

Exhibit A



February 18, 2022

Submitted online at foia.gov

Douglas Hibbard
Chief, Initial Request Staff, 6th Floor
U.S. Department of Justice
441 G St, NW
Washington, DC 20530-0001

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.
- Any guidance provided to federal, state, or local law enforcement in response to threats

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

against pro-life (or anti-abortion) organizations.

- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Office of the Attorney General

- Merrick Garland, Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

Office of the Deputy Attorney General

- Lisa Monaco, Deputy Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

Office of the Associate Attorney General

- Vanita Gupta, Associate Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

Office for Access to Justice

- Rachel Rossi, Director
- Any staff who represent the office at the Reproductive Rights Task Force

Office of Legal Policy

- Hampton Dellinger, Assistant Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

Office of Legislative Affairs

- Carlos Uriarte, Assistant Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

Office of Public Affairs

- Xochitl Hinojosa, Director
- Any staff who respond to media inquiries relating to the Reproductive Rights Task Force or matters relating to abortion

The term “all records” in this request refers to letters, correspondence, emails including

³ *Id.*

attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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 exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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

⁴ 5 U.S.C. § 552(a)(3)(B).

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

In addition, FGI is a "person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience" and thus qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns "the operations or activities of the Federal government,"
- B. Whether the disclosure is "likely to contribute significantly" to an understanding of government operations or activities, and
- C. Whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that "in most cases records possessed by a federal agency will

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increase the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

C. Disclosure of the requested records will contribute to the understanding of a reasonably broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI’s dissemination of the information will:

⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term "representative of the news media" includes any person or entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: "A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience."^{14 15}

In interpreting this test, the court noted "the news-media waiver . . . focuses on the nature of the requester, not its request."¹⁶ Accordingly, where a requester "satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so."¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: "there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that "the news-media fee waiver applies only to records that 'are not sought for commercial use.'" *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself,’” concluding “there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do.”²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in Cause of Action, FGI clearly qualifies as a representative of the news media.

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

²⁷ *Id.* at 1125 (citations omitted).

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

Exhibit B



February 18, 2022

Submitted at foia.gov

Stephanie Logan
Freedom of Information/Privacy Act Office, Room 8314
Civil Division
1100 L Street, NW
Washington, DC 20035

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

- Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.
- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Civil Division

- Brian Boynton, Principal Deputy Assistant Attorney General, Civil Division
- Any staff who represent the office at the Reproductive Rights Task Force

The term “all records” in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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,

³ *Id.*

⁴ 5 U.S.C. § 552(a)(3)(B).

2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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 send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, FGI is a “person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” and thus qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
- B. Whether the disclosure is “likely to contribute significantly” to an understanding of government operations or activities, and
- C. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increasing the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

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⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

C. Disclosure of the requested records will contribute to the understanding of a reasonably broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI's dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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-

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

partisan organization. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term “representative of the news media” includes any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: “A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.”^{14 15}

In interpreting this test, the court noted “the news-media waiver . . . focuses on the nature of the requester, not its request.”¹⁶ Accordingly, where a requester “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: “there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that “the news-media fee waiver applies only to records that ‘are not sought for commercial use.’” *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself,’” concluding “there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do.”²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in *Cause of Action*, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

²⁷ *Id.* at 1125 (citations omitted).

Exhibit C



February 18, 2022

Submitted at foia.gov

Kilian Kagle
Chief, 4CON, Room 6.153
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.
- Any guidance provided to federal, state, or local law enforcement in response to threats

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

against pro-life (or anti-abortion) organizations.

- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Civil Rights Division

- Kristen Clarke, Assistant Attorney General, Civil Rights Division
- Any staff who represent the office at the Reproductive Rights Task Force

The term “all records” in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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 *Id.*

⁴ 5 U.S.C. § 552(a)(3)(B).

3. Provide all segregable portions of the records for which you claim a specific exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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 send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, FGI is a “person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” and thus qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
- B. Whether the disclosure is “likely to contribute significantly” to an understanding of government operations or activities, and
- C. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increasing the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

C. Disclosure of the requested records will contribute to the understanding of a reasonably

⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI's dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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. FGI has no commercial interest and will realize no commercial benefit from

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term “representative of the news media” includes any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: “A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.”^{14 15}

In interpreting this test, the court noted “the news-media waiver . . . focuses on the nature of the requester, not its request.”¹⁶ Accordingly, where a requester “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: “there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that “the news-media fee waiver applies only to records that ‘are not sought for commercial use.’” *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

satisfy the statute's distribution criterion because it is 'more like a middleman for dissemination to the media than a representative of the media itself,'" concluding "there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do."²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in *Cause of Action*, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

²⁷ *Id.* at 1125 (citations omitted).

Exhibit D



February 18, 2022

Submitted at foia.gov

Melissa Golden
Lead Paralegal and FOIA Specialist, Room 5517
Office of Legal Counsel
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

- Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.
- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Office of Legal Counsel

- Christopher Schroeder, Assistant Attorney General
- Any staff who represent the office at the Reproductive Rights Task Force

The term “all records” in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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,

³ *Id.*

⁴ 5 U.S.C. § 552(a)(3)(B).

2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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 send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, FGI is a “person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” and thus qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
- B. Whether the disclosure is “likely to contribute significantly” to an understanding of government operations or activities, and
- C. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increasing the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

C. Disclosure of the requested records will contribute to the understanding of a reasonably broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI's dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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-

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

partisan organization. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term “representative of the news media” includes any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: “A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.”^{14 15}

In interpreting this test, the court noted “the news-media waiver . . . focuses on the nature of the requester, not its request.”¹⁶ Accordingly, where a requester “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: “there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that “the news-media fee waiver applies only to records that ‘are not sought for commercial use.’” *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself,’” concluding “there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do.”²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in *Cause of Action*, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

²⁷ *Id.* at 1125 (citations omitted).

Exhibit E



February 18, 2022

Submitted at foia.gov

Valerie Yancey
FOIA Officer and Executive Officer
Office of the Solicitor General
950 Pennsylvania Avenue, NW, Room 6627
Washington, DC 20530-0001

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

- Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.
- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Office of the Solicitor General

- Elizabeth Prelogar, Solicitor General,
- Any staff who represent the office at the Reproductive Rights Task Force

The term “all records” in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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,

³ *Id.*

⁴ 5 U.S.C. § 552(a)(3)(B).

2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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 send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, FGI is a “person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” and thus qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
- B. Whether the disclosure is “likely to contribute significantly” to an understanding of government operations or activities, and
- C. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increasing the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

C. Disclosure of the requested records will contribute to the understanding of a reasonably broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI's dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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-

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

partisan organization. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term “representative of the news media” includes any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: “A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.”^{14 15}

In interpreting this test, the court noted “the news-media waiver . . . focuses on the nature of the requester, not its request.”¹⁶ Accordingly, where a requester “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: “there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that “the news-media fee waiver applies only to records that ‘are not sought for commercial use.’” *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself,’” concluding “there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do.”²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in *Cause of Action*, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

²⁷ *Id.* at 1125 (citations omitted).

Exhibit F



February 18, 2022

Submitted online at foia.gov

Kevin Krebs
Assistant Director, FOIA/Privacy Unit
175 N Street, NE, Suite 5.400
Washington, DC 20530-0001

Re: Records relating to the Reproductive Rights Task Force

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the relevant implementing regulations of the Department of Justice (DOJ). FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government.

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

BACKGROUND

In the wake of the *Dobbs vs. Jackson Board of Health* decision, the Department of Justice established the Reproductive Rights Task Force. A stated purpose of the task force is to ensure that states do not “infringe on federal legal protections”¹ related to abortion. It also conducts outreach on “how to report threats, attacks, or other forms of interference that may violate federal law.”² At the same time, there have been numerous reports of violence against pro-life organizations. The requested documents will provide insight on the work of the task force and the DOJ’s response to threats against pro-life supporters.

REQUESTED RECORDS

FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

Final documents:

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.
- Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.

¹ <https://www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force>

² <https://www.justice.gov/opa/pr/readout-reproductive-rights-task-force-meeting>

- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”³

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”
- “abortion”
- “clinics”
- “reproductive health care”

Custodians:

Executive Office for United States Attorneys

- Monty Wilkinson, Director
- Any staff who represent the office at the Reproductive Rights Task Force

The term “all records” in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”⁴ Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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 *Id.*

⁴ 5 U.S.C. § 552(a)(3)(B).

3. Provide all segregable portions of the records for which you claim a specific exemption⁵, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response.

Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.⁶

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with 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 justifications for each withheld records, including the specific exemptions 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 send the non-exempt portions to my email address below within the statutory time limit.⁷

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request 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."⁸

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

⁵ See 5 U.S.C. § 552(b).

⁶ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

⁷ 5 U.S.C. § 552(b).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii).

In addition, FGI is a “person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience” and thus qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
- B. Whether the disclosure is “likely to contribute significantly” to an understanding of government operations or activities, and
- C. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject.

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 is the Reproductive Rights Task Force, clearly concerning the operations and activities of Department of Justice. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁹ The threshold is met here not only because the records sought are by nature possessed by the Department of Justice staff but also because they relate to work as part of the federal government.

Thus, FGI meets this factor.

B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.

Disclosure of the requested records is certain to contribute significantly to public understanding of the Department of Justice’s intentions with the formation of the Reproductive Rights Task Force as it relates to civil rights and religious freedom. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight in how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increasing the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

C. Disclosure of the requested records will contribute to the understanding of a reasonably

⁹ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>

broad audience.

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records. A very broad audience of people on both sides of the abortion debate could have a significantly increased understanding of the work of senior officials at the Department of Justice with the release of the requested records.

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.

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

FGI is a non-partisan organization that researches government operations and informs the public its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI's dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.¹⁰ FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."¹¹ It is sufficient for FGI to show how it distributes information to the public generally.¹²

3. 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. FGI has no commercial interest and will realize no commercial benefit from

¹⁰ *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

¹¹ *Judicial Watch*, 326 F.3d at 1314.

¹² *Id.*

the release of the requested records.

4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term “representative of the news media” includes any person or entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”¹³ In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: “A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience.”^{14 15}

In interpreting this test, the court noted “the news-media waiver . . . focuses on the nature of the requester, not its request.”¹⁶ Accordingly, where a requester “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”¹⁷ Moreover, the media entity waiver applies to newer organizations as well as older ones: “there is no indication that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”¹⁸

A. FGI gathers information of potential interest.

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

B. FGI gathers information of interest to a segment of the public.

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particularly information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”¹⁹ Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”²⁰

¹³ 5 U.S.C. § 552(a)(4)(A)(ii).

¹⁴ 799 F.3d 1108, 1120 (D.C. Cir. 2015).

¹⁵ The court further noted that “the news-media fee waiver applies only to records that ‘are not sought for commercial use.’” *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

¹⁶ 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

¹⁷ *Id.*

¹⁸ *Id.* at 1124.

¹⁹ *Cause of Action*, 799 F.3d at 1121.

²⁰ *Id.*

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, however, there can be no doubt that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

C. FGI uses its editorial skills to turn raw materials into distinct works.

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”²¹ Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”²²

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at functionalgovernment.org. These press releases have included and will continue to include substantive analysis of the information gathered by FGI and involve a significant degree of editorial discretion. FGI has also prepared detailed reports and provided substantive editorial comment to other journalists. Many of those are also posted on our website.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

D. FGI distributes its work to an audience.

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”²³ Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”²⁴ Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”²⁵

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”²⁶

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot

²¹ *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

²² *Id.*

²³ *Cause of Action*, 799 F.3d at 1123.

²⁴ *Id.* at 1124 (footnote omitted).

²⁵ *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

²⁶ *Id.* at 1124.

satisfy the statute's distribution criterion because it is 'more like a middleman for dissemination to the media than a representative of the media itself,'" concluding "there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do."²⁷

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization that FGI can partner with to distribute distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

E. FGI qualifies as a representative of the news media.

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

Accordingly, under the standard set forth in FOIA, and interpreted in Cause of Action, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley
Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org

²⁷ *Id.* at 1125 (citations omitted).

Exhibit G



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

March 16, 2023

Chris Stanley
Functional Government Initiative
6218 Georgia Avenue, NW
Suite 1 – 1235
Washington, DC 20011
chris@functionalgovernment.org

Re: FOIA-2023-00736

Dear Chris Stanley:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated and received in this Office on February 18, 2023, in which you requested records concerning the Reproductive Rights Task Force since May 2, 2022.

The records you seek require a search in and/or consultation with another Office, and so your request falls within “unusual circumstances.” See 5 U.S.C. § 552(a)(6)(B)(i)-(iii) (2018). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for this request.

We regret the necessity of this delay, but we assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact this Office by telephone at the above number, by e-mail at doj.oip.foia@usdoj.gov, or you may write to the Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison, Valeree Villanueva, at the telephone number listed above to discuss any aspect of your request.

-2-

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448.

To the extent that you are seeking records from the Office for Access to Justice (ATJ), I suggest you direct your request to that Department component, if you have not already done so.

Sincerely,
Initial Request Staff
Office of Information Policy
U.S. Department of Justice

Exhibit H

From: DOJ.OIP.FOIA (SMO) DOJ.OIP.FOIA@usdoj.gov
Subject: RE: Re: [EXTERNAL] Your FOIA Request FOIA-2023-00736
Date: March 24, 2023 at 3:46 PM
To: chris@functionalgovernment.org

Good afternoon,

Thank you for your inquiry. We apologize for the confusion. OIP will route that part of your request to the Office of Access to Justice.

Sincerely,
OIP

From: Chris Stanley <chris@functionalgovernment.org>
Sent: Friday, March 24, 2023 1:13 PM
To: DOJ.OIP.FOIA (SMO) <DOJ.OIP.FOIA@usdoj.gov>
Subject: [EXTERNAL] Re: Your FOIA Request FOIA-2023-00736

I have a couple questions on this FOIA on which I would appreciate your help.

I submitted several similar FOIAs to this one to different FOIA offices of DOJ, based on a helpful conversation when I called before submitting. I noted from that call that the Office of Access to Justice was handled by the same office as the other custodians. However, this letter says differently. Can you refer that part to that office, please? If you can't do that, I would appreciate assistance on where to submit it. I can't find that office on [FOIA.gov](https://www.foia.gov) as a place to direct a request, and I don't see it on the DOJ FOIA contact page at <https://www.justice.gov/oip/find-foia-contact-doj/list>.

Thank you again for your assistance on this FOIA request.

Chris Stanley
Director, Functional Government Initiative
chris@functionalgovernment.org
(202) 302-3974 (mobile)

On Mar 16, 2023, at 1:41 PM, OIP-NoReply <OIP-NoReply@usdoj.gov> wrote:

Attached is correspondence from the Department of Justice's Office of Information Policy, which is associated with the above-referenced Freedom of Information Act (FOIA) request.

Please do not reply to this e-mail, as this account is not monitored.

Thank you,

Initial Request Staff
Office of Information Policy
U.S. Department of Justice

Exhibit I



U.S. Department of Justice
Civil Rights Division

KK:ANF:AKL

Freedom of Information/PA Unit –4CON
950 Pennsylvania Ave., NW
Washington, DC 20530

Via Electronic Mail

Mr. Chris Stanley
Functional Government Initiative
6218 Georgia Ave. NW
Ste 1-1235
Washington, DC 20011
chris@functionalgovernment.org

February 24, 2023

Date Received: February 18, 2023

FOI/PA No.23-00119-F

Subject of Request: Information pertaining to all records from May 2, 2022, to the date the search begins meeting the following criteria. Final documents: The final memo creating the Reproductive Rights Task Force; Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force; Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.; Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.; Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.” Other records: Any records containing the following search terms “FACE Act”; “Freedom of Access to Clinic Entrances”; “pro-life”; “abortion”; “clinics” ;“reproductive health care” Custodians: Civil Rights Division Kristen Clarke, Assistant Attorney General, Civil Rights Division; Any staff who represent the office at the Reproductive Rights Task Force

Dear Mr. Stanley:

This is to inform you that your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above. Your request has been assigned the FOI/PA number shown above. Please refer to this number in any future correspondence concerning this request. In connection with review of your FOI/PA request, the following paragraph(s) are applicable:

_____ In searching its file for records responsive to your request, _____

_____ located records that originated with the Civil Rights Division. These records were referred to the Civil Rights Division as the originating component for review and release

XX As a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delay may be encountered in processing your request. In an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt. Please be assured that your request is being handled as equitably as possible. We appreciate your patience and will provide you with a response at the earliest possible date. Please note that the Civil Rights Division utilizes multi-track processing in which processing ranges from faster tracks for requests (seeking access to documents already processed for prior requests) to much slower tracks for complex requests involving voluminous amounts of responsive documents or extensive consultation. At your option, you may wish to call the number below and limit the scope of your request to enable your request to be handled in the most expeditious manner available to fulfill your interests.

____ Since your letter did not include authorization or a certification of identity, we will close your file for now. We will re-open your request on receipt of the required authorization forms. The Privacy Act, and the Department of Justice Privacy Act regulation, 28 C.F.R. §16.41, require each person requesting records indexed or maintained under his or her name or another person's name, to furnish the Department with proof of identity/consent to disclosure. Please complete the enclosed form and return it directly to the Freedom of Information/Privacy Acts Branch, Civil Rights Division, US Department of Justice, Washington, D.C. 20530.

XX We have to consult with other offices in the Civil Rights Division to conduct a search and locate records which may be responsive to your request. Because of the need to examine a voluminous amount of records, we can respond only after consulting with the other offices. Thus, there may be some delay in the processing of your request as a result. Accordingly, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request **beyond the ten additional days provided by the statute**. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in approximately **one month**, whereas complex requests necessarily take longer. To allow us to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

XX Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request.

If you are not satisfied with the Civil Rights Division's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

April N. Freeman

for

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Unit
Civil Rights Division

Exhibit J



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

February 23, 2023

Chris Stanley
Director
Functional Government Initiative
chris@functionalgovernment.org

Re: FOIA Tracking No. FY23-046

Dear Mr. Stanley:

This letter acknowledges receipt of your February 18, 2023 Freedom of Information Act (“FOIA”) request to the Office of Legal Counsel (“OLC”), in which you sought records of “Christopher Schroeder, Assistant Attorney General[, and a]ny staff who represent [OLC] at the Reproductive Rights Task Force,” “from May 2, 2022, to the date the search begins,” related to, among other things, the Reproductive Rights Task Force, and records containing the listed search terms. We received your request on February 21, 2023, and it has been assigned tracking number **FY23-046**.

Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the “complex” processing track. If you would like to narrow your request so that it can be transferred to the “simple” track and processed more quickly, please contact Melissa Golden at the addresses and phone number provided below. We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$25.

Because of the considerable number of FOIA requests received by OLC prior to your request, we have not yet been able to process your request. Accordingly, we likely will be unable to comply with the statutory deadline for responding to your request. We regret the necessity of this delay, but please be assured that your request will be processed as soon as possible.

In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5517, Washington, DC 20530.

Sincerely,
OLC FOIA Staff

Exhibit K



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20532

March 6, 2023

VIA U.S. MAIL or VIA EMAIL to chris@functionalgovernment.org

Chris Stanley
Functional Government Initiative
6218 Georgia Ave NW, Apartment 1
Washington, DC 20011-5125

Re: OSG FOIA No. **2023 - 127995**

Dear Mr. Stanley:

This letter acknowledges our receipt of your Freedom of Information Act (FOIA) request dated February 18, 2023 and received by the Office of the Solicitor General (OSG) on February 21, 2023, in which you request:

“FGI requests from the Department of Justice all records from May 2, 2022, to the date the search begins meeting the following criteria.

- The final memo creating the Reproductive Rights Task Force.
- Any mission statements, charters, or similar documents relating to the Reproductive Rights Task Force.
- Any guidance provided to federal, state, or local law enforcement on the Freedom of Access to Clinic Entrances (FACE) Act.
- Any guidance provided to federal, state, or local law enforcement in response to threats against pro-life (or anti-abortion) organizations.
- Any guidance provided to “reproductive health care providers, including groups representing both clinics providing abortions and pregnancy resource centers” on “how to report threats, attacks, or other forms of interference that may violate federal law.”

Other records:

Any records containing the following search terms:

- “FACE Act”
- “Freedom of Access to Clinic Entrances”
- “pro-life”

- “abortion”
- “clinics”
- “reproductive health care”

- Custodians:
 - Office of the Solicitor General
 - Prelogar, Solicitor General
 - Any staff who represent the office at the Reproductive Rights Task Force”

This Office has assigned the following FOIA tracking number to your request: **2023 - 127995**.

Based on our preliminary review of your request, and pursuant to 28 C.F.R. §16.5(b), your request has been assigned to the “complex” processing track. We are currently experiencing a backlog in our processing of complex FOIA matters and want to alert you of the potential delay. Also, if you would like to narrow your request, which could potentially allow for faster processing, please contact our FOIA Coordinator at osgfoia@usdoj.gov or at 202-514-2203, using the assigned FOIA tracking number. As a result of the complex designation, we are extending the time limit to respond to your request beyond the ten additional days provided by the statute.

Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request

If you have any questions, if you wish to discuss reformulation or an alternative time frame for the processing of your request, or if you wish to discuss any aspect of your request, you may contact our FOIA Coordinator at osgfoia@usdoj.gov or at 202-514-2203, using the assigned FOIA tracking number. You may also write to OSG at:

OSG FOIA Coordinator
Office of the Solicitor General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0009

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770; toll free at 1-877-684-6448
Facsimile: 202-741-5769

Due to the high volume of correspondence received by this office, we have adopted a first in/first out practice of processing all incoming requests. Your request has been placed in chronological order based on the date of receipt and will be handled as quickly as possible when it is assigned for processing.

Sincerely,

Office of the Solicitor General

OSG/nd

Exhibit L

From: usaeo.foia.requests@usdoj.gov
Subject: Request Acknowledgement by Executive Office for U.S. Attorneys
Date: February 18, 2023 at 1:50 AM
To: chris@functionalgovernment.org

Dear Chris Stanley,

Case Number E0USA-2023-001389 has been assigned to the request you submitted. In all future correspondence regarding this request please reference case number E0USA-2023-001389.

Regards,
Executive Office for U.S. Attorneys