵ The FTC FOIA and Privacy Act Handbook (2019) states:

At a minimum, your FOIA request should contain:

- (1) Your name, address, and daytime telephone number or email address, in case we need to contact you to discuss your request; [and]
- (2) *A precise description of the records that you seek*, e.g., consumer complaints or investigative files about a particular company or product ...¹⁶

A FOIA request is categorized as an "undue burden" if it would create an unreasonable hardship for the agency to process.¹⁷ Overbroad and unreasonably burdensome requests are considered invalid because "FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters."¹⁸ To determine whether the request is an undue burden, the courts review "whether the agency is able to determine precisely what records are being requested."¹⁹ Failure to meet the "reasonable-description requirement does not doom requests

¹¹ See *Joseffer Appeal* at 3.

¹² *Shapiro v. CIA*, 170 F. Supp. 3d 147, 156 (D.D.C. 2016) (quoting *Wolf v. CIA*, 569 F. Supp. 2d 1, 9 (D.D.C. 2008)).

¹³ *Nat'l Sec. Couns. v. CIA*, 898 F. Supp. 2d 233, 284 (D.D.C. 2012), *aff'd*, 969 F.3d 406 (D.C. Cir. 2020) (citing 5 U.S.C. § 552(a)(6)(A)(i)).

¹⁴ *Joseffer Appeal* at 3-4.

¹⁵ 5 U.S.C. § 552(a)(3)(A).

¹⁶ Fed. Trade Comm'n, *Freedom of Information Act & Privacy Act Handbook* at 7, https://www.ftc.gov/system/files/attachments/foia-reading-room/foiahandbook_2019.pdf (last updated Sept. 2019) (emphasis added).

¹⁷ *Ayuda, Inc. v. FTC*, 70 F. Supp. 3d 247, 275-76 (D.D.C. 2014).

¹⁸ *Ass'n Archives & Research Ctr., Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989); see generally *Blakey v. Dep't of Justice*, 549 F.Supp. 362 (D.D.C. 1982), *aff'd* 720 F.2d 215 (D.C. Cir. 1983).

¹⁹ *Tereshchuk v. Bureau of Prisons*, 67 F. Supp. 3d 441, 454 (D.D.C. 2014) (quoting *Yeagar v. DEA*, 678 F.2d 315, 326

that precisely describe the records sought, even if compliance might overwhelm an agency's response team."²⁰ Instead, the inquiry turns on whether "a professional employee of the agency, familiar with the subject matter, can locate the records with a reasonable amount of effort."²¹

Here, the Chamber sought "*all records related to votes cast by former Commissioner Rohit Chopra between September 30, 2021 and October 8, 2021.*"²² The request included a description of six categories of potential responsive records that seemingly broadened rather than narrowed the request to include, among other categories, "records related to any matter that was not publicly announced by the FTC prior to December 2, 2021" and "legal analysis performed or received by the FTC." The Chamber also indicated that the list of six categories was not exhaustive, and did not specify offices, custodians, or other "identifiable limitation."²³ While some reasonable subcategory of records relevant to this topic no doubt could be drafted, fulfilling the request as submitted would have placed an unreasonable burden on the agency. As the D.C. Circuit has explained:

FOIA imposes obligations on agencies to disclose records for requests that "reasonably describe[] such records." 5 U.S.C. § 552(a)(3)(A). We have explained that agencies "need not honor a request that requires 'an unreasonably burdensome search.'" *Am. Fed'n of Gov't Emps. Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) (citing *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978)). We have also established that agencies should read FOIA requests "as drafted, not as either agency officials or [the requester] might wish it was drafted." *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984). The upshot is that, when the request as drafted would require an agency to undertake an unreasonably burdensome search, the agency can decline to process the request.²⁴

Under these circumstances, the agency was empowered to deny the request in full as improper and unduly burdensome. I therefore affirm the FOIA Unit's decision.

If you are dissatisfied with my action on your appeal, FOIA permits you to file a lawsuit in accord with 5 U.S.C. § 552(a)(4)(B), in a United States District Court in the district where you reside or have your principal place of business, or in the District of Columbia.

Finally, I note that the 2007 FOIA amendments created the Office of Governmental Information Services ("OGIS") to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. See <https://ogis.archives.gov>. Using OGIS services does not affect your right to pursue litigation. OGIS's contact information is as follows:

(D.C. Cir. 1982)).

²⁰ *Shapiro*, 170 F. Supp. 3d at 156.

²¹ *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (quoting *Marks v. U.S.*, 578 F.2d 261, 263 (9th Cir. 1978) (quotation marks omitted).

²² Heather Initial Request (emphasis added).

²³ *Freedom Watch, Inc. v. Dep't of State*, 925 F. Supp. 2d 55, 61-62 (D.D.C. 2013).


²⁴ *Nat'l Sec. Couns. v. CIA*, 969 F.3d 406, 410 (D.C. Cir. 2020).

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
ogis@nara.gov
phone: 202-741-5770, or toll-free 1-877-684-6448
fax: 202-741-5769.

Sincerely,

**ELIZABETH
TUCCI**

Elizabeth Tucci
Deputy General Counsel for Legal Counsel

 Digitally signed by ELIZABETH
TUCCI
Date: 2022.02.22 10:07:18
-05'00'