

Exhibit 5



March 15, 2024

VIA FOIA PORTAL

Department of the Treasury
1500 Pennsylvania Ave. NW
Washington D.C. 20220

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 In November, a [media report](#) detailed the Biden Administration’s actions to counter negative social media posts about the economy it finds threatening:²

The White House official said the administration is working with TikTok creators to tell positive stories of Biden’s economic stewardship, **while also working with social media platforms to counter misinformation.** (emphasis added)

Treasury officials have previously sought out social media platforms to discuss supposed misinformation. According to documents obtained during discovery in *Murthy v. Missouri*,³ the Deputy Secretary of the Treasury Wally Adeyemo asked the Cybersecurity and Infrastructure Security Agency to arrange meetings for Treasury with [Microsoft](#), [Meta](#), [Google](#), and [Twitter](#) in February 2022.

Given this recent history and the Biden Administration’s refusal to reveal its alleged authorities to censor “misinformation,”⁴ AFPF is concerned that Treasury is improperly pressuring social media companies to remove content critical of the Administration under the guise of “misinformation.” Therefore, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF hereby requests the following records:⁵

1. All internal and external email communications, including attachments, sent to or by the following Treasury employees, including through any alias accounts:
 - Wally Adeyemo, Deputy Secretary
 - Aditi Hardikar, Deputy Chief of Staff

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited Feb. 5, 2024).

² Jeff Stein and Taylor Lorenz, *The viral \$16 McDonald’s meal that may explain voter anger at Biden*, THE WASHINGTON POST (Nov. 24, 2023), <https://www.washingtonpost.com/business/2023/11/24/bigmac-price-tiktok-biden-economy-inflation/>.

³ *f/k/a Missouri v. Biden*. AFPF submitted an [amicus brief](#) in support of respondents before the Supreme Court arguing, “[c]ensorship by proxy is still censorship.”

⁴ *DHS still won’t reveal its alleged authorities to censor ‘misinformation’*, Ams. for Prosperity (Dec. 19, 2023), <https://bit.ly/3NUghoP>.

⁵ 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.”

- Lily Adams, Assistant Secretary for Public Affairs

Along with email, please search and provide records from any medium of communications used by Treasury including but not limited to Microsoft Teams, text messaging, etc. Please limit your search and processing of records for the foregoing custodians to those records containing any of the following sets of keywords:

- “McDonald’s” OR “McDonalds” OR “Big Mac” OR “Inflation”) AND “TikTok”
- “Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Inflation”)
- “Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Social media” OR “Google” OR “Meta” OR “Facebook” OR “TikTok” OR “YouTube” OR “Instagram” OR “Microsoft” OR “Twitter” OR “X.com”)
- “Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Zients” OR “White House” OR “S1” OR “Yellen” OR “Biden”)

The time period for this request is October 1, 2023, to the present.⁶

For the purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. For all items of this request, if the agency uncovers responsive email records, AFPF’s request specifically seeks the entirety of any email chain, any portion of which contains an individual email message responsive to this request, *i.e.*, the entire email chain is responsive to this request. If the agency identifies responsive records it deems outside its legal control (*e.g.*, congressional records), AFPF requests the agency inform AFPF that such records exist.

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.”⁷ In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they relate to the Biden Administration’s actions to counter negative social media posts about the economy by labeling them as misinformation.

AFPF intends to educate the public with the results of this FOIA request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. Its staff has significant experience and relevant expertise; AFPF 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. AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it 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.⁸ As the D.C. Circuit has explained, the

⁶ The term “present” should be construed as the date on which an agency begins its search for responsive records.

⁷ 5 U.S.C. § 552(a)(4)(A)(iii); *see* 31 C.F.R. § 1.7; *see also 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).

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

“representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁹ 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.¹⁰ These distinct works are distributed to the public through various online outlets, such as websites, X.com, 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.”¹¹

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

⁹ See *Cause of Action*, 799 F.3d at 1121.

¹⁰ See, e.g., *DHS still won't reveal its alleged authorities to censor 'misinformation'*, Ams. for Prosperity (Dec. 19, 2023), <https://bit.ly/3NUghoP>; *New federal memos raise concern over social media censorship and free speech online*, Ams. for Prosperity (Sept. 26, 2023), <https://bit.ly/3HeMIL3>; *AFP Foundation Files Suit for ANWR Lease Sale Cancellation Documents*, Ams. for Prosperity (Oct. 31, 2023), <https://bit.ly/3vxsZ6S>; *4 outstanding questions the federal government needs to answer about its Disinformation Governance Board*, Ams. for Prosperity (July 26, 2023), <https://bit.ly/3TUSkBE>; *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/37mDnIX>; *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/3Zrjgg7>; *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>.

¹¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).