

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

PROTECT THE PUBLIC’S TRUST)
712 H Street, N.E.)
Suite 1682)
Washington, D.C. 20002,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF STATE)
2201 C Street, N.W.)
Washington, D.C. 20520,)
)
Defendant.)
_____)

Civil Case No. 1:23-cv-01262

COMPLAINT

1. Plaintiff Protect the Public’s Trust brings this action against the U.S. Department of State under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
- 3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

4. Plaintiff Protect the Public’s Trust (“PPT”) is an unincorporated association of retired and former public servants and concerned citizens that is dedicated to restoring public trust in government by promoting the fair and equal application of the rules and standards of ethical conduct to all public servants. *See* D.C. Code § 29–1102(5). Consistent with Justice

Brandeis’s aphorism that “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant U.S. Department of State (“State” or the “Department”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

STATEMENT OF FACTS

6. On February 22, 2023, PPT submitted four separate FOIA requests to the Department. Three of those requests are the subject of this Complaint.
7. First, PPT submitted a FOIA request (attached as Exhibit A) seeking the following records:
 1. From June 1, 2020, through September 30, 2021, records of communications between the list of Global Engagement Center officials and the list of Global Disinformation Index/Atlantic Council employees regarding the 2021 US-Paris Tech Challenge, Disinfo Cloud, Park Advisors and/or the AN Foundation.

Global Engagement Center officials

- a) James Rubin
- b) Leah Bray
- c) Patricia Watts
- d) Any Chief of Staff

Global Disinformation Index/ Atlantic Council employees

- I. Clare Melford
- II. Daniel Rogers
- III. Anne Applebaum
- IV. Nic Newman
- V. Ben Nimmo
- VI. Franziska Roesner
- VII. Finn Heinrich
- VIII. Cris Tardaguila

- IX. Amy Mitchell
- X. Graham Brookie
- XI. Clara Tsao

8. Second, PPT submitted a FOIA request (attached as Exhibit B) seeking the following records:

1. From June 1, 2020, through September 30, 2021, records of communications between the list of Global Engagement Center officials and the list of Global Disinformation Index/Atlantic Council employees regarding the subject matters and publications below. For this request we are not interested in news clips or articles shared without comment. We are seeking communications about the named outlets by the individuals and organizations listed.

- A. GDI's ratings of websites
- B. "dynamic exclusion list"
- C. "disinformation risk rating"
- D. American Spectator
- E. Newsmax
- F. The Federalist
- G. The American Conservative
- H. One America News
- I. The Blaze
- J. The Daily Wire
- K. RealClearPolitics
- L. Reason
- M. The New York Post
- N. Washington Examiner
- O. Breitbart News
- P. Wall Street Journal
- Q. NPR
- R. ProPublica
- S. The Associated Press
- T. Insider
- U. The New York Times
- V. USA Today
- W. The Washington Post
- X. BuzzFeed News
- Y. HuffPost

Global Engagement Center officials

- a) James Rubin
- b) Leah Bray
- c) Patricia Watts
- d) Any Chief of Staff

Global Disinformation Index/ Atlantic Council employees

- I. Clare Melford
- II. Daniel Rogers
- III. Anne Applebaum
- IV. Nic Newman
- V. Ben Nimmo
- VI. Franziska Roesner
- VII. Finn Heinrich
- VIII. Cris Tardaguila
- IX. Amy Mitchell
- X. Graham Brookie
- XI. Clara Tsao

9. Third, PPT submitted a FOIA request (attached as Exhibit C) seeking the following records:

- 1. From June 1, 2020, through September 30, 2021, records of communications between the list of Global Engagement Center officials regarding the Global Disinformation Index, DoubleVerify, Integral Ad Science, NewsGuard, and/or the Institute for Strategic Dialogue.

Global Engagement Center officials

- a) James Rubin
- b) Leah Bray
- c) Patricia Watts
- d) Any Chief of Staff

10. As Attorney General Garland has made clear, FOIA is “a vital tool for ensuring transparency, accessibility, and accountability in government” whose “‘basic purpose . . . is to ensure an informed citizenry,’ which is ‘vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed.’” Merrick Garland, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines* 1 (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download> (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)) (“Garland Memo”).

11. Each of these requests concerns the relationship between State and the Global Disinformation Index (GDI). GDI reportedly is a British organization that purports to rate news outlets based on their alleged disinformation risk factors and maintain a “dynamic exclusion list.” See Gabe Kaminsky, *Disinformation, Inc.: Meet the Groups Hauling in Cash to Secretly Blacklist Conservative News*, Wash. Examiner (Feb. 9, 2023), <https://archive.md/aqYV3>. This list is reportedly used to “remove the financial incentive” to create “disinformation” by encouraging advertisers to avoid outlets with poor disinformation scores. *Id.* GDI’s disinformation risk list is reported to have a political skew, with liberal news outlets ranking higher than conservative ones, leading to concerns that GDI is effectively seeking to demonetize its political opponents. *Id.* GDI has reportedly received a total of at least \$330,000 from entities under State. Gabe Kaminsky, *Disinformation Inc: Watchdog Blasts State Department for Funding Group Blacklisting Conservative Media*, Wash. Examiner (Feb. 11, 2023), <https://archive.md/HnuwJ>. The nexus between government funding and groups that are accused of suppressing political views they disagree with has sparked serious concerns that State is engaging in indirect political censorship. *Id.* The information sought by FOIAs at issue in this case are in the public interest because they shed light on the official relationship between State and GDI, including providing the public with information about whether and, if so, how State is censoring American citizens.
12. On March 1, 2023, the Department acknowledged receipt of all four of Plaintiff’s requests. It further designed Exhibit A as “F-2023-05435,” Exhibit B as “F-2023-05440,” and Exhibit C as “F-2023-05441.” The Department indicated that it would “treat as non-responsive any compilation of publicly available news reports and any publicly available

documents not created by the U.S. government, such as mass-distribution emails from news media.” It further indicated that Plaintiff’s requests were all placed into the “complex processing track” and that the Department was claiming “unusual circumstances” justifying taking longer than 20 business days to respond. Finally, the Department indicated that Plaintiff qualified as a member of the media for FOIA fee purposes.

13. On March 29, 2023, Plaintiff followed up seeking a status update or estimated timeline for producing records responsive to requests F-2023-05435, F-2023-05440, F-2023-05441, and one other request that is not at issue in this Complaint.
14. On March 31, 2023, the Department responded, stating in part “these requests are in process and have an estimated date of completion (EDC) of August 29, 2025. Please note, EDCs are estimates and are subject to change.”
15. As the Garland Memo makes clear, “Timely disclosure of records is also essential to the core purpose of FOIA.” Garland Memo at 3.
16. August 2025 is not timely, particularly for a matter of such great public interest as whether the Department is giving grants to groups to effectively censor U.S. media outlets in the name of fighting “disinformation.”
17. To date, Plaintiff’s requests have been pending for over 70 days—well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
18. The Department has not provided responsive records, has not communicated to Plaintiff the scope of documents it intends to produce and withhold, along with the reasons for such withholding, and has not informed Plaintiff of its ability to appeal any adverse portion of its determination in response to any of Plaintiff’s three requests. Accordingly, the

Department has not made a determination of whether it will comply with Plaintiff's requests. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013).

19. Moreover, given the Department's estimated date of completion it is clear that the Department has no intention of fulfilling Plaintiff's records requests in a timely manner absent litigation, instead leaving the public in the dark for two more years and through the next Presidential election.
20. Through the Department's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review of each of its three FOIA requests.

COUNT I – F-2023-05435

Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

21. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
22. PPT properly submitted a request for records, F-2023-05435, within the possession, custody, and control of the Department.
23. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
24. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
25. The Department's failure to provide all non-exempt responsive records violates FOIA.

26. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to request F-2023-05435 and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

COUNT II – F-2023-05440

Violation of FOIA, 5 U.S.C. § 552

Wrongful Withholding of Non-Exempt Responsive Records

27. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

28. PPT properly submitted a request for records, F-2023-05440, within the possession, custody, and control of the Department.

29. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.

30. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.

31. The Department's failure to provide all non-exempt responsive records violates FOIA.

32. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to request F-2023-05440 and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

COUNT III – F-2023-05441

Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

33. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
34. PPT properly submitted a request for records, F-2023-05441, within the possession, custody, and control of the Department.
35. The Department is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
36. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
37. The Department's failure to provide all non-exempt responsive records violates FOIA.
38. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to request F-2023-05441 and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter and maintain jurisdiction until Defendant complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to each of

PPT's FOIA requests and an index justifying the withholding of all or part of any responsive records withheld under claim of exemption.

- (3) Award PPT the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (4) Grant PPT other such relief as the Court deems just and proper.

Dated: May 4, 2023

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

/s/Gary M. Lawkowski
Gary M. Lawkowski
D.D.C. Bar ID: VA125
DHILLON LAW GROUP, INC.
2121 Eisenhower Avenue, Suite 608
Alexandria, Virginia 22314
Telephone: 703-574-1654
GLawkowski@Dhillonlaw.com

Counsel for the Plaintiff