



March 3, 2022

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530-0001

**Re: Follow-up Investigation Request Regarding Potential Improprieties
Related to the Attorney General's October 4, 2021, Memorandum**

Dear Inspector General Horowitz:

On October 7, 2021, America First Legal Foundation (“AFL”) sent a [letter](#) requesting that you open an investigation into improprieties surrounding the issuance of Attorney General Merrick Garland’s October 4, 2021, Memorandum that targeted parents for exercising their constitutionally-protected rights and privileges.¹ To date, we have received no response from you or any of your employees, nor have we seen you publicly announce an investigation into the situation. We implore you to open an investigation into this apparent egregious abuse of federal power.

While not restating all the contents of our initial letter to your office, further information revealed since our first request emphasizes the urgent need for your office to open an investigation into the circumstances surrounding the memorandum’s issuance:

- The National School Board Association, citing legal authorities including the Patriot Act, sent President Biden a letter on Wednesday, September 29, 2021, demanding federal action to confront “the growing number of threats of violence and acts of intimidation” to local school board members arising out of

¹ America First Legal Foundation, *Letter to Inspector General Horowitz Re: Request for Investigation Regarding Potential Improprieties Related to the October 4, 2021, Attorney General’s Memorandum* (Oct. 7, 2021), <https://wordpress.aflegal.org/wp-content/uploads/2021/10/Garland-Memo-DOJ-IG-Request-10072021.pdf>.

“policies for masks to protect the health and safety of students and school employees” and “propaganda purporting the false inclusion of critical race theory within classroom instruction and curricula.”²

- Media reports indicate that Secretary of Education Miguel Cardona solicited this letter from the NSBA.³ According to an October 5, 2021, email obtained by Parents Defending Education via a Freedom of Information Act request, the NSBA Secretary-Treasurer recalled that the organization’s interim CEO “told the officers he was writing a letter to provide information to the White House, from a request by Secretary Cardona.”⁴
- A mere three business days after the NSBA sent its letter, on October 4, 2021, Attorney General Garland issued a memorandum to the FBI Director, DOJ officials, and U.S. Attorneys on the subject of “Partnership Among Federal, State, Local, Tribal, and Territorial Law Enforcement to Address Threats Against School Administrators, Board Members, Teachers, and Staff” (the “Garland Memorandum”).⁵ Using language strikingly similar to that of the NSBA’s letter, the Memorandum was premised entirely upon “a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation’s public schools.” The memorandum also stated that the Department would “protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment.”⁶
- In addition to the plain language of his memorandum, Attorney General Garland repeatedly made similar statements in sworn testimony before Congress. During a hearing before the Senate Committee on the Judiciary on October 27, 2021, Attorney General Garland testified, “I have the letter from NSBA you’re referring to ... I did not adopt every concern that they had in their letter. I adopted only the concern about violence and threats of violence ... The [Garland Memorandum] is only about violence and threats of violence ... The FBI gets complaints, concerns from people around the country for all different kinds of threats and violence ... These are then assessed, and they are only pursued if consistent with the First Amendment. We have a true threat that

² Nat’l School Board Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) at 5 (Sep. 29, 2021), <https://nsba.org/-/media/NSBA/File/nsbaletter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>. [<https://www.documentcloud.org/documents/21094557-national-school-boards-association-letter-to-biden>].

³ Peter Hasson, *Education Secretary Cardona solicited NSBA letter comparing protesting parents to domestic terrorists: email*, FOX NEWS (Jan. 11, 2022), <https://www.foxnews.com/politics/education-secretary-cardona-solicited-nsba-letter-comparing-parents-domestic-terrorists-email>.

⁴ *Id.*

⁵ U.S. Dep’t of Just., ATTORNEY. GEN. MEM. RE PARTNERSHIP AMONG FEDERAL, STATE, LOCAL, TRIBAL, AND TERRITORIAL LAW ENFORCEMENT TO ADDRESS THREATS AGAINST SCHOOL ADMINISTRATORS, BOARD MEMBERS, TEACHERS, AND STAFF (Oct. 4, 2021) <https://www.justice.gov/ag/page/file/1438986/download>.

⁶ *Id.*

violates federal statutes or that needs to be referred to a state or [local law enforcement agency] for their assistance.”⁷

- Additionally, in response to questions from Senator Cruz, Attorney General Garland testified that he did not look into the cited instances of violence before issuing the Garland Memorandum.⁸ Moreover, he could not recall how many alleged instances of violence the NSBA letter cited or the facts of any of them. As a seasoned attorney and judge, the fact that Attorney General Garland could not cite one instance of violence or threats of violence directed at school boards is telling, particularly when it formed the premise for the issuance of the Garland Memorandum.
- Despite the Attorney General’s representations in the Garland Memorandum, and in response to a request we submitted to the Federal Bureau of Investigation under the Freedom of Information Act for numerous records—including “[a]ll records created by the Department showing the ‘disturbing spike in harassment, intimidation, and threats of violence’ referenced in the Garland Memorandum,” and “[a]ll records created by the Department showing ‘the rise in criminal conduct directed toward school personnel’ referenced in the Garland Memorandum,”—the FBI conducted a search of its records, and stated that it was “unable to identify records responsive to” the request (see enclosures).

As you know well, if any component within the Department of Justice would have records about “a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation’s public schools,” it would be the FBI. Again, according to the FBI, no such records exist.

If the timing surrounding the NSBA letter and rapid three-day turnaround of Attorney General’s memorandum is not suspicious enough in and of itself, it appears that someone or some combination of individuals at the Department of Justice coordinated with other officials in the Biden Administration and fabricated a justification for a memorandum issued by Attorney General Garland. Accordingly, we renew our request that your Office promptly investigate whether the Attorney General’s Memorandum was formulated and issued based on improper considerations.

⁷ *Oversight of the Dep’t of Just.: Hearing Before the S. Comm. on the Judiciary*, 117th Cong. (Oct. 27, 2021) (oral testimony of Merrick Garland, Att’y Gen. of the United States in response to questions from Senator Grassley), <https://www.judiciary.senate.gov/meetings/10/20/2021/oversight-of-the-department-of-justice>

⁸ *Id.* (in response to questions from Senator Ted Cruz).

Sincerely,

s/ Gene P. Hamilton

Gene P. Hamilton

Vice-President and General Counsel

America First Legal Foundation

Cc: The Hon. Sen. Dick Durbin, Chairman, Committee on the Judiciary
The Hon. Chuck Grassley, Ranking Member, Committee on the Judiciary
The Hon. Rep. Jerrold Nadler, Chairman, House Committee on the Judiciary
The Hon. Rep. Jim Jordan, Ranking Member, House Committee on the Judiciary

Encl: AFL FOIA
FBI Response



October 7, 2021

Via Online Portal and Email

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Freedom of Information Act Request: DOJ's Assault on America's School Parents

Dear FOIA Officers:

America First Legal Foundation ("AFL") is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

Americans have a fundamental liberty interest in, and the Constitutional right to control and direct, the education of their own children.¹ Accordingly, parents across the nation are speaking out against Critical Race Theory and other forms of anti-religious, anti-family public school indoctrination. They want schools open and teaching children in-person without politically driven curricula and universal mask mandates.² Consequently, radical leftist teacher unions, public school administrators, school board members, and politicians have targeted them for cancellation, lawfare, and intimidation.³ As Terry McAuliffe, a political operative substantially funded by the National Education Association and American Federation of Teachers put it, “I don’t think parents should be telling [public] schools what they should teach.”⁴ Nevertheless, parents continue to exercise their right to direct the upbringing and education of their children, and to fight the idea that their children are teacher union property.⁵

On September 29, 2021, the partisan “National School Boards Association” made public a “letter” demanding federal action under the PATRIOT ACT to stop parents from

¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (O’Connor, J.); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 – 35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

² Jon Levine, *Powerful Teachers Union Influenced CDC on School Reopenings, Emails Show*, NEW YORK POST (May 1, 2021) <https://nypost.com/2021/05/01/teachers-union-collaborated-with-cdc-on-school-reopening-emails/>.

³ See Harold Hutchinson, *‘Expose These People Publicly’: Parents Against Critical Race Curriculum Listed By Teachers Attempting To ‘Infiltrate’ Them*, DAILY CALLER (March 17, 2021) <https://dailycaller.com/2021/03/17/virginia-parents-targeted-for-opposing-critical-race-theory/>; Luke Rosiak, *‘Let Them Die,’ Top PTA, NAACP Official Says In Tirade About Anti-Critical Race Theory Parents*, DAILY WIRE (July 16, 2021) <https://www.dailywire.com/news/pta-naacp-official-let-them-die-critical-race-theory>; Jonathan Turley, *GoFundMe Shuts Down Fundraiser Of Parents Opposing Critical Race Theory In Loudoun County*, RES IPSA LOQUITUR – THE THING ITSELF SPEAKS (Mar. 31, 2021) <https://jonathanturley.org/2021/03/31/gofundme-shuts-down-fundraiser-of-parents-opposing-critical-race-theory-in-loudoun-county/>; *Nasty Nightline Accuses Parents Protesting CRT of Enabling Racism, Whitewashing History* (July 16, 2021) <https://www.cybernistas.com/2021/07/16/nasty-nightline-accuses-parents-protesting-crt-of-enabling-racism-whitewashing-history/>; William A. Jacobson, *Union-Linked Coalition Scripts ‘Messaging’ To Counter Parental Pushback Against Critical Race Theory*, LEGAL INSURRECTION (Jul. 5, 2021) <https://legalinsurrection.com/2021/07/union-linked-coalition-scripts-messaging-to-counter-parental-pushback-against-critical-race-theory/>; Samuel Chamberlin, *Teachers Union Sues Rhode Island Mom Over Requests for CRT Curriculum Info*, NEW YORK POST (Aug. 5, 2021) <https://nypost.com/2021/08/05/teachers-union-sues-mom-over-requests-for-crt-curriculum-info/>; Emma Colton, *Kansas Math Teacher Resigns Over CRT Training and Renewed Mask Mandates, Gets Fined, Kansas School Reportedly Spends \$400,000 on Critical Race Theory Training for Teachers*, FOX NEWS (Aug. 14, 2021) <https://www.foxnews.com/us/kansas-math-teacher-resigns-crt-mask-mandate-fined>.

⁴ Michael Lee, *McAuliffe Says He Doesn’t Believe Parents Should Tell Schools What to Teach*, FOX NEWS (Sept. 28, 2021) <https://www.foxnews.com/politics/mcauliffe-says-he-doesnt-believe-parents-should-control-what-schools-teach>. In 2021, teacher unions have given McAuliffe over \$600,000 for his political campaign. Vpap.org, *Top Donors, Terry McAuliffe, Democrat* (Oct. 10, 2021) https://www.vpap.org/candidates/11897/top_donors/?start_year=2021&end_year=2021. See also Josh Gerstein, *Chinese Investors Sue McAuliffe, Rodham over Green-car Investments, The Suit is the Latest Headache for the Virginia Governor as He Mulls a Presidential Bid*, POLITICO (Nov. 8, 2017) <https://www.politico.com/story/2017/11/28/greentech-automotive-lawsuit-terry-mcauliffe-262771>.

⁵ *Pierce*, 268 U.S. at 535.

objecting to mask mandates and Critical Race Theory.⁶ Federal action was demanded because, *inter alia*, parents were engaged in First Amendment activities including “posting watchlists against school boards and spreading misinformation that boards are adopting critical race theory curriculum and working to maintain online learning by haphazardly attributing it to COVID-19.”⁷

On October 4, 2021, the Attorney General issued a Memorandum to the Federal Bureau of Investigation, the Executive Office for U.S. Attorneys, the Assistant Attorney General of the Criminal Division, and all United States Attorneys purporting to address a “disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools.” He promised the Department would “protect all people in the United States from violence, threats of violence, and *other forms of intimidation and harassment*.”⁸

⁶ National School Board Ass’n, *Letter to Joseph R. Biden Re: Federal Assistance to Stop Threats and Acts of Violence Against Public Schoolchildren, Public School Board Members, and Other Public School District Officials and Educators* (sic) (Sept. 29, 2021) <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>. This letter repeated union-approved talking points, including the fatuous claim “critical race theory is not taught in public schools...” *Id.* at 1; William A. Jacobson, *supra* note 3; Jessica Anderson, *Reading, Writing, and Racism: the NEA’s Campaign to Gaslight Parents*, NATIONAL REVIEW ONLINE (July 10, 2021) <https://www.nationalreview.com/2021/07/reading-writing-and-racism-the-neas-campaign-to-gaslight-parents/>

⁷ National School Board Ass’n, *supra* note 6 at 5. Labeling First Amendment protected political speech “hate” the letter also claimed as grounds for federal action the following:

In Ohio, an individual mailed a letter to a school board member labeling the return address on the envelope from a local neighborhood association and then enclosing threatening hate mail from another entity. This correspondence states that, “We are coming after you and all the members on the ... BoE [Board of Education].” This hate mail continues by stating, “You are forcing them to wear mask—for no reason in this world other than control. And for that you will pay dearly.” Among other incendiaries, this same threat also calls the school board member a “filthy traitor,” implies loss of pension funds, and labels the school board as Marxist. Earlier this month, a student in Tennessee was mocked during a board meeting for advocating masks in schools after testifying that his grandmother, who was an educator, died because of COVID-19. These threats and acts of violence are affecting our nation’s democracy at the very foundational levels, causing school board members – many who are not paid – to resign immediately and/or discontinue their service after their respective terms. Further, this increasing violence is a clear and present danger to civic participation, in which other citizens who have been contemplating service as either an elected or appointed school board member have reconsidered their decision.

Citations omitted.

⁸ Memorandum from the Attorney General, October 4, 2021, to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, titled, “Partnership among federal, state, local, tribal, and territorial law enforcement to address threats against school administrators, board members, teachers, and staff” available at <https://www.justice.gov/ag/page/file/1438986/download>.

AFL’s mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution and laws of the United States. The evidence suggests the Attorney General’s October 4 Memorandum is the byproduct of and/or a key Biden Administration “deliverable” in a collusive scheme to injure, oppress, threaten, or intimidate parents in the free exercise or enjoyment of their rights or privileges secured by the Constitution or laws of the United States. Especially in the context of the Attorney General’s promise, memorialized both in his June 11 policy address and in the Biden Administration’s “first-ever” National Strategy for Countering Domestic Terrorism,⁹ to use the Department’s criminal and other authorities to target American citizens in “combat” against domestic “misinformation” and “disinformation”, the October 4 Memorandum is of grave concern. Violent crime is exploding, and the U.S. southern border is open to criminal aliens and terrorist infiltration, but the Department, at the behest of leftist partisans, has instead chosen to threaten American parents for exercising their Constitutional rights.¹⁰

Therefore, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, AFL hereby requests the following department records. For the purposes of 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e), AFL certifies it has a compelling need for expedited processing of its requests.

I. Special Definitions

“Department” means the U.S. Department of Justice and its components.

“Garland Memorandum” means the Memorandum from the Attorney General, dated October 4, 2021, addressed to the Director of the Federal Bureau of Investigation, the Director of the Executive Office for U.S. Attorneys, the Assistant Attorney General for the Criminal Division, and the United States Attorneys, with the Subject line titled, “Partnership among federal, state, local, tribal, and territorial law enforcement

⁹ U.S. Dep’t of Justice, *Attorney General Merrick Garland Delivered a Policy Address Regarding Voting Rights* (June 11, 2021) <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivered-policy-address-regarding-voting-rights>; Nat’l Sec. Council, *National Strategy for Countering Domestic Terrorism* at 9, 18, 20, 29 (June 2021) <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

¹⁰ Jeff Asher, *Murder Rose by Almost 30% in 2020. It’s Rising at a Slower Rate in 2021*, NEW YORK TIMES (Sept. 22, 2021) <https://www.nytimes.com/2021/09/22/upshot/murder-rise-2020.html>; Ryan Lucas, *FBI Data Shows an Unprecedented Spike in Murders Nationwide in 2020*, NPR (Sept. 27, 2021) <https://www.npr.org/2021/09/27/1040904770/fbi-data-murder-increase-2020>; Matt Masterson, *Chicago Outpacing 2020 Shooting, Homicide Totals Through End of August*, WTTW (Sept. 1, 2021) <https://news.wttw.com/2021/09/01/chicago-outpacing-2020-shooting-homicide-totals-through-end-august>; See generally, Southwest Border Land Encounters, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited October 6, 2021).

to address threats against school administrators, board members, teachers, and staff” found at <https://www.justice.gov/ag/page/file/1438986/download>.

“NSBA” means the National School Board Association

“NSBA Letter” means the document found at <https://nsba.org/-/media/NSBA/File/nsba-letter-to-president-biden-concerning-threats-to-public-schools-and-school-board-members-92921.pdf>

“Person” means any legal or natural person.

II. Custodians

Relevant custodians include:

1. Attorney General Merrick B. Garland
2. The Attorney General’s Chief of Staff
3. The Office of the Attorney General
4. The Office of the Deputy Attorney General
5. The Office of the Associate Attorney General
6. The Department of Justice White House Liaison
7. The Office of Public Affairs
8. The Office of the Assistant Attorney General for the Criminal Division
9. The Office of the Assistant Attorney General for the Civil Rights Division
10. The Office of the Director of the FBI
11. The Executive Office for U.S. Attorneys
12. The Office of Legal Counsel

II. Requested Records

The timeframe for all requests is September 15, 2021, to the date this request is processed.

A) All records of, concerning, or regarding (1) the Garland Memorandum and/or (2) the NSBA Letter.

B) All records sufficient to show each person within the Department who reviewed (1) the Garland Memorandum and/or (2) the NSBA Letter.

C) All records created by the Department showing the “disturbing spike in harassment, intimidation, and threats of violence” referenced in the Garland Memorandum.

D) All records the Department relied upon to support the Garland Memorandum statement “there has been a disturbing spike in harassment, intimidation, and threats of violence against school administrators, board members, teachers, and staff who participate in the vital work of running our nation's public schools.”

E) All records created by the Department showing “the rise in criminal conduct directed toward school personnel” referenced in the Garland Memorandum.

F) All records the Department relied upon to support the Garland Memorandum statement there has been “a rise in criminal conduct directed toward school personnel.”

G) All records sufficient to show the Department’s understanding and interpretation of the term “intimidation and harassment” used in the Garland Memorandum.

H) All communications from, with, or regarding any person employed by the National Education Association and/or the American Federation of Teachers.

I) All communications with any person having an email address including eop.gov regarding (1) the Garland Memorandum, (2) the NSBA, (3) the NSBA Letter, (4) the National Education Association and/or the American Federation of Teachers and/or (5) any person employed by the National Education Association and/or the American Federation of Teachers.

IV. Redactions

FOIA requires the Department to disclose records freely and promptly. The department must liberally construe AFL’s requests and make a good faith effort to search for requested records using methods “which can be reasonably expected to produce the information requested.” At all times, FOIA must be construed to carry out Congress’s open government mandate according to the ordinary public meaning of its terms at the time of its enactment.¹¹

Redactions are disfavored as the FOIA’s exemptions are exclusive and must be narrowly construed. If a record contains information responsive to a FOIA request, then the department must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. Consequently, the department should produce email attachments.

In connection with this request, and to comply with your legal obligations:

¹¹ 5 U.S.C. §§ 552(a)(3)(A), 552(a)(6)(A); *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1738 (2020); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978); *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 151 (1989); *Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990).

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term “record” in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (“NARA”) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.

- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

V. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, AFL requests a waiver of all search and duplication fees.

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest. This has previously been recognized by this department and by the Departments of Defense Education, Energy, Interior, Health and Human Services, and Homeland Security, and the Office of the Director of National Intelligence.

Second, waiver is proper as disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government." The disclosure of records bearing on the department's fidelity to the rule of law and the apparent use of its law enforcement authorities to chill parents from contesting critical race theory and mask mandates in their children's public schools will plainly contribute to public understanding of the federal government's activities.

VI. Expedited Processing

AFL certifies "compelling need" for expedited processing under 5 U.S.C. § 552(a)(6)(E).

First, as multiple federal agencies (including this department) have acknowledged, AFL is primarily "engaged in disseminating information." Second, the Garland Memorandum, as well as the department's plan to "protect all people" from "intimidation

and harassment” are assuredly matters of “actual or alleged Federal Government activity.” Third, the common public meaning of “urgency” at the time of § 552(a)(6)(E)(v)(II)’s enactment was “the quality or state of being urgent.” The common public meaning of “urgent”, in turn, was “requiring or compelling speedy action or attention.” The department obviously believes the Garland Memorandum and its subject matter require or compel speedy action and attention, as evidenced by his direction for the FBI and the U.S Attorneys to meet with school leaders in each federal judicial district within the next 30 days. Accordingly, AFL should be granted expedited processing.

In the alternative, 28 C.F.R. § 16.5(e) is the department’s expedited processing regulation. 28 C.F.R. § 16.5(e)(ii) repeats the statutory factors. Therefore, as explained above, AFL is entitled to expedited processing here as well. But as permitted by statute, the department has expanded expedited processing to include requests for records involving the loss of substantial due process rights or matters of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence. Chilling parents’ exercise of their Constitutional rights, as the Garland Memorandum arguably does, facially threatens the “loss of substantial due process rights” under 28 C.F.R. § 16.5(e)(1)(iii). Additionally, the Garland Memorandum and its subject matter are self-evidently of urgent and intense public interest and concern in which there are possible questions about the government’s integrity that affect public confidence under 28 C.F.R. § 16.5(e)(1)(iv).

Also in the alternative, the Circuit test for expedited processing requires weighing three main factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.¹² AFL meets this test as well. Respecting factor one, as noted above, the Garland Memorandum and its subject matter are assuredly matters of public concern and media interest and central to a pressing issue of the day. Respecting factor two, if production is delayed, then both AFL and the public at large will be precluded from obtaining in a timely fashion information vital to the current and ongoing debate surrounding election integrity, voting rights, and, critically, the Biden Administration’s unprecedented decision to use the department’s massive coercive powers against American parents. Being closed off from the opportunity to debate the department’s conduct here itself is a harm in an open democracy.¹³ And the

¹² *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 309-10 (D.C. Cir. 2001).

¹³ In *Protect Democracy Project*, the District Court reasoned:

But do the requests touch on ‘a matter of current exigency to the American public,’ and would ‘delaying a response...compromise a significant recognized interest,’ *Al-Fayed*, 254 F.3d at 310? Likely, the answer to both questions is yes. Regarding nationwide ‘exigency’: In its requests, submitted the day after the April 6 missile strikes against Syria, Protect Democracy explained that ‘the President’s decision to initiate military action is of the utmost importance to the public,’ and that ‘whether the President has

possibility exists that extra-legal law enforcement action may be taken by the department against parents who oppose the indoctrination of their children. Disclosing relevant records months or even years from now will be of academic interest only—any damage will have been done and stale information is of little value.¹⁴ Respecting factor three, AFL’s requests manifestly concern “federal government activity.”

Any concerns the department or other requesters may raise about granting AFL expedited processing have been weighed by Congress, and Congress has concluded them to be of subsidiary importance to compelling and time-sensitive cases, such as this. Practically speaking, AFL believes it is difficult for the department to credibly argue expedited processing in this case would cause much delay to other requesters given the very specific nature of AFL’s FOIA requests and the extremely limited time window.

VII. Production

To accelerate 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, records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 600 14th Street NW, 5th Floor, Washington, D.C. 20005.

VIII. Conclusion

Please contact me at FOIA@aflegal.org if you have questions about this request, believe additional discussion of search and processing will facilitate more efficient and timely production, or if the fee waiver and expedited processing demands are not granted in full. Thank you in advance for your cooperation.

Thank you,

Reed D. Rubinstein
America First Legal Foundation

the legal authority to launch [such] a military strike’ is similarly critical. Few would take issue with these assertions. But as evidence that they were justified, one need look no further than the widespread media attention—including by some of the nation’s most prominent news outlets—paid both to the April 6 strike and its legality, as early as the date of Protect Democracy’s requests.

Protect Democracy Project, Inc. v. U.S. Dep’t of Def., 263 F. Supp. 3d 293, 299-300 (D.D.C. 2017). If the one or two news cycles worth of attention given to one missile strike is sufficient to constitute “urgent” then certainly, then the Garland Memorandum and its subject matter are urgent as well.

¹⁴ See *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988).



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

December 2, 2021

REED RUBINSTEIN
AMERICA FIRST LEGAL FOUNDATION
5TH FLOOR
600 14TH STREET NW
WASHINGTON, DC 20005

Request No.: 1509771-000
Subject: All Records Related to the AG and
the FBI regarding National School Board
Associations
(August 1, 2021 to October 20, 2021)

Dear Reed Rubinstein:

This is in response to your Freedom of Information/Privacy Acts (FOIPA) request. Based on the information you provided, we conducted a search of the places reasonably expected to have records. However, we were unable to identify records responsive to your request. Therefore, your request is being closed. If you have additional information pertaining to the subject of your request, please submit a new request providing the details, and we will conduct an additional search.

Please see the paragraphs below for relevant information that may be specific to your request. Only checked boxes contain corresponding paragraphs relevant to your request. If no boxes are checked, the corresponding information does not apply.

- ☐ Please be advised that your request was reopened based on the additional information you provided. A new search was conducted, and we were unable to identify responsive records.
- ☐ Records potentially responsive to your request were destroyed. Since this material could not be reviewed, it is not known if it was responsive to your request. Record retention and disposal is carried out under supervision of the National Archives and Records Administration (NARA) according to Title 44 United States Code Section 3301, Title 36 Code of Federal Regulations (CFR) Chapter 12 Sub-chapter B Part 1228, and 36 CFR 1229.10. Please be advised that the General Records Schedule (GRS) disposition authority for FOIPA records is DAA-GRS-2016-0002-0001 (GRS 4.2, Item 020).
- ☐ Records potentially responsive to your request were transferred to the National Archives and Records Administration (NARA). If you wish to review these records, file a FOIPA request with NARA at the following address:

National Archives and Records Administration
Special Access and FOIA
8601 Adelphi Road, Room 5500
College Park, MD 20740-6001
- ☐ Potentially responsive records were identified during the search. However, we were advised that they were not in their expected locations. An additional search for the missing records also met with unsuccessful results. Since we were unable to review the records, we were unable to determine if they were responsive to your request.
- ☐ The portion of your request concerning an FBI identification record – commonly referred to as a criminal history record or "rap sheet" – has been forwarded to the Criminal Justice Information Services (CJIS) Division for processing. For additional information, see the enclosed FBI FOIPA Addendum General Information Section.
- ☐ Requests for expedited processing are not applicable when a final response is issued within ten calendar days.

Police departments should be aware that the search conducted was limited to FBI records. Requests for criminal history records or rap sheets should be directed to Criminal Justice Information Services (CJIS). Information regarding CJIS is listed in the enclosed FBI FOIPA Addendum General Information Section.

Records potentially responsive to your request were transferred to the National Personnel Records Center - Civilian Personnel Records (NPRC-CPR). In order to obtain information on a file located at the NPRC, your request must be mailed to the following address:

National Archives and Records Administration
ATTN: Archival Programs
P.O. Box 38757
St. Louis, MO 63138

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 contacting 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. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, 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.

Sincerely,



Michael G. Seidel
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 Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. 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.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems or locations where responsive records would reasonably be found. A standard search normally consists of a search for main files in the Central Records System (CRS), 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. Unless specifically requested, a standard search does not include references, administrative records of previous FOIPA requests, or civil litigation files. For additional information about our record searches, visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.
- (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) **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.
- (iv) **National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private Citizens cannot request a name check.

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.