

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PROSPERITY FOUNDATION)
4201 Wilson Boulevard, Suite 1000)
Arlington, VA 22203,)

Plaintiff,)

v.)

U.S. DEPARTMENT OF THE INTERIOR)
1849 C Street, N.W.)
Washington, D.C. 20240;)

Defendant.)

COMPLAINT EXHIBIT 4



September 13, 2023

VIA FOIAXpress PAL

Freedom of Information Act Request
Department of the Interior
U.S. Fish & Wildlife Service

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonpartisan organization dedicated to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹ AFPF is investigating the Department of the Interior’s (“Interior”) and U.S. Fish & Wildlife Service’s (“USFWS”) decision to cancel lease sales in the Arctic National Wildlife Refuge that are required by federal law.² A previous AFPF investigation found Interior misled the public about its reason for cancelling a separate lease sale in Alaska’s Cook Inlet.³

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF hereby requests the following records:⁴

All internal and external communications (e-mail, text, instant messaging, etc.) sent to or by the following Interior employees, including through any alias accounts:

1. Director Martha Williams
2. Chief of National Wildlife Refuge System Cynthia Martinez
3. Regional Director, Alaska, Sara Boario

Please limit your search and processing of records for the foregoing custodians to those records containing any of the following sets of keywords:

- A. (“Arctic National Wildlife Refuge” OR “ANWR” OR “Coastal Plain”) AND (“lease sale” OR “cancel” OR “cancellation”)
- B. (“Arctic National Wildlife Refuge” OR “ANWR” OR “Coastal Plain”) AND (“NEPA” OR “National Environmental Policy Act”)

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited Sept. 12, 2023).

² See Bobby Magill, *Arctic Oil Leasing Legal Fight Looms on Alaska Cancellations (1)*, BLOOMBERG LAW, (Sept. 7, 2023), <https://news.bloomberglaw.com/environment-and-energy/arctic-oil-leasing-legal-battles-loom-after-alaska-cancellations>.

³ Kevin Schmidt, *New emails undermine official reason for cancelling key oil and gas lease*, AMS. FOR PROSPERITY (Sept. 8, 2022), <https://bit.ly/3te6boa>.

⁴ For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.”

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C. “Tax Cuts and Jobs Act” OR “TCJA” OR “Tax Act” OR “PL 115-97” OR “Public Law 115-97”

The time period for this request is March 1, 2023 to the present.⁵

For purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. If any portion of a record, so defined, is found to be potentially responsive to AFPF’s request, then USFWS should process the record in its entirety without any further segmentation or subject-matter scoping.

Request for Expedited Processing

AFPF requests expedited processing of its request because (1) AFPF is “primarily engaged in disseminating information” and (2) the requested records concern “actual or alleged Federal government activity” about which there is an “urgency to inform the public.”⁶

First, as discussed below, AFPF is primarily engaged in disseminating information because it qualifies as a news media requester.⁷ AFPF 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.

Second, in this case, the requested records concern unprecedented actions by Interior and its component agencies, including USFWS, to cancel lease sales required by federal law.⁸ These records unquestionably concern the activity of the federal government that is ongoing and highly controversial. Disclosure of responsive records, in other words, concerns a matter of public exigency.

Delay in the production of records responsive to this request would compromise a significant and recognized public interest in government accountability. The Supreme Court has stated that the “core purpose of the FOIA” is to allow the American people access to information that might “contribute significantly to public understanding of the *operations or activities of the government.*”⁹ The ability of a “watchdog” group like AFPF to secure records such as those sought in this request for the purposes of government accountability,¹⁰ especially where a current exigency and unfolding story exists, weighs in favor of expedited processing.

As required by 43 C.F.R. § 2.20(b), the undersigned—Kevin Schmidt—hereby certifies that AFPF’s request for expedited processing is true and correct to the best of his knowledge and belief.

⁵ The term “present” should be construed as the date on which an agency begins its search for responsive records. *See generally Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

⁶ 5 U.S.C. § 552(a)(6)(E)(v)(II); *see* 43 C.F.R. § 2.20.

⁷ *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (referencing *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)).

⁸ *See* Public Law 115-97.

⁹ *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

¹⁰ *See Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001) (“[O]btaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”); *Ctr. to Prevent Handgun Violence v. Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

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Request for a Public-Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹¹ In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they relate to USFWS’s and Interior’s decision to cancel oil and gas lease sales required by law.

AFPF intends to educate the public with the results of this request and similar requests filed with other federal agencies. It has the intent and ability to make those results available to a reasonably broad public audience through various media. AFPF’s staff has significant experience and relevant expertise; these professionals will analyze responsive records, if any, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public. Finally, AFPF is a non-profit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, and it therefore has no commercial interest in making this request.

Request to Be Classified as a Representative of the News Media

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.¹² As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.¹³ AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct work product, including press releases, blog posts, reports, and other informative materials.¹⁴ These distinct works are distributed to the public through various online outlets, such as websites, Twitter,

¹¹ 5 U.S.C. § 552(a)(4)(A)(iii); see 43 C.F.R. § 2.45(a)(1)–(2); see also *id.* § 2.48(a); see generally *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

¹² 5 U.S.C. § 552(a)(4)(A)(ii); 43 C.F.R. § 2.70.

¹³ See *Cause of Action*, 799 F.3d at 1121.

¹⁴ See, e.g., *AFPF Obtains Over 400 Pages of Secretary Mayorkas Using Personal Email for Government Business*, AMS. FOR PROSPERITY (May 19, 2023), <https://bit.ly/3DdcqgZ>; *AFP Foundation investigates DHS secretary’s use of private email while creating Disinformation Governance Board*, AMS. FOR PROSPERITY (Jan. 12, 2023), <https://bit.ly/3HTpOJe>; *New emails undermine official reason for cancelling key oil and gas lease*, AMS. FOR PROSPERITY (Sept. 8, 2022), <https://bit.ly/3te6boa>; *AFP Foundation launches FOIA investigation into Disinformation Governance Board*, AMS. FOR PROSPERITY (May 9, 2022), <https://bit.ly/3GRBgWn>; *More evidence the VA is improperly delaying or denying community care to eligible veterans*, AMS. FOR PROSPERITY (Jan. 28, 2022), <https://bit.ly/37mDnlX>; *AFP Foundation gets CMS to release state-level Medicaid improper payment data after years of stonewalling*, AMS. FOR PROSPERITY (Jan. 20, 2022), <https://bit.ly/34sz7A2>; AMS. FOR PROSPERITY FOUND., PERMISSION TO CARE: HOW CERTIFICATE OF NEED LAWS HARM PATIENTS AND STIFLE HEALTHCARE INNOVATION (Oct. 2021), available at <https://bit.ly/3Zrjpg7>; *Records confirm VA’s use of inaccurate wait time numbers*, AMS. FOR PROSPERITY (Oct. 1, 2021), <https://bit.ly/3a9KGeL>; *Government documents reveal Export-Import Bank fails to protect taxpayers . . . again*, AMS. FOR PROSPERITY (Oct. 30, 2020), <https://bit.ly/3hD09Jn>; *Kansas Shut Down Businesses That Were Willing and Able to Comply with Safety Guidelines*, AMS. FOR PROSPERITY FOUND. (July 21, 2020), <https://bit.ly/3vbj7eC>; AMS. FOR PROSPERITY FOUND., ET AL., GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT (Mar. 2020), AMS. FOR PROSPERITY FOUND., available at <https://bit.ly/2zQOEKI>.

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and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”¹⁵

Record Production and Contact Information

To facilitate document review, please provide non-exempt responsive records in an electronic format in lieu of a paper production. If a portion of responsive records can be produced more readily, AFPF requests that those records be produced first with any remaining records released on a rolling basis as circumstances permit. If you have any questions about this request, please contact me at KSchmidt@afphq.org. Thank you for your attention to this matter.

Kevin Schmidt

KEVIN SCHMIDT

DIRECTOR OF INVESTIGATIONS, AFPF

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii).