



August 10, 2023

VIA email: FOIAAppeal@ftc.gov
Freedom of Information Act Appeal
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Freedom of Information Act Appeal: FOIA-2023-00927

Dear Ms. Dasgupta:

I. Introduction

On April 14, 2023, America First Legal Foundation (“AFL”) submitted a FOIA request to the United States Federal Trade Commission (“FTC”) and requested a fee waiver. Exhibit 1. On April 17, 2023, AFL received an Acknowledgment Letter from the FTC assigning the request case number 2023-00927. Exhibit 2. On June 7, 2023, AFL received a denial letter stating:

In response to item 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission’s law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to items 2 through 7 of your request, our search of the FTC’s records did not identify any record that would respond to your request.

Exhibit 3.

The FTC’s categorical denial of Item 1 is unlawful because (1) the FTC has a non-discretionary duty to publish its standards justifying re-opening the investigation; (2) the FTC is not a “law enforcement agency”; (3) the Request made no request for witness statements in pending or current materials; (4) denials of materials contained in active investigatory files must be made by the proper “responsible official” under 16 C.F.R. § 4.11(a)(1)(iii)(B); (5) the FTC failed to make a “reasonable harm” determination and attempt to segregate non-exempt information in

611 Pennsylvania Ave SE #231
Washington, DC 20003

320 South Madison Avenue
Monroe, Georgia 30655

compliance with 16 C.F.R. § 4.11(a)(1)(iii)(A); and (6) even if the FTC is a “law enforcement agency” it has failed to demonstrate compliance with the two-part test of *Pratt v. Webster*, 673 F.2d 408, 420 (D.C. Cir. 1982). Also, the FTC’s search of Items 2 through 7 is legally inadequate. Accordingly, AFL appeals under 5 U.S.C. § 552(a)(6)(A)(ii) and 16 C.F.R. § 4.11(a)(3).

II. Grounds for Appeal

A. The categorical denial of Item 1 is unlawful

Item 1 seeks:

All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.

Exhibit 1 at 2. The FTC’s categorical denial of this Item is unlawful for the following reasons.

1. The FTC failed to carry out a non-discretionary duty

The FTC had a non-discretionary duty to publish its standards for re-opening the Twitter investigation. The FOIA’s prefatory language states:

Each agency shall make available to the public information as follows: (1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public ... (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and (E) each amendment, revision, or repeal of the previous. Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.

5 U.S.C. § 552(a). The FTC’s standards must be made public, not kept secret; the Commission’s denial of Item 1, therefore, was without competent legal grounds.

2. The FTC is not a “law enforcement agency”

The FTC is not a “law enforcement agency” because it is not an executive agency, and the president does not have unilateral removal power over its commissioners. *See Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2198–99 (2020) (“The Court identified several organizational features that helped explain its characterization of the FTC as non-executive. Composed of five members—no more than three from the same political party—the Board was designed to be ‘non-partisan’ and to ‘act with entire impartiality.’”) (citing *Humphrey’s Ex’r v. United States*, 295 U.S. 602, 624 (1935)). Also, the term “law enforcement agency” must be construed according to its ordinary public meaning at the time of enactment. *New Prime Inc. v. Oliveira*, 139 S. Ct. 532, 539, 202 L. Ed. 2d 536 (2019). The ordinary understanding of law enforcement includes not just the investigation and prosecution of offenses that have already been committed but also proactive steps designed to prevent criminal activity and maintain security. *Milner v. Dep’t of Navy*, 562 U.S. 562, 582 (2011) (Alito, J., concurring).

3. Request 1 is for policy statements, not witness statements

The FTC bears the burden of demonstrating that *all* records covered by Request 1 are law enforcement records. *See Jefferson v. Dep’t of Just., Off. of Pro. Resp.*, 284 F.3d 172, 179 (D.C. Cir. 2002). The Court in *Robbins Tire & Rubber Co. v. NLRB* found that “witness statements in pending unfair labor practice proceedings are exempt from FOIA disclosure at least until completion of the Board’s hearing.” 437 U.S. at 236. However, FTC Docket No. C-4316 culminated in an Order on May 26, 2022, and, as such, is not a currently pending matter. Request No. 1 made no request for pending or current materials but is limited in its time frame from April 26, 2022, to November 30, 2022. Even if the records from Docket No. C-4316 from that time frame were part of pending proceedings, Request No. 1 is for *policy statements and interpretations of general applicability* not “witness statements.” Therefore, Exemption 7(A), which is limited to records that could “reasonably be expected to interfere with enforcement proceedings” cannot possibly apply.

4. The denial violates the FTC’s regulations

The FTC’s regulations require that initial determinations to deny “active investigatory files,” must be made by the “Director or the Deputy Director of the Bureau or the Director of the Regional Office responsible for the investigation,” rather than the “deciding official (as designated by the General Counsel).” 16 C.F.R. § 4.11(a)(1)(iii)(B). The Denial Letter contains no evidence showing that the determination denying item 1 was made by such an official; instead, the Denial Letter is signed off by the Acting Assistant General Counsel. *See Exhibit 3 at 3.*

5. The FTC failed to find reasonable harm or segregate and release nonexempt information

The FTC's regulations provide that it "will only withhold information if the agency reasonably foresees that disclosure would harm an interest protected by a FOIA exemption or disclosure is prohibited by law." 16 C.F.R. § 4.11(a)(1)(iii)(A). Even then, it must "take reasonable steps necessary to segregate and release nonexempt information." *Id.* There is no evidence that the FTC either made a reasonable harm determination or attempted to segregate and release nonexempt information.

6. The FTC fails the *Pratt* test

The FTC is not a law enforcement agency under FOIA, and Item 1 seeks policy statements and interpretations of general applicability, not witness statements. But even if the FTC is a law enforcement agency under FOIA, and Item 1 includes records such as witness statements, the FTC's denial is still erroneous. To begin with, a "law enforcement purpose" does not include investigatory activities wholly unrelated to law enforcement agencies' legislated functions of preventing risks to national security and violations of criminal laws and of apprehending those who do violate the laws. *Pratt v. Webster*, 673 F.2d 408, 420–21 (D.C. Cir. 1982). To pass the FOIA Exemption 7 threshold, the FTC must establish that its investigatory activities are realistically based on a legitimate concern that federal laws have been or may be violated or that national security may be breached. Either of these concerns must have some plausible basis and a rational connection to the object of the agency's investigation. *Id.*; *see also Jefferson v. Dep't of Just., Off. of Pro. Resp.*, 284 F.3d 172, 178 (D.C. Cir. 2002). The FTC, however, has failed to demonstrate that Item 1 triggers Exemption 7.

B. The FTC failed to conduct an adequate search for Items 2 through 7

The FTC is obligated to conduct a search that is "reasonably calculated to uncover all relevant documents." U.S. DEP'T OF JUST., GUIDE TO THE FREEDOM OF INFORMATION ACT PROCEDURAL REQUIREMENTS at 42 (Aug. 20, 2021), <https://bit.ly/3ytafVq> (citing *Campbell v. SSA*, 446 F. App'x 477, 480 (3d Cir. 2011); *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)). It has the burden of establishing that the search was adequate. *Havemann v. Colvin*, 629 F. App'x 537, 539 (4th Cir. 2015), *see also Aguiar v. Drug Enf't Admin.*, 865 F.3d 730, 738 (D.C. Cir. 2017); *Weisberg v. DOJ*, 705 F.2d 1344 (D.C. Cir. 1983). To do this, it must explain its search process in a way that is relatively detailed and non-conclusory. *Goland v. CIA*, 607 F.2d 339, 352 (D.C. Cir. 1978).

A one-sentence line stating that no responsive records were found is legally inadequate. The FTC owes AFL an explanation of how an adequate search resulted in no responsive documents when the requests, limited to certain custodians, sought

records based on the FTC's own findings; on its face, it appears that the FTC's position is that it handled the Twitter case without internal communications or policy input. Notably, AFL cited a congressional report that referenced the FTC's documents that were attached as Exhibits to "the Committee Report." Exhibit 1 at 2 (citing STAFF OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., INTERIM STAFF REPORT ON THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER (Mar. 7, 2023) (available at <https://bit.ly/3yvb8vD>) [hereinafter COMMITTEE REPORT]). Specifically:

- Item 2 asked for records related to certain individuals during the specified time, including Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. Request No. 2 is limited from April 26, 2022, to November 30, 2022. See Exhibit 1 at 1.
- Item 3 sought records underlying the FTC's determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter. Exhibit 1 at 3.
- Item 4 sought communications referring or relating to "Open Markets Institute." Exhibit 1 at 3. This organization sent a letter urging the FTC to block Elon Musk's acquisition of Twitter. Barry Lynn, *OMI Statement on Elon Musk and Twitter*, OPEN MARKETS INSTITUTE (Apr. 26, 2022) (attached to the COMMITTEE REPORT as App. 10); see also Barry Lynn, *Open Markets Institute Statement in Response to Elon Musk Buying Twitter*, OPEN MARKETS INSTITUTE (Oct. 27, 2022) (attached to the COMMITTEE REPORT as App. 12). Nevertheless, the FTC's search did not pick up this letter much less any agency communications about it.
- Item 5 sought communications referring or relating to the Center for American Progress, Common Cause, MoveOn, or Public Citizen. Exhibit 1 at 4. Reportedly, these organizations demanded the FTC to investigate. AMERICAN PROGRESS, *The FTC, Congress, and Advertisers Must Hold Elon Musk and Twitter Accountable, Say Progressive Groups* (Dec. 21, 2022) (attached to the COMMITTEE REPORT as App. 14).
- Item 6 sought "records concerning FTC's determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5 above, did not constitute prohibited *ex parte* communications." Exhibit 1 at 4. Again, is the FTC taking the position that there are no such communications?
- Item 7 sought "communications" specifically "between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, above, or any member of the Commission." *Id.* (emphasis added).

The FTC's claim that it found nothing at all in response when it searched for these items lacks credibility; it appears an adequate search still needs to be done. There needs to be an explanation of how an adequate search resulted in no responsive documents when the requests themselves relied on FTC findings cited in the Requests. Accordingly, AFL appeals the FTC's denial and that the Commission conduct a legally competent search as its regulations require.

III. Conclusion

Thank you in advance for considering this appeal. Please do not hesitate to contact us if you have any questions.

Sincerely,

/s/ Juli Haller

Juli Z. Haller

America First Legal Foundation

EXHIBIT 1



April 14, 2023

Via Online Portal

Freedom of Information Act Request
c/o Anisha Dasgupta, General Counsel
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Freedom of Information Act Request: FTC Docket No. C-4316

Dear Ms. Dasgupta,

America First Legal Foundation is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, and ensure due process and equal protection for all Americans, all to promote public knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. To that end, we file Freedom of Information Act (FOIA) requests on issues of pressing public concern, then disseminate the information we obtain, making documents broadly available to the public, scholars, and the media. Using our editorial skills to turn raw materials into distinct work, we distribute that work to a national audience through traditional and social media platforms. AFL's email list contains over 63,300 unique addresses, our Twitter page has 69,200 followers, the Twitter page of our Founder and President has over 429,900 followers, our Facebook page has 122,000 followers, and we have another approximately 31,800 followers on GETTR.

I. Background

On March 7, 2023, the U.S. House of Representatives, Committee on the Judiciary and Select Subcommittee on the Weaponization of the Federal Government, released a staff report on the FTC's harassing behavior toward Twitter once Elon Musk took control of the social media platform.¹ The staff report accused the FTC of acting beyond its authority by seeking information about Twitter's personnel decisions, Elon

¹ COMMITTEE ON THE JUDICIARY AND THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT U.S. HOUSE OF REPRESENTATIVES, THE WEAPONIZATION OF THE FEDERAL TRADE COMMISSION: AN AGENCY'S OVERREACH TO HARASS ELON MUSK'S TWITTER, (Mar. 7, 2023) (available at <https://bit.ly/3yvb8vD>) (hereinafter "Committee Report").

Musk-related communications, and communications with journalists, among other matters.² The FTC’s presumptive justification for these investigations is that they are necessary for the enforcement of its consent order with Twitter.³ Yet according to the House Judiciary Committee, the FTC’s actions represent a gross abuse of government authority and a threat to the First Amendment.⁴ Also, the Committee Report raises three additional concerns: (1) That the FTC violated the Paperwork Reduction Act in collecting information from Twitter between November 2022 through February 2023; (2) that the FTC violated *ex parte* rules established under the Administrative Procedure Act; and (3) that the FTC exceeded its authority because its consent order with Twitter did not authorize the subject investigations.

II. Records Requested

Pursuant to 5 U.S.C. § 552(a), AFL requests the following records:

1. All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.
2. All records relating to the FTC’s need under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, for information concerning Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. The time frame for this item is April 26, 2022, to November 30, 2022.

² Committee Report, *supra* note 1 at 1. See Committee Report, *supra* note 1 at 5 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)) (concerning access to journalistic communications); Committee Report, *supra* note 1 at 10 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 30, 2022)) (concerning communications relating to Elon Musk); Committee Report, *supra* note 1 at 9 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)) (concerning Twitter’s personnel decisions and other operational activities); Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 9, 2022)) (concerning Twitter’s termination of Jim Baker); Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement Regarding Twitter Blue and Resignations to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 10, 2022)); Committee Report, *supra* note 1 at 2, (citing Request 3(d), Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 21, 2022)) (requesting information about when Twitter “first conceived of the concept for Blue Verified”).

³ Ryan Tracy, *FTC Twitter Investigation Sought Elon Musk’s Internal Communications, Journalist Names*, WALL STREET J. (Mar. 8, 2023), <https://on.wsj.com/41TPWN8>, (Statement from FTC Chair Lina Khan); *accord.* Twitter, Inc., Decision and Order, C-4316, FTC (2022); see also *United States v. Twitter, Inc.*, No. 3:22-cv-3070 (N.D. Cal. May 26, 2022), ECF No. 11 (Stipulated Order).

⁴ Committee Report, *supra* note 1 at 1.

3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates:
 - a. November 10, 2022 (4 letters),⁵
 - b. November 15, 2022,⁶
 - c. November 21, 2022,⁷
 - d. November 30, 2022,⁸
 - e. December 6, 2022,⁹
 - f. December 9, 2022,¹⁰
 - g. December 13, 2022,¹¹
 - h. January 3, 2023,¹²
 - i. January 18, 2023,¹³
 - j. January 23, 2023,¹⁴ and
 - k. February 1, 2023.¹⁵

The time frame for this item is April 26, 2022, to February 1, 2023.

4. All communications referring or relating to “Open Markets Institute.” The time frame for this item is April 26, 2022, to November 30, 2022.

⁵ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement Regarding Twitter Blue and Resignations to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 10, 2022)); Committee Report, *supra* note 1 at 2 (citing FTC Letter Regarding Twitter Blue and Resignations (Nov. 10, 2022), *supra* n.9; Request 1, Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter Regarding Terminations, Twitter, Inc., No. C-4316 (Nov. 10, 2022)).

⁶ Committee Report, *supra* note 1 at 4 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 15, 2022)).

⁷ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 21, 2022) (request for when Twitter “first conceived of the concept for Blue Verified”)).

⁸ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Nov. 30, 2022)).

⁹ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 6, 2022)).

¹⁰ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 9, 2022)).

¹¹ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Dec. 13, 2022)).

¹² Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Jan. 3, 2023)).

¹³ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Counsel for Twitter, Twitter, Inc., No. C-4316 (Jan. 18, 2023)).

¹⁴ Committee Report, *supra* note 1 at 10 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Twitter’s Head of Product, Legal, Twitter, Inc., No. C-4316 (Jan. 23, 2023)).

¹⁵ Committee Report, *supra* note 1 at 2 (citing Letter from FTC Staff Attorney, FTC Division of Enforcement to Twitter’s Head of Product, Legal, Twitter, Inc., No. C-4316 (Feb. 1, 2023)).

5. All communications referring or relating to Center for American Progress, Common Cause, MoveOn, or Public Citizen. The time frame for this item is April 26, 2022, to November 30, 2022.
6. All records concerning FTC's determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5, *above*, did not constitute prohibited *ex parte* communications. The time frame for this item is April 26, 2022, to November 30, 2022.
7. All communications between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, *above*, or any member of the Commission. The time frame for this item is April 26, 2022, to February 1, 2023.

III. Custodians

Suggested custodians for subparts 1-6 of this request include the following:

1. The Chair and all Commissioners on the Federal Trade Commission.
2. All political appointees and detailees assigned to the Office of the Chair.
3. The General Counsel and all Deputy General Counsels in the Office of the General Counsel.
4. The Director, all the Deputy Directors, and the Chief of Staff of the Bureau of Consumer Protection (BCP).
5. All employees at a GS-14 level and above in BCP's Division of Enforcement.
6. All employees at a GS-14 level and above in BCP's Division of Privacy and Identity Protection.
7. The Regional Director and Assistant Regional Director of BCP's Western Region (San Francisco).

IV. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii), 16 C.F.R. § 4.8(e), AFL requests a waiver of all search and duplication fees associated with this request. The requested information specifically concerns identifiable operations and activities of the FTC, including how it has managed and reopened a matter on its docket. Because there are concerns about violations of statutory requirements and the potential suppression of protected First Amendment speech, disclosure of the requested information would contribute significantly to public understanding. Furthermore, AFL has a demonstrated ability and intention to effectively convey the information broadly to the public;¹⁶ AFL's

¹⁶ As demonstrated in recent press releases, AFL frequently creates original works with its editorial skills to disseminate information disclosed from released records to the public. *E.g.*, Press Release, *America First Legal's Investigation Reveals the Biden White House Was Involved With the Mar-a-Lago Raid and that NARA Misled Congress; AFL Launches Additional Investigation* (Apr. 10, 2023), <http://bit.ly/3MDRJku>; Press Release, *America First Legal Releases Documents Revealing the FBI's*

status as a representative of the news media has been recognized by other agencies for granting fee waivers, including this Department in prior requests, as well as the Departments of Defense, Education, Energy, Justice, Interior, and Homeland Security. Finally, as a non-profit organization, AFL has no identifiable commercial interest, and the request is made entirely to serve the public interest. We are, of course, available to provide additional information in writing or offline in support of this request. If AFL's request for a fee waiver is not granted in full, please get in touch with us immediately upon making that determination.

V. Processing and Production

Processing should occur in strict compliance with the processing guidance in the Attorney General's Memorandum on Freedom of Information Act Guidelines. If you have any questions about our request or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, then please contact me at FOIA@aflegal.org.

Finally, to accelerate your release of responsive records, AFL welcomes production on an agreed rolling basis. If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive to America First Legal Foundation, 611 Pennsylvania Ave SE #231, Washington, DC 20003.

Thank you in advance for your cooperation.

Sincerely yours,

/s/ Reed D. Rubinstein

Reed D. Rubinstein

America First Legal Foundation

Counterterrorism Division Wanted the DOJ to "Reconsider" AG Garland's Infamous Memo Targeting American Parents (Mar. 23, 2023), <http://bit.ly/3nZfDMK>.

EXHIBIT 2



AFL FOIA <foia@aflegal.org>

#FOIA-2023-00927 Acknowledgment Letter

1 message

Robinson, Lindsay <lrobinson@ftc.gov>
To: "foia@aflegal.org" <foia@aflegal.org>

Mon, Apr 17, 2023 at 9:51 AM

Dear Requester,

This correspondence acknowledges the receipt of your Freedom of Information Act (FOIA) request dated April 17, 2023 seeking documents regarding documents re: Twitter.

You may check the status of your FOIA request by visiting <http://www.ftc.gov/about-ftc/foia/foia-reading-rooms/track-your-foia-request>. This report is updated at the end of each month. If you should have any questions regarding your request, please contact me at lrobinson@ftc.gov. In any call or future correspondence concerning the request, please refer to the following case number 2023-00927.

Lindsay A. Robinson (she/her)

General Attorney

Federal Trade Commission

Office of the General Counsel, FOIA

600 Pennsylvania Ave. NW, Washington, DC 20580

(202) 326-3401 | lrobinson@ftc.gov



EXHIBIT 3



Case 1:23-cv-02765-DLF Document 1-1 Filed 09/21/23 Page 16 of 18

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, DC 20580

June 7, 2023

Sent via Email

Reed Rubinstein
America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003
Email: foia@aflegal.org

Re: FOIA-2023-00927

Dear Reed Rubinstein:

This is in response from the Federal Trade Commission (“FTC”) to your Freedom of Information Act (“FOIA”) request dated April 14, 2023, seeking access to:

1. All records concerning the reopening of FTC Docket No. C-4316 and related general statements of policy or interpretations of general applicability interpreting that docket to authorize the information collections of Twitter information which took place between April 2022 and February 2023. The time frame for this item is April 26, 2022, to November 30, 2022.
2. All records relating to the FTC’s need under Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, for information concerning Bari Weiss, Matt Taibbi, Michael Shellenberger, and Abigail Shrier. The time frame for this item is April 26, 2022, to November 30, 2022.
3. All records relating to FTC’s determination that the Paperwork Reduction Act did not apply to the information collections in the form of letter requests to Twitter (or its counsel) on the following dates: November 10, 2022 (4 letters), November 15, 2022, November 21, 2022, November 30, 2022, December 6, 2022, December 9, 2022, December 13, 2022, January 3, 2023, January 18, 2023, January 23, 2023, and February 1, 2023. The time frame for this item is April 26, 2022, to February 1, 2023.
4. All communications referring or relating to “Open Markets Institute.” The time frame for this item is April 26, 2022, to November 30, 2022.
5. All communications referring or relating to Center for American Progress, Common Cause, MoveOn, or Public Citizen. The time frame for this item is April 26, 2022, to November 30, 2022.

#FOIA-2023-00927

Reed Rubinstein

America First Legal Foundation

June 7, 2023

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6. All records concerning FTC's determination that communications from the Senate, the Open Markets Institute, or any entity identified in Request No. 5, *above*, did not constitute prohibited *ex parte* communications. The time frame for this item is April 26, 2022, to November 30, 2022.
7. All communications between FTC Division of Enforcement attorneys James Kohm, Reenah Kim, or Laura Koss, or FTC Division of Privacy and Identity Protection attorneys Jamie Hine or Andrea Arias, and any entity identified in Requests No. 4 or 5, *above*, or any member of the Commission. The time frame for this item is April 26, 2022, to February 1, 2023.

In accordance with the FOIA and agency policy, we have searched our records on April 17, 2023 and May 22, 2023. In response to item 1 of your request, records are exempt from disclosure under FOIA Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), because disclosure of that material could reasonably be expected to interfere with the conduct of the Commission's law enforcement activities. *See Robbins Tire & Rubber Co. v. NLRB*, 437 U.S. 214 (1978). In response to items 2 through 7 of your request, our search of the FTC's records did not identify any record that would respond to your request. If you believe that you have additional information that may help locate responsive records or if you would like to amend your request, please submit a new FOIA request with further details.

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

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Reed Rubinstein

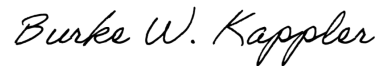
America First Legal Foundation

June 7, 2023

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You also may seek dispute resolution services from the FTC FOIA Public Liaison Richard Gold via telephone at 202-326-3355 or via e-mail at rgold@ftc.gov; or from the Office of Government Information Services via email at ogis@nara.gov, via fax at 202-741-5769, or via mail at National Archives and Records Administration, Office of Government Information Services, 8601 Adelphi Road, College Park, MD 20740. Please note that the FOIA Public Liaison's role relates to comments, questions, or concerns that a FOIA Requester may have with or about the FOIA Response. The FOIA Public Liaison's role does not relate to acting in matters of private controversy nor can they resolve individual complaints.

Sincerely,



Burke W. Kappler

Acting Assistant General Counsel