

Exhibit 104



Sorenson Law Office

PO Box 10836
Eugene, Oregon 97440

June 22, 2023

Director
Office of Information Policy
441 G Street, NW
6th Floor
Washington, D.C. 20530

SENT VIA ONLINE PORTAL:

<https://www.justice.gov/oip/submit-and-track-request-or-appeal>.

RE: Administrative Appeal of FOIA Requests NFP-149803

I. FACTUAL BACKGROUND

On April 27, 2023, our law firm, on behalf of our law firm's client, the Chinese American Legal Defense Alliance (CALDA) (“Requester”), submitted a Freedom of Information Act (“FOIA”) request to the Federal Bureau of Investigation (“Agency”) that sought expedited processing of records concerning:

- All emails to or from Matthew Olsen, Assistant Attorney General for National Security, former Director of the National Counterterrorism Center, since January 1, 2014, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;

- their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.
- All emails to or from John C. Demers, former Assistant Attorney General for National Security, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.
 - All records, reports, training materials, policy directives, and emails to and from the Federal Bureau of Investigation concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.

Ex. 1

The Agency separated the single request into three separate request responses. The response to one of those three requests is detailed and appealed below.

NFP-149803

On May 10, 2023, the Agency issued a determination in NFP-149803. The subject listed by the Agency is “investigations of U.S. University Professors Regarding Affiliations with China.” Ex. 2. All of the requests here concern professors of U.S. universities so it is difficult to identify exactly which portion of the original request is identified by the nine word description; however, Requester here treats this to be in reference to the third set of bullet pointed records requested. Agency stated the request did not provide enough detail to enable personnel to locate records “with a reasonable amount of effort” and closed the request. *Id.*

On May 10, 2023, Agency also denied expedited processing of the request.

II. THE FREEDOM OF INFORMATION ACT

The purpose of FOIA is to “open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976). Former President Obama reinforced FOIA’s strong

presumption of disclosure with regard to all FOIA decisions. *See* Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (directing agencies to administer FOIA under a presumption that, “[i]n the face of doubt, openness prevails”). Attorney General Merrick Garland issued FOIA guidelines that reinforce a commitment to open government, encouraging federal agencies to both “make discretionary releases of information” and “consider [whether] partial disclosure” is possible when an agency determines full disclosure is not possible. *See* Attorney General Merrick Garland’s Memorandum for Heads of Executive Departments and Agencies (Mar. 15, 2022).

In his memo, the Attorney General Garland also reiterated a “foreseeable harm” standard for defending agency decisions to withhold information under FOIA. *See id.* Thus, the DOJ will defend an agency’s denial of a FOIA request “only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.” *Id.* Under this standard “information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure.” *Id.*

FOIA “mandates a policy of broad disclosure of government documents” and carries a strict disclosure mandate that requires federal agencies to expeditiously disclose requested records to requesters. *See* 5 U.S.C. § 552, *Church of Scientology v. Dep’t of the Army*, 611 F.2d 738, 741 (9th Cir. 1980). Consequently, any inquiry under FOIA brings with it a “strong presumption in favor of disclosure.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). To that end, nothing in FOIA should be read to “authorize withholding of information or limit the availability of records to the public, except as specifically stated.” *See* 5 U.S.C. § 552(c). Congress recognized that in certain limited instances, records may be exempt from FOIA’s broad disclosure mandate, and thus created nine categories of exemptions. § 552(b). These exemptions, however, “must be narrowly construed in light of FOIA’s dominant objective of disclosure, not secrecy.” *Maricopa Audubon Soc’y. v. U.S. Forest Serv.*, 108 F.3d 1082, 1085 (9th Cir. 1996).

Accordingly, because FOIA carries a presumption in favor of disclosure, and indeed, because, “FOIA requesters face an information asymmetry given that the agency possesses the requested information and decides whether it should be withheld or disclosed,” *COMPTEL v. U.S. Federal Comm’n.*, 910 F. Supp. 2d 100, 111 (D.D.C. 2012) (internal citations omitted), agencies bear the burden of justifying the withholding of any records that are responsive to a FOIA request. 5 U.S.C. §552 (a)(4). An agency must provide “a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.” *See King v. Dept. of Justice*, 830 F.2d 210, 219 (D.C. Cir. 1987) (agency must provide); *see also Coastal States Gas*

Corp. v. Dep't of Energy, 617 F.2d 854, 861 (D.C. Cir. 1980) (holding an agency's disclosure of "who wrote the [document], to whom it was addressed, its date, and a brief description" was "patently inadequate" to establish exemption under FOIA).

Under the FOIA Improvement Act of 2016, 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. *See* FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

III. FOIA REQUIRES AGENCIES TO CONDUCT A SEARCH WHEN REQUESTERS REASONABLY DESCRIBE THE RECORDS SOUGHT

The Agency has failed to conduct a reasonable search in response to a FOIA request (FOIA Number NFP-149803) which specifically described the records sought.

FOIA requires that a requester "reasonably describe" the records sought in sufficient detail that an agency professional familiar with the subject matter can locate the records with a "reasonable amount of effort." *Ferri v. DOJ*, 573 F. Supp. 852, 859 (W.D. Pa. 1983). After a valid request has been made to the agency, that agency must "make reasonable efforts to search for records." 5 U.S.C. § 552 (a)(3)(A)(C). The term "search" here means "to review, manually *or* by automated means, agency records for the purpose of locating those records which are responsive to a request." *Id.* § (a)(3)(A)(D) (emphasis added).

The Court of Appeals for the District of Columbia has recognized that the central purpose of FOIA's "reasonably describe" requirement is to allow an agency to know which documents are being requested. *See Yeager v. DEA*, 678 F.2d 315 (D.C. Cir 1982). In *Yeager*, the D.C. Circuit found that a request for over 1,000,000 records relating to foreign and domestic investigation reports did reasonably describe those records sought. *Id.* at 321. The records spanned several different databases. *Id.* Ultimately, the request did reasonably describe the records in that case. *Id.* at 326.

The records sought in this narrow in time FOIA request concern records about a specific government program, a specific category of target investigated under that program, and a specific Agency which has received records. Ex. 1. The Agency does not have to make any guesses about which records are encompassed when the Requester asked for records from a particular time period relating to the

[I]nvestigation or prosecution of any professors of a U.S. university regarding any of the following subjects:

- their possible ties or affiliation with China;

- their possible theft of U.S. technology or trade secrets for China;
- their possible acts of espionage for China;
- their possible failure to disclose their ties or affiliations with China; or
- their possible failure to disclose their income received from China.

Ex. 1.

This list contains of objective descriptions requires no guess work and allows an agency professional familiar with the matter to know precisely what is sought.

This government crackdown on Chinese Americans in public life had broad sweeping effects across the United States. Requester seeks these records in order to cast light on the injustices which have resulted from that specific program.

VII. CONCLUSION

As described above, the Agency has failed to conduct a reasonable search in response to a FOIA request that specifically described the records sought. Accordingly, the Agency must conduct an adequate search for responsive records and produce all responsive records by a certain date. In so doing, the Agency must also provide an estimated date of completion of its release of the records. 5 U.S.C. § 552 (a)(7)(B).

Please notify me of the date you receive this FOIA Appeal and the number you assign to identify this FOIA Appeal. I expect your timely resolution of this matter. Do not hesitate to contact me with any questions regarding this appeal. Please contact me at peter@sorensonfoialaw.com or Sorenson Law Office, PO Box 10836, Eugene, Oregon 97440.

C. Peter Sorenson

Sorenson Law Office

PO Box 10836

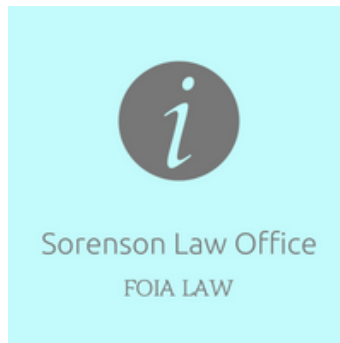
Eugene, Oregon 97440

Enclosures:

Ex. 1. Requester's Request

Ex. 2. Agency response dated May 10, 2023 FOIA No.: NFP-149803

Exhibit 1



April 27, 2023

FBI Records Information Dissemination Section
Attn: FOIPA request
170 Marcel Drive
Winchester, VA 22602-4843

SENT VIA ONLINE PORTAL: <https://efoia.fbi.gov>

Dear Chief FOIA Officer,

I am writing on behalf of my client, Chinese American Legal Defense Alliance (“CALDA”). CALDA is a nonprofit organization registered in New Jersey and California. Their contact address for this request is: 7901 Stoneridge Drive #208, Pleasanton, CA 94588; and email address is czhu@dehengsv.com.

I. REQUEST

CALDA, pursuant to the Freedom of Information Act (“FOIA”), makes the following requests:

1. All emails to or from Matthew Olsen, Assistant Attorney General for National Security, former Director of the National Counterterrorism Center, since January 1, 2014, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.

2. All emails to or from John C. Demers, former Assistant Attorney General for National Security, concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
 - their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;

- their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.
3. All records, reports, training materials, policy directives, and emails to and from the Federal Bureau of Investigation concerning the investigation or prosecution of any professors of a U.S. university regarding any of the following subjects:
- their possible ties or affiliation with China;
 - their possible theft of U.S. technology or trade secrets for China;
 - their possible acts of espionage for China;
 - their possible failure to disclose their ties or affiliations with China; or
 - their possible failure to disclose their income received from China.

II. TIME FRAME OF THIS REQUEST

For all requests listed above, the time frame is identified for the creation of or receipt of records to include January 1, 2014 through the time that the agency conducts its search for responsive records.

III. INFORMATION HELPFUL TO FULFILLING THIS REQUEST

In November of 2018, the Department of Justice (DOJ) announced the start of the “China Initiative.” Then-Attorney General Jeff Sessions stated that: “This Initiative will identify priority Chinese trade theft cases, ensure that we have enough resources dedicated to them, and make sure that we bring them to an appropriate conclusion quickly and effectively.”¹ Intense publicity campaigns by the FBI to Corporate America² and Academia³ followed to justify and mobilize a whole-of-government effort with massive federal dollars and resources.

The FBI also implemented threat awareness sessions at universities, circulating information singling out China as a threat and labeling students, faculty, and researchers as 'non-traditional collectors'.⁴

According to a Bloomberg News analysis of the 50 indictments displayed on the China Initiative webpage, the program hadn't "been very successful at catching spies."⁵ Most of the cases listed by December 17, 2021, involved individual profiteering or career advancement by the accused, rather than state-directed spying. Despite this, many of these indictments portray the alleged thefts as for the benefit of China. Seton Hall University law professor Margaret Lewis

¹ “Attorney General Jeff Session’s China Initiative Fact Sheet”, November 1, 2018, <https://www.justice.gov/opa/speech/file/1107256/download>

² <https://www.fbi.gov/file-repository/china-risk-to-corporate-america-2019.pdf/view>

³ <https://www.fbi.gov/file-repository/china-risk-to-academia-2019.pdf/view>

⁴ Greenfield, Nathan M. (September 25, 2021). "Professor acquittal – Is China Initiative out of control?" University World News. Archived from the original on April 3, 2022. Retrieved July 5, 2022.

⁵ Prasso, Sheridan (December 14, 2021). "China Initiative Set Out to Catch Spies. It Didn’t Find Many". *Bloomberg News*. Archived from the original on December 14, 2021. Retrieved January 22, 2022.

described this as "a conflation of individual motives with a country's policy goals" that has led to the criminalization of "China-ness."*Id.*

Disturbingly, the "China Initiative" amplified a new xenophobic label of "non-traditional collectors," which was first used by FBI Director Christopher Wray.⁶ This term prompted concern from Asian Americans and civil rights groups across the country. For example, a group of 14 advocacy organizations signed a letter to Director Wray expressing their concerns that the "well-intentioned public policies might nonetheless lead to troubling issues of potential bias, racial profiling, and wrongful prosecution."⁷

Furthermore, civil rights leaders have raised concerns about the "China Initiative" and have called for its immediate end. In January 2021, the Asian Pacific American Justice (APA Justice), along with the Brennan Center for Justice and the Asian Americans Advancing Justice (AAJC), sent a letter to then President-Elect Biden that was signed by almost 70 other organizations raising concerns about the "China Initiative" and calling for its end.⁸

Importantly, within the Asian American community, there is a significant amount of anecdotal evidence regarding profiling of Asian Americans. Former University of Tennessee Knoxville (UTK) Professor Anming Hu⁹ was the first case of an academic to go to trial under the "China Initiative" in June 2021. The trial revealed the zeal of the misguided "China Initiative" and FBI agent Kujtim Sadiku to criminalize Professor Hu with reckless and deplorable tactics¹⁰ of spreading false information to cast him as a spy for China and press him to become a spy for the U.S. government. When these efforts failed, the DOJ brought charges against Professor Hu for intentionally hiding his ties to a university in China, which also fell apart upon cross examination of UTK officials during the trial. After the presiding judge declared a mistrial with a hung jury, a juror commented¹¹ that "[i]t was the most ridiculous case." About the FBI, she added: "If this is who is protecting America, we've got problems." Despite these backdrops, the DOJ announced its intent to retry the case, including the utterly ironic allegation that Professor Hu made false statements to federal agents.

This case prompted further scrutiny from the U.S. Congress. On June 18, 2021, three Members of Congress sent a letter to the Inspector General of the Department of Justice requesting information about Professor Anming Hu's case and the practices of the "China Initiative" more broadly. Then, on July 30, 2021, over 90 Members of Congress from both the House of Representatives and the Senate sent a letter to Attorney General Merrick Garland

⁶ David Choi, "FBI director calls China out on one of the biggest threats to the US", Mar 21, 2018, <https://www.businessinsider.com/fbi-china-espionage-chris-wray-2018-3>

⁷ "Open Letter To FBI Director Christopher Wray", March 1, 2018, <https://advancingjustice-aaajc.org/sites/default/files/2018-03/OPEN%20LETTER%20TO%20FBI%20DIRECTOR%20CHRISTOPHER%20WRAY.pdf>

⁸ "Letter to President-elect Joe Biden on Justice Department's 'China Initiative,'" AAJC, January 5, 2021, <https://advancingjustice-aaajc.org/sites/default/files/2021-01/Letter%20to%20President-elect%20Biden%20Re%20the%20China%20Initiative.pdf>

⁹ <https://www.apajustice.org/anming-hu.html>

¹⁰ <https://www.knoxnews.com/story/news/crime/2021/06/14/federal-agents-falsely-accused-university-of-tennessee-professor-spying-china/7649378002/>

¹¹ <https://theintercept.com/2021/06/23/anming-hu-trial-fbi-china/>

requesting information about the “China Initiative.”¹² In this letter, they “request whether, under the ‘China Initiative,’ there is a written or unwritten policy, program, pattern or practice to target people based on their race, ethnicity or national origin.”

The Initiative has created a sense among Asian Americans in academia of feeling “uneasy,” “profil[ed],” “targeted,” and “fear[ful].”^{13 14} In fact, the issue has preceded the case of Professor Anming Hu. In February 2020, the Subcommittee on Civil Rights and Civil Liberties of the House Oversight Committee launched an investigation into the Federal Bureau of Investigation’s (FBI) handling of probes of ethnically Chinese scientists.¹⁵ This investigation was based on concerns that the FBI was targeting and discriminating against scientists of Chinese ethnicity.

On June 30, 2021, Representative Jamie Raskin, Chair of the House Oversight Subcommittee on Civil Rights and Civil Liberties, and Representative Judy Chu, Chair of the Congressional Asian Pacific American Caucus (CAPAC), held a Congressional roundtable on this issue entitled: “Researching while Chinese American: Ethnic Profiling, Chinese American Scientists and a New American Brain Drain.”¹⁶

The DOJ publishes press releases regarding updates to cases that are considered “China Initiative” cases.¹⁷ Based on the press releases on the DOJ website, it appears that investigations relating to the “China Initiative” are conducted – at the very least – by the Federal Bureau of Investigation (FBI), the National Security Division (NSD), Department of Health and Human Services (HHS) including but not limited to their Office of Inspector General, and the various United States Attorneys’ Offices in the states where the charges are eventually made. Additionally, other federal agencies appear to also be involved with these investigations including but not limited to, the National Institute of Health (NIH), the Federal Drug Administration (FDA), National Aeronautics and Space Agency (NASA), Department of Energy

¹² “Rep. Lieu And 90 Members Of Congress Urge DOJ Probe Into Alleged Racial Profiling Of Asians”, July 30, 2021, <https://lieu.house.gov/media-center/press-releases/rep-lieu-and-90-members-congress-urge-doj-probe-alleged-racial-profiling>

¹³ Jodi Xu Klein, “Fear mounts that Chinese-American scientists are being targeted amid US national security crackdown,” *South China Morning Post*, July 3, 2019, <https://www.scmp.com/news/china/diplomacy/article/3017013/fear-mounts-chinese-american-scientists-are-being-targeted>

¹⁴ Jeff Tollefson, “Chinese American scientists uneasy amid crackdown on foreign influence,” *Nature*, June 3, 2019, <https://www.nature.com/articles/d41586-019-01605-9>

¹⁵ “Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists,” *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

¹⁶ “House Oversight Committee, Roundtable Led By Reps. Raskin And Chu Hears About Effects Of Ethnic Profiling Against Chinese American Scientists,” *House Oversight Committee*, June 30, 2021, <https://raskin.house.gov/2021/6/roundtable-led-by-reps-raskin-and-chu-hears-about-effects-of-ethnic-profiling-against-chinese-american-scientists>

¹⁷ General information and press releases for the “China Initiative” can be found here: “Information About The Department Of Justice’s China Initiative And A Compilation Of China-related Prosecutions Since 2018”, *Department of Justice*, <https://www.justice.gov/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>

(DOE), and other agencies associated with federal funding and grants for research, including funding from the National Science Foundation (NSF). Some of these investigations are assisted by various American academic institutions. Furthermore, based on the charging documents linked to the press release page on the DOJ website, our request includes the most common federal charges brought against those accused in cases seemingly related to enforcement of the “China Initiative.”

The USD (R&E) is composed of three major entities, one of which is the Directorate for Research and Technology (DDR&E (R&T)).¹⁸ The DDR&E (R&T) is responsible for the “oversight of the labs, Federally Funded Research and Development Centers (FFRDC), University Affiliated Research Centers (UARC), and academic research.”^{19 20} As stated on its website, the DDR&E (R&T) has a goal to take a “balanced approach between maintaining scientific collaboration and protecting American scientific advances from illicit exploitation.”²¹ Thus, the USD (R&E) is likely involved in the implementation of the “China Initiative” and likely to have records responsive to this request.

In addition to the USD (R&E), the Defense Advanced Research Projects Agency (DARPA) is also likely involved in the implementation of the “China Initiative.” Whereas demonstrated above, much of the work conducted in the name of the “China Initiative” is done through the enforcement of a particular set of federal laws relating to the allocation and administration of federal grants and work visas for scientific research in academia and the commercial sector. DARPA works closely with academic, corporate, and governmental partners.²² DARPA’s website indicates that “universities are an integral part of the innovation ecosystem, and DARPA seeks robust engagement directly with potential university partners,” and provides several links for academics to apply for grant funding.²³

The DARPA website also states that, “[i]n order to identify and mitigate undue foreign influence, as required by Under Secretary of Defense for Research and Engineering (USD (R&E)), DARPA has established a policy and process to identify potential foreign influenced conflicts of interest or commitment.”²⁴ Therefore, the Office of the Secretary of the Defense and Joint Staff should direct its counterparts, the USD (R&E), DARPA, and others involved in the administration of federal grants, to conduct a search for records responsive to this request.

IV. HOW RESPONSIVE RECORDS SHOULD BE PROVIDED

CALDA requests copies of the responsive records for this FOIA request be provided in a digital format, either via email, or stored on a thumb drive, CD, or other electronic data storage device. Providing these records in an electronic format will save agency staff processing time, as well as reducing the cost of making paper copies of all responsive records. *See* 5 U.S.C. §552 (a)(3)(B).

¹⁸ <https://www.cto.mil/enterprise/>

¹⁹ *Id.*

²⁰ <https://rt.cto.mil/>

²¹ *Id.*

²² <https://www.darpa.mil/work-with-us/for-universities>

²³ <https://www.darpa.mil/work-with-us/for-universities>

²⁴ *Id.*

V. APPLICATION FOR EXPEDITED PROCESSING

In this case, CALDA contends that there has been and will be a substantial loss of due process rights to CALDA's members and to the Chinese American community in general. The subject matter of this request has been and continues to be a subject of widespread and exceptional media interest which raises questions of the government's integrity which affect public confidence.

CALDA requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity."²⁵

A. The Urgency of Obtaining the Requested Records

The records requested are urgently needed to inform the public about possible ongoing civil rights violations being carried out by the government in its pursuit of the "China Initiative." Beyond the government's likely discriminatory prosecutions under this initiative, the effect of the unlawful discrimination is likely having a chilling effect on the collaboration and free association rights of Asian Americans, especially concerning their roles and opportunities in academic and scientific institutions. Thus, it's no coincidence that former China Initiative Steering Committee member and former U.S. Attorney for the District of Massachusetts, Andrew Lelling, stated that the initiative's purpose was to have a "chilling effect on collaboration with the Chinese."²⁶

Consequently, history has demonstrated that when certain countries of origin become a focus of national security issues, innocent people in the United States with perceived ethnic or cultural ties to the targeted country, can easily become victims of unlawful discriminatory behavior. As explained in the section above (III. "Information Helpful to Fulfilling this Request"), this discrimination appears to already be taking place and requires immediate transparency and action to stop it. Therefore, this FOIA request is extremely time sensitive.

This request will shed light on government actions that are negatively affecting a significant public interest. As thoroughly cited and discussed in the section above (III. "Information Helpful to Fulfilling this Request") numerous civil rights groups and Congressional Members and Committees have demonstrated very real concerns over the negative consequences the "China Initiative" has – and continues to have – on Asian Americans. These concerns have already been exemplified by the numerous cases cited above where individuals were seemingly targeted by the justice system based primarily on their ethnicity, and not the evidence, because time and time again the necessary evidence was never produced. These types of examples highlight concerns that innocent people are currently being swept up in counter-intelligence initiatives, which is reminiscent of a "new Red Scare."²⁷

²⁵ 5 U.S.C. § 552(a)(6)(E)(v)(II)

²⁶ Catherine Maticic, "U.S. attorneys warn of upcoming 'spike' in prosecutions related to China ties", Feb. 7, 2020, <https://www.sciencemag.org/news/2020/02/us-attorneys-warn-upcoming-spike-prosecutions-related-china-ties>

²⁷ "Raskin and Chu Launch Investigation into NIH and FBI Probes of Chinese Scientists," *House Oversight Committee*, February 20, 2020, <https://oversight.house.gov/news/press-releases/raskin-and-chu-launch-investigation-into-nih-and-fbi-probes-of-chinese>

Therefore, there is a compelling need for the information requested in this FOIA action because it would provide the public and government officials the clarity and context to properly scrutinize and alter how investigations under the new “China Initiative” are being conducted. Thus, it would help answer urgent questions regarding racial profiling prompted by the “China Initiative;” a government activity that’s affecting a significant public interest.

B. CALDA’s Primary Purpose for the Request is to Inform the Public about the Government’s Activity

CALDA is the United States’ first and only non-profit organization dedicated to providing free and direct legal representation to all Chinese Americans who have suffered racial discrimination and hatred. Their mission is to seek justice and racial equality through litigation and other legal actions. While justice is achieved directly through their litigation process, racial equity is achieved through their public relation and public awareness campaigns that reveal the injustices exemplified by their litigation.

CALDA has many different means in which to widely disseminate the information it receives and generates from the records released by this request. Their main media channels include the social media platform WeChat. There, they have the ability to reach out to hundreds of thousands of Chinese Americans. Additionally, CALDA’s website (www.caldausa.org) can reach out to millions of Chinese Americans. CALDA also has access to public relations firms that can publish stories on traditional national media platforms within the United States.

With regard to the “China Initiative,” CALDA is also working directly with multiple nationwide nonprofits including Asian Americans Advancing Justice, the ACLU, the Cato Institute, and APA Justice. All these organizations have proven their capability and willingness to help disseminate the information CALDA receives or generates from its own litigation and FOIA efforts. Lastly, CALDA’s board members are active in the dissemination of information relating to racial justice and equity. Many of them have been making presentations on different media platforms that are viewed by tens of thousands of people.

Therefore, the records, and the information that CALDA generates from this FOIA request, will quickly and widely be disseminated to the public. In doing so, it can create the transparency and political will necessary to alter the government’s activity which continues to negatively affect a significant public interest; the unwarranted and unlawful discrimination of Asian Americans under the direction of the “China Initiative.”

VI. PUBLIC INTEREST FEE WAIVER REQUESTED

Under the Freedom of Information Act, a requester seeking a fee waiver must demonstrate with reasonable specificity that the requested information is likely to contribute significantly to the public understanding of government operations and activities. *See* 5 U.S.C. § 552. When considering a public interest fee waiver request, courts generally consider (1) the substance of the request, (2) the informative value of the information, (3) the requester’s ability to disseminate the information, and (4) the likelihood that the information will contribute significantly to the public understanding. *Public Emples. for Env’tl. Responsibility v. United States DOC*, 968 F. Supp. 2d 88, 100 (D.D.C 2013).

Under FOIA fees are assessed in accordance with the Department of Justice FOIA/PA regulations, based on three categories of requestors:

1. Commercial requesters—charged for search time, document review, and duplication;
2. News media, educational, and scientific requesters—charged for duplication only after the first 100 pages; and
3. All other requesters—charged for search time (after two hours) and duplication (the first 100 pages are free).

Generally, “requester category” means one of the three categories in which agencies place requesters for the purpose of determining whether a requester will be charged fees for search, review and duplication; categories include commercial requesters, noncommercial scientific or educational institutions or news media requesters, and all other requesters. The term “fee waiver” means that processing fees will be waived, or reduced, if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a primarily commercial interest. The DOJ website further states that no search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

Here, CALDA’s FOIA request, and the history and objectives of the CALDA organization, demonstrate its qualifications to receive a Public Interest Fee Waiver. First, as described in the sections above, the substance of the request is designed to expose the discriminatory effect of the government’s actions surrounding the implementation of the “China Initiative.”

Secondly, also described above, the information sought is highly valuable because the request is designed to show that the government’s actions in pursuit of implementing the “China Initiative” are likely – directly or indirectly – having a discriminatory effect upon Asian Americans. The records released because of this request are likely to demonstrate the disparate discriminatory impact the “China Initiative” has had upon Asian Americans. Therefore, the release and analysis of these records will very likely create the transparency and political will necessary to create procedural safeguards to protect Asian Americans from the unnecessary and unlawful discrimination within the justice system, as well as in academic and scientific institutions.

Thirdly, and also described in the section above, CALDA is perfectly situated to widely disseminate the records sought, as well as the information generated from the analysis of the records sought. CALDA has demonstrated its ability and intent to widely disseminate any information derived from this request through its media apparatus as well as other organizations it works closely with.

Finally, the information sought is very likely to significantly contribute to the public understanding of the disparate impact the “China Initiative” has had on Asian Americans. Records released from this request will illustrate whether there has been an uptick in serious federal charges against Asian Americans since the start of the “China Initiative.” By requesting records before and after the start of the “China Initiative,” it will allow a thorough analysis of the effect the “China Initiative” has had on Asian Americans, and whether that increased scrutiny has been justified, or has been improperly prompted by discriminatory stereotypes.

In the event that our waiver is not granted and you comply with all time requirements, we are willing to pay up to \$40 for the records sought. See paragraph VIII for more information.

VII. POLICY AND LEGAL DIRECTION FOR OPEN GOVERNMENT

Disclosure of the above referenced agency records are also sought in order to promote government transparency, and to reflect the Administration’s policy to support our nation’s fundamental commitment to open government. As the Supreme Court has observed, “virtually every document generated by an agency is available in one form or another, unless it falls within one of the Act’s nine exemptions.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 136 (1975).

FOIA was designed to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny,” see, e.g., *Dept. of the Air Force v. Rose*, 425 U.S. 352, 361 (1976), and in order “to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); see also *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *United States Dept. of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

The above-described agency records are subject to disclosure under FOIA, and are not otherwise exempt from disclosure pursuant to FOIA’s nine statutory exemptions. See 5 U.S.C. § 552(b)(1) - (9). To the extent that a determination is made by your FOIA office staff that any limited portions of the records listed above will be withheld from disclosure for this request, FOIA expressly requires all agencies to disclose “[a]ny reasonably segregable portion of a record . . . after deletion of the portions of the record which are exempt.” 5 U.S.C. §552(b). See, e.g., *Oglesby v. U.S. Dept. of Army*, 79 F.3d 1172, 1178 (D.C. Cir. 1996); see also *Abdelfattah v. U.S. Dept. Of Homeland Security*, 488 F.3d 178, 186-187 (3rd Cir).

The 2007 Openness Promotes Effectiveness in our National Government Act amendments to FOIA (the “OPEN Government Act”) requires identification of the amount of any material withheld, the location of any withholdings, a direct reference to the specific statutory exemption supporting each withholdings asserted, and if technically possible, also require that this information shall “be indicated at the place in the record where such deletion is made.” See 5 U.S.C. § 552(b).

VIII. CONSEQUENCES OF AGENCY FAILURE TO COMPORT

An effect of the 2007 Amendments was to impose consequences on agencies that fail to comport with FOIA's requirements. *See* S.Rep. No. 110-59. To underscore Congress's belief in the importance of the statutory time limit, the 2007 Amendments declare that "[a]n agency shall not assess search fees ... if the agency fails to comply with *any time limit*" of FOIA. § 552(a)(4)(A)(viii) (emphasis added). *Bensman v National Park Service*, 806 F.Supp.2d 31 (DCD 2011).

Therefore, I would appreciate your assistance in expressly identifying any exempt responsive records (or portions thereof) and the applicable FOIA exemptions for any responsive materials withheld for this FOIA request.

Please inform my office in writing if there are any "unusual circumstances" that will cause delay in responding to this FOIA request, or providing the records which are requested, and in addition, please provide the approximate date that you anticipate a final response will be provided.

IX. AUTHORIZATION

The Board of Directors of CALDA has authorized the Sorenson Law Office to make this request on their behalf. CALDA has also authorized the Sorenson Law Office to receive records on behalf of CALDA.

If any other authorizations or forms are needed for processing the request, the release of responsive records, the request for expedited processing, or request for the public interest fee waiver, please let us know as soon as possible. We are more than happy to supply the agency with all necessary documentation required to complete this request as requested.

X. ESTIMATED DATE OF COMPLETION REQUESTED

CALDA specifically requests the agency to provide an estimated date of completion for this request.

XI. CONTACT

Please provide a receipt for this request and provide a tracking number so that we may inquire about the status of this request.

If you have any questions regarding this FOIA request, or need help locating documents, or if I can be of any other assistance, please feel free to contact me via email at: peter@sorensonfoialaw.com.

Thank you in advance for your assistance.

Best,

C. Peter Sorenson
Sorenson Law Office
PO Box 10836
Eugene, Oregon 97440

Exhibit 2



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

May 10, 2023

C. PETER SORENSON
SORENSON LAW OFFICE
POST OFFICE BOX 10836
EUGENE, OR 97440

FOIPA Request No.: NFP-149803
Subject: Investigations of U.S. University
Professors Regarding Affiliations with China
(January 1st, 2014 to Present)

Dear C. Sorenson:

This is in response to your Freedom of Information Privacy Acts (FOIPA) request. Your request is overly broad and it does not comport with the requirements of 28 CFR § 16.3(b), as it does not provide enough detail to enable personnel to locate records "with a reasonable amount of effort." Therefore, your request is being closed.

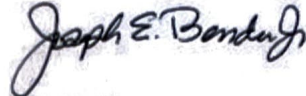
Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. "Part 1" of the Addendum includes standard responses that apply to all requests. "Part 2" includes additional standard responses that apply to all requests for records about yourself or any third party individuals. "Part 3" includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation'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 following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (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." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by emailing the FBI's FOIA Public Liaison at foipaquestions@fbi.gov. The subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified. You may also contact the Office of Government Information Services (OGIS). 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, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Joseph E. Bender, Jr.
Acting Section Chief
Record/Information Dissemination Section
Information Management Division

Enclosures

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Confidential Informant Records.** The FBI can neither confirm nor deny the existence of confidential informant records pursuant to FOIA exemptions (b)(7)(D), (b)(7)(E), and (b)(7)(F) [5 U.S.C. § 552 (b)(7)(D), (b)(7)(E), and (b)(7)(F)] and Privacy Act exemption (j)(2) [5 U.S.C. § 552a (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records would reveal confidential informant identities and information, expose law enforcement techniques, and endanger the life or physical safety of individuals. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches and Standard Search Policy.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems, such as the Central Records System (CRS), or locations where responsive records would reasonably be found. The CRS is an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. The standard search policy is a search for main entity records in the CRS. Unless specifically requested, a standard search does not include a search for reference entity records, administrative records of previous FOIPA requests, or civil litigation files.
 - a. *Main Entity Records* – created for individuals or non-individuals who are the subjects or the focus of an investigation
 - b. *Reference Entity Records*- created for individuals or non-individuals who are associated with a case but are not known subjects or the focus of an investigation
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Foreseeable Harm Standard.** As amended in 2016, the Freedom of Information Act provides that a federal agency may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates, or (2) disclosure is prohibited by law (5 United States Code, Section 552(a)(8)(A)(i)). The FBI considers this foreseeable harm standard in the processing of its requests.
- (iv) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative "FBI file." An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.