

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:20-cv-01848-DLF**

AMERICANS FOR PROSPERITY FOUNDATION v.
UNITED STATES DEPARTMENT OF JUSTICE
Assigned to: Judge Dabney L. Friedrich
Cause: 05:552 Freedom of Information Act

Date Filed: 07/09/2020
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff

**AMERICANS FOR PROSPERITY
FOUNDATION**

represented by **Eric R. Bolinder**
AMERICANS FOR PROSPERITY
FOUNDATION
1310 N. Courthouse Rd
Suite 700
Washington, VA 22079
571-329-3324
Email: ebolinder@afphq.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan Patrick Mulvey
AMERICANS FOR PROSPERITY
FOUNDATION
1310 N. Courthouse Road
Suite 700
Arlington, VA 22201-2961
571-444-2841
Email: rmulvey@afphq.org
ATTORNEY TO BE NOTICED

V.

Defendant

**UNITED STATES DEPARTMENT OF
JUSTICE**

represented by **Kathleene A. Molen**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 4th Street NW
Washington, DC 20530
(202) 803-1572
Email: Kathleene.Molen@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/09/2020	<u>1</u>	COMPLAINT against UNITED STATES DEPARTMENT OF JUSTICE (Filing fee \$ 400 receipt number ADCDC-7318472) filed by AMERICANS FOR PROSPERITY FOUNDATION. (Attachments: # <u>1</u> Exhibit Exhibit 1, # <u>2</u> Exhibit Exhibit 2, # <u>3</u> Exhibit Exhibit 3, # <u>4</u> Exhibit Exhibit 4, # <u>5</u> Exhibit Exhibit 5, # <u>6</u> Civil Cover Sheet Civil Cover Sheet, # <u>7</u> Summons Summons for U.S. Department of Justice, # <u>8</u> Summons Summons for Civil Process Clerk, # <u>9</u> Summons Summons for U.S. Attorney General)(Bolinder, Eric) (Entered: 07/09/2020)
07/09/2020	<u>2</u>	NOTICE of Appearance by Ryan Patrick Mulvey on behalf of AMERICANS FOR PROSPERITY FOUNDATION (Mulvey, Ryan) (Entered: 07/09/2020)
07/09/2020	<u>3</u>	LCvR 26.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by AMERICANS FOR PROSPERITY FOUNDATION (Bolinder, Eric) (Entered: 07/09/2020)

07/09/2020		Case Assigned to Judge Dabney L. Friedrich. (adh,) (Entered: 07/09/2020)
07/09/2020	<u>4</u>	STANDARD ORDER for Civil Cases. See text for details. Signed by Judge Dabney L. Friedrich on July 9, 2020. (lcldf2) (Entered: 07/09/2020)
07/10/2020	<u>5</u>	SUMMONS (3) Issued Electronically as to UNITED STATES DEPARTMENT OF JUSTICE, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(adh,) (Entered: 07/10/2020)
07/13/2020	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/10/2020. Answer due for ALL FEDERAL DEFENDANTS by 8/9/2020. (Bolinder, Eric) (Entered: 07/13/2020)
07/21/2020	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES DEPARTMENT OF JUSTICE served on 7/15/2020 (Bolinder, Eric) Modified serve date on 7/22/2020 (eg). (Entered: 07/21/2020)
07/30/2020	<u>8</u>	NOTICE of Appearance by Kathleene A. Molen on behalf of UNITED STATES DEPARTMENT OF JUSTICE (Molen, Kathleene) (Entered: 07/30/2020)
08/05/2020	<u>9</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/15/2020. (Bolinder, Eric) (Entered: 08/05/2020)
08/10/2020	<u>10</u>	ANSWER to Complaint by UNITED STATES DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Exhibit A)(Molen, Kathleene) (Entered: 08/10/2020)
08/10/2020		MINUTE ORDER requiring the parties to MEET AND CONFER and file a joint status report proposing a schedule for further proceedings. The status report should address the status of the plaintiff's FOIA request, including the anticipated number of documents responsive to the request and the anticipated date(s) for release of the requested documents. The parties shall file the joint status report on or before September 8, 2020. Signed by Judge Dabney L. Friedrich on August 10, 2020. (lcldf2) (Entered: 08/10/2020)
08/10/2020		Set/Reset Deadlines: Status Report due by 9/8/2020 (zjch) (Entered: 08/10/2020)
08/26/2020	<u>11</u>	MOTION for Preservation Order and MOTION to Expedite Consideration by AMERICANS FOR PROSPERITY FOUNDATION (Attachments: # <u>1</u> Declaration of Eric R. Bolinder, # <u>2</u> Text of Proposed Order)(Bolinder, Eric). Added MOTION to Expedite on 8/28/2020 (eg). (Entered: 08/26/2020)
09/04/2020	<u>12</u>	Joint STATUS REPORT by AMERICANS FOR PROSPERITY FOUNDATION. (Attachments: # <u>1</u> Text of Proposed Order)(Bolinder, Eric) (Entered: 09/04/2020)
09/05/2020		MINUTE ORDER. Upon consideration of the parties' <u>12</u> Joint Status Report, it is ORDERED that the parties shall file, on or before September 18, 2020, another joint status report advising the Court of the status of this matter. So Ordered by Judge Dabney L. Friedrich on September 5, 2020. (lcldf2) (Entered: 09/05/2020)
09/05/2020		Set/Reset Deadlines: Status Report due by 9/18/2020 (zjch) (Entered: 09/08/2020)
09/09/2020	<u>13</u>	Memorandum in opposition to re <u>11</u> MOTION for Order MOTION to Expedite filed by UNITED STATES DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Declaration U.S. Attorney Michael B. Stuart)(Molen, Kathleene) (Entered: 09/09/2020)
09/16/2020	<u>14</u>	REPLY to opposition to motion re <u>11</u> MOTION for Order MOTION to Expedite filed by AMERICANS FOR PROSPERITY FOUNDATION. (Bolinder, Eric) (Entered: 09/16/2020)
09/17/2020		MINUTE ORDER. Before the Court is the plaintiff's <u>11</u> Motion for a Preservation Order and Request for Expedited Consideration. The plaintiff seeks an order compelling the U.S. Attorney for the Southern District of West Virginia to preserve the contents of his personal email account to prevent the loss of records responsive to the plaintiff's FOIA request. See Dkt. 11 at 11. "A Motion to Compel Preservation is subject to the same analytical framework as a motion for injunctive relief." Competitive Enter. Inst. v. Office of Sci. & Tech. Pol'y, No. 14-765, 2016 WL 10676292, at *2 (D.D.C. Dec. 12, 2016). The Court must consider (1) the likelihood

		<p>that the plaintiff will prevail on the merits; (2) the likelihood that the plaintiff will be irreparably harmed absent a preservation order; (3) the prospect that others will be harmed if the Court grants the motion; and (4) the public interest in granting the motion. <i>Id.</i> On the current record, the plaintiff has not carried its burden in showing a likelihood of success on the merits or irreparable harm. The plaintiff bases its request on a single email that the U.S. Attorney forwarded from his government email account to his personal email account that contained two MP3 audio files, both of which are being provided to the plaintiff. See Dkt. 13–1 5. Absent evidence to the contrary, "[g]overnment officials are presumed to have properly discharged the duty to forward official business communications from a personal email account to an official email account." <i>Democracy Forward Found. v. U.S. Dep't of Commerce</i>, No. 18–246, 2020 WL 4219610, at *4 (D.D.C. July 22, 2020) (quoting <i>Judicial Watch, Inc. v. U.S. Dep't of Justice</i>, 319 F. Supp. 3d 431, 437–38 (D.D.C. 2018)). Here, this presumption is supported by the U.S. Attorney's sworn declaration that his "customary practice" is to forward an email to his official email account or copy his official email address if he happens to send or receive a work–related email on his personal email account. Dkt. 13–1 7. The single email that the U.S. Attorney sent from his government email account to his personal email account is insufficient to overcome the presumption that he complied with his record–keeping obligations. Thus, the plaintiff has not demonstrated a likelihood of success on the merits. Nor has the plaintiff shown that a preservation order is necessary to ensure the availability of records responsive to its FOIA request. See <i>Winter v. NRDC</i>, 555 U.S. 7, 20 (2008) (to secure injunctive relief, a plaintiff must demonstrate that irreparable injury is "likely," not just probable). Accordingly, the plaintiff's <u>11</u> Motion for a Preservation Order is DENIED. So Ordered by Judge Dabney L. Friedrich on September 17, 2020. (lcldf2) (Entered: 09/17/2020)</p>
09/18/2020	<u>15</u>	Joint STATUS REPORT by UNITED STATES DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Text of Proposed Order)(Molen, Kathleene) (Entered: 09/18/2020)
09/18/2020		MINUTE ORDER. Upon consideration of the parties' <u>15</u> Joint Status Report, it is ORDERED that the parties shall submit another joint status report on or before October 16, 2020. Signed by Judge Dabney L. Friedrich on September 18, 2020. (lcldf2) (Entered: 09/18/2020)
09/18/2020		Set/Reset Deadlines: Status Report due by 10/16/2020 (zjch) (Entered: 09/21/2020)
10/16/2020	<u>16</u>	Joint STATUS REPORT by UNITED STATES DEPARTMENT OF JUSTICE. (Attachments: # <u>1</u> Text of Proposed Order)(Molen, Kathleene) (Entered: 10/16/2020)
10/19/2020		MINUTE ORDER. Upon consideration of the parties' <u>16</u> Joint Status Report, it is ORDERED that the parties shall submit another joint status report on or before November 16, 2020. So Ordered by Judge Dabney L. Friedrich on October 19, 2020. (lcldf2) (Entered: 10/19/2020)
10/19/2020		Set/Reset Deadlines: Status Report due by 11/16/2020 (zjch) (Entered: 10/19/2020)
11/13/2020	<u>17</u>	STIPULATION of Dismissal by AMERICANS FOR PROSPERITY FOUNDATION. (Bolinder, Eric) (Entered: 11/13/2020)
11/13/2020		MINUTE ORDER dismissing this case with prejudice in light of the parties' <u>17</u> Stipulation of Dismissal. See Fed. R. Civ. P. 41(a). The Clerk of Court is directed to close this case. So Ordered by Judge Dabney L. Friedrich on November 13, 2020. (lcldf2) (Entered: 11/13/2020)