

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

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW
11th Floor
Washington, DC 20005

Plaintiff,

v.

OFFICE OF MANAGEMENT AND BUDGET
725 17th Street NW
Washington, DC 20503,

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
200 Independence Avenue SW
Washington, DC 20201,

U.S. DEPARTMENT OF HOMELAND
SECURITY
3801 Nebraska Avenue NW
Washington, DC 20016, *and*

U.S. DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue NW
Washington, DC 20220

Defendants.

Case No. _____

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to compel the production of records in the possession of Defendants Office of Management and Budget (“OMB”), U.S. Department of Health and Human Services (“HHS”), U.S. Department of

Homeland Security (“DHS”), and U.S. Department of the Treasury (“Treasury”) (collectively, “Defendants”).

2. In November 2018, *The Daily Beast* reported, based on documents produced in response to a FOIA request, that U.S. Environmental Protection Agency officials expressly approved a script bolstering the Trump Administration’s policy agenda, which was read by a news anchor in advance of then-Administrator Scott Pruitt’s May 2017 appearance on *Fox & Friends*, the morning program of Fox News Channel, without acknowledging the government’s role in creating the content.¹

3. In August 2019, *The Hollywood Reporter* reported, based on documents produced in response to a FOIA request by Democracy Forward, that officials at the U.S. Department of the Treasury had requested a number of changes to an article on the Fox Business Network website, including asking for a new social media post from Fox Business’s Twitter account, with a Fox Business Network reporter responding to a Treasury official that she “just did exactly what you asked me to do.”²

¹ See Maxwell Tani, *‘Fox & Friends’ Fed Interview Script to Trump’s EPA Chief, Emails Show*, Daily Beast (Nov. 27, 2018), <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

² See Jeremy Barr, *“You’re the Man”: Fox News Emails With Trump Treasury Department Reveal Coziness*, Hollywood Reporter (Aug. 15, 2019), <https://www.hollywoodreporter.com/news/youre-man-fox-news-emails-trump-treasury-team-reveal-coziness-1231461>.

4. These actions raised concerns about possible violations of a law that prohibits the government from playing an undisclosed role in the creation and dissemination of information and opinions through the news media.³

5. In order to determine how widespread these potentially unlawful practices are, Democracy Forward submitted FOIA requests to Defendants seeking records reflecting communications between (1) political appointees in specific agency offices and (2) an enumerated list of media organizations.

6. Defendants have failed to respond sufficiently to Democracy Forward's requests. Democracy Forward therefore respectfully requests that the Court compel Defendants to comply with FOIA and produce all responsive, non-exempt records.

JURISDICITON AND VENUE

7. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue in this Court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

9. Plaintiff Democracy Forward Foundation is a not-for-profit public interest organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward works to promote transparency and accountability in government, in part by educating the public on government actions and policies.

³ See, e.g., 2016 Consolidated Appropriations Act, Pub. L. No. 114-113, § 718, 129 Stat. 2477 (2015) (prohibiting use of funds "for publicity or propaganda purposes within the United States").

10. Defendant OMB is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records Democracy Forward has requested pursuant to FOIA.

11. Defendant HHS is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records Democracy Forward has requested pursuant to FOIA.

12. Defendant DHS is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records Democracy Forward has requested pursuant to FOIA.

13. Defendant Treasury is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records Democracy Forward has requested pursuant to FOIA.

STATEMENT OF FACTS

OMB FOIA Request

14. Democracy Forward submitted a FOIA request to OMB on April 23, 2020, requesting the following records:

1. All records containing or documenting communications sent to or received by OMB political appointees with the following organizations and domains:
 - Fox News or @foxnews.com, @foxbusiness.com
 - Breitbart News Network or @breitbart.com
 - Blaze Media or @blazemedia.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmax.com
 - Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sbgi.net

- The Rush Limbaugh Show or @rushlimbaugh.com

Ex. A (“OMB FOIA Request”) at 1-2. The search period for the OMB FOIA Request was January 1, 2019, to the date of search. The OMB FOIA Request also excluded publicly available materials such as news clips unless they contained additional discussion or commentary.

15. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. Part 1303, which require waiver of fees if the disclosure 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.” *See* OMB FOIA Request at 3.

16. On April 23, 2020, Democracy Forward received a message confirming receipt by OMB of the OMB FOIA Request and assigning it tracking number 2020-339.

17. Democracy Forward has received no further communication from OMB since April 23, 2020.

18. OMB’s response to Democracy Forward’s FOIA request was due no later than May 21, 2020. *See* 5 U.S.C. § 552(a)(6)(A)(i).

19. As of the date of this Complaint, OMB has not produced any records responsive to the OMB FOIA Request, nor has OMB notified Democracy Forward of the scope of any responsive records the agency intends to produce or withhold, or any reasons for any withholdings, or informed Democracy Forward that it may appeal any adequately specific, adverse determination.

20. Because OMB has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

HHS FOIA Request

21. Democracy Forward submitted a FOIA request to HHS on April 23, 2020, requesting the following records:

1. All records containing or documenting communications sent to or received by political appointees in the HHS Office of the Assistant Secretary for Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:
 - o Fox News or @foxnews.com, @foxbusiness.com
 - o Breitbart News Network or @breitbart.com
 - o Blaze Media or @blazemedia.com
 - o CRTV.com or @crtv.com
 - o The Blaze or @theblaze.com
 - o NewsMax or @newsmax.com
 - o Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
 - o Daily Wire or @dailywire.com
 - o One America News or @oann.com
 - o Sinclair Broadcast Group or @sbgi.net
 - o The Rush Limbaugh Show or @rushlimbaugh.com

Ex. B (“HHS FOIA Request”) at 1-2. The search period for the HHS FOIA Request was January 1, 2019, to the date of search. The HHS FOIA Request also excluded publicly available materials such as news clips unless they contained additional discussion or commentary.

22. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, which require waiver of fees if the disclosure 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.” *See* HHS FOIA Request at 3.

23. On May 1, 2020, Democracy Forward received a message confirming receipt by HHS of the HHS FOIA Request, assigning it tracking number 2020-01088-FOIA-OS, and invoking a ten-working-day extension due to “unusual and exceptional circumstances.”

24. On June 16, 2020, Democracy Forward received a message from HHS indicating that the status of the HHS FOIA Request had changed to “In Process.”

25. HHS’s response to Democracy Forward’s FOIA request was due no later than June 5, 2020. *See* 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B).

26. As of the date of this Complaint, HHS has not produced any records responsive to the HHS FOIA Request, nor has HHS notified Democracy Forward of the scope of any responsive records the agency intends to produce or withhold, or any reasons for any withholdings, or informed Democracy Forward’s that it may appeal any adequately specific, adverse determination.

27. Because HHS has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

DHS FOIA Request

28. Democracy Forward submitted a FOIA request to DHS on April 23, 2020, requesting the following records:

1. All records containing or documenting communications sent to or received by political appointees in the DHS Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:
 - Fox News or @foxnews.com, @foxbusiness.com
 - Breitbart News Network or @breitbart.com
 - Blaze Media or @blazemedia.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmax.com
 - Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sbgi.net
 - The Rush Limbaugh Show or @rushlimbaugh.com

Ex. C (“DHS FOIA Request”) at 1-2. The search period for the DHS FOIA Request was January 1, 2019, to the date of search. The DHS FOIA Request also excluded publicly available materials such as news clips unless they contained additional discussion or commentary.

29. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, which require waiver of fees if the disclosure 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.” *See* DHS FOIA Request at 3.

30. Democracy Forward has received no communication from DHS regarding the DHS FOIA Request.

31. DHS’s response to Democracy Forward’s FOIA request was due no later than May 21, 2020. *See* 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B).

32. As of the date of this Complaint, DHS has not produced any records responsive to the DHS FOIA Request, nor has DHS notified Democracy Forward of the scope of any responsive records the agency intends to produce or withhold, or any reasons for any withholdings, or informed Democracy Forward that it may appeal any adequately specific, adverse determination.

33. Because DHS has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

Treasury FOIA Request

34. Democracy Forward submitted a FOIA request to Treasury on April 23, 2020, requesting the following records:

1. All records containing or documenting communications sent to or received by political appointees in the Treasury Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:
 - o Fox News or @foxnews.com, @foxbusiness.com
 - o Breitbart News Network or @breitbart.com
 - o Blaze Media or @blazemedia.com
 - o CRTV.com or @crtv.com
 - o The Blaze or @theblaze.com
 - o NewsMax or @newsmax.com
 - o Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
 - o Daily Wire or @dailywire.com
 - o One America News or @oann.com
 - o Sinclair Broadcast Group or @sbgi.net
 - o The Rush Limbaugh Show or @rushlimbaugh.com

Ex. D (“Treasury FOIA Request”) at 1-2. The search period for the Treasury FOIA Request was January 1, 2019, to the date of search. The Treasury FOIA Request also excluded publicly available materials such as news clips unless they contained additional discussion or commentary.

35. Democracy Forward sought a waiver of search and duplicating fees under 5 U.S.C. § 552(a)(4)(A)(iii) and 31 C.F.R. § 1.7, which require waiver of fees if the disclosure 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.” *See* Treasury FOIA Request at 3.

36. On April 28, 2020, Democracy Forward received a letter from Treasury refusing to process the Treasury FOIA Request. *See* Ex. E. The letter informed Democracy Forward that Treasury concluded that the request “is too broad to be processed” and that the request did not

“describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate records.” Although Treasury asserted that the letter “is not a denial of your request,” it also stated that Treasury would not process the request as written, but that Treasury would reconsider if Democracy Forward agreed to narrow its request to “a subject matter or topic of interest.”

37. In a response dated April 28, 2020, Democracy Forward declined to revise the Treasury FOIA Request, noting that the request as written complies with all FOIA requirements and that the FOIA does not require that a request be limited to “a subject matter or topic of interest.” *See* Ex. F. Democracy Forward further noted that Treasury has previously processed a FOIA request that is substantially similar to the Treasury FOIA Request. *See id.* (citing Treasury FOIA Request No. 2018-12-063). Accordingly, Democracy Forward asked Treasury to reconsider its denial of the request.

38. On May 1, 2020, Treasury—having apparently reconsidered its previous response—sent Democracy Forward a letter acknowledging receipt of the Treasury FOIA Request and indicating that it would require an additional ten days to process the request due to “unusual circumstances.” *See* Ex. G.

39. Democracy Forward has received no further correspondence from Treasury since May 1, 2020.

40. Treasury’s response to Democracy Forward’s FOIA request was due no later than June 5, 2020. *See* 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(6)(B).

41. As of the date of this Complaint, Treasury has not produced any records responsive to the Treasury FOIA Request, nor has Treasury notified Democracy Forward of the scope of any responsive records the agency intends to produce or withhold, or any reasons for

any withholdings, or informed Democracy Forward that it may appeal any adequately specific, adverse determination.

42. Because Treasury has “fail[ed] to comply with the applicable time limit provisions” of the FOIA, Democracy Forward is “deemed to have exhausted [its] administrative remedies.” *See id.* § 552(a)(6)(C)(i).

CLAIMS FOR RELIEF

Count One (Violation of the FOIA by OMB), 5 U.S.C. § 552

43. Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

44. By failing to respond to Democracy Forward’s request within the statutorily prescribed time limit, OMB has violated its duties under FOIA, *see* 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

45. Democracy Forward is being irreparably harmed by OMB’s violation of the FOIA and will continue to be irreparably harmed until OMB is compelled to comply with the FOIA.

Count Two (Violation of the FOIA by HHS), 5 U.S.C. § 552

46. Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

47. By failing to respond to Democracy Forward’s request within the statutorily prescribed time limit, HHS has violated its duties under FOIA, *see* 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records and

to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

48. Democracy Forward is being irreparably harmed by HHS's violation of the FOIA and will continue to be irreparably harmed until HHS is compelled to comply with the FOIA.

Count Three (Violation of the FOIA by DHS), 5 U.S.C. § 552

49. Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

50. By failing to respond to Democracy Forward's request within the statutorily prescribed time limit, DHS has violated its duties under FOIA, see 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

51. Democracy Forward is being irreparably harmed by DHS's violation of the FOIA and will continue to be irreparably harmed until DHS's is compelled to comply with the FOIA.

Count Four (Violation of the FOIA by Treasury), 5 U.S.C. § 552

52. Democracy Forward incorporates by reference the foregoing paragraphs as if fully set forth herein.

53. By failing to respond to Democracy Forward's request within the statutorily prescribed time limit, Treasury has violated its duties under FOIA, see 5 U.S.C. § 552 *et seq.*, including but not limited to its duties to conduct a reasonable search for responsive records and to produce all responsive, reasonably segregable, non-exempt information, and to not withhold responsive records.

54. Democracy Forward is being irreparably harmed by Treasury's violation of the FOIA and will continue to be irreparably harmed until Treasury is compelled to comply with the FOIA.

Request for Relief

WHEREFORE, Democracy Forward prays that this Court:

1. order Defendants to conduct a search for any and all responsive records to Democracy Forward's FOIA requests using search methods reasonably likely to lead to discovery of all responsive records;
2. order Defendants to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;
3. enjoin Defendants from continuing to withhold any and all non-exempt responsive records;
4. order Defendants to grant Democracy Forward's request for a fee waiver;
5. award Democracy Forward its attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. grant any other relief this Court deems appropriate.

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Dated: June 23, 2020

Respectfully submitted,

/s/ Nitin Shah

Nitin Shah (D.C. Bar No. 156035)
Benjamin Seel (D.C. Bar No. 1035286)
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EXHIBIT A



April 23, 2020

VIA Electronic Delivery

Dionne Hardy
725 17th Street NW, Suite 9204
Washington, DC 20503
OMBFOIA@omb.eop.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the Office of Management and Budget (“OMB”) FOIA regulations at 5 C.F.R. Part 1303, Democracy Forward Foundation makes this request for records.

Background

In November 2018, *the Daily Beast* reported that in advance of an appearance by then-EPA Administrator Scott Pruitt, the cable news program “Fox & Friends” shared its interview script and questions for approval from EPA political officials.¹ This undisclosed collaboration between government officials and a media outlet was troubling and unethical, according to experts cited in the *Daily Beast* story. It may also have been unlawful. The facts documented in the *Daily Beast* story raise serious concerns about how government officials are deceiving the American people as to their role in creating the material the public receives through the news media.

Records Requested

In an effort to better understand and explain to the public OMB’s undisclosed collaboration with media outlets, Democracy Forward Foundation requests that OMB produce the following within twenty (20) working days:

1. All records containing or documenting communications sent to or received by OMB political appointees with the following organizations and domains:
 - Fox News or @foxnews.com, @foxbusiness.com
 - Breitbart News Network or @breitbart.com

¹ Maxwell Tani, ‘Fox & Friends’ Fed Interview Script to Trump’s EPA Chief, Emails Show, *The Daily Beast* (Nov. 27, 2018), <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

- Blaze Media or @blazemedia.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmax.com
- Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sbgi.net
- The Rush Limbaugh Show or @rushlimbaugh.com

The search period is January 1, 2019 to the date of search. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms, unless the records contain additional discussion or commentary from OMB employees or contacts at the organizations listed above.

Scope of Search

For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period,

we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. Part 1303, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “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.” 5 U.S.C. § 552(a)(4)(A).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

As described above, the learning of any undisclosed collaboration between government officials and media outlets is an issue of significant and ongoing public attention, and the records requested will contribute to the public’s understanding of the operation and activities of the government. In particular, these records can illuminate the role government press offices have in creating the material the public receives through the news media.

Democracy Forward Foundation is able to, and regularly does, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see *id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of any undisclosed collaboration between government officials and media outlets.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant

public interest, DFF’s communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.²

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization’s email list, discussing ongoing legal developments related to executive branch policymaking. These materials often include

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descriptions and analysis of information obtained by DFF through its FOIA requests.³ In addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.⁴

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Democracy Forward Foundation is a purely noncommercial requester.

Democracy Forward Foundation is not filing this Request to further its commercial interest, and any information disclosed by DFF as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.⁶

⁶ See, e.g., *A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), <https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019), <https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-20190213-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These*

For all the foregoing reasons, Democracy Forward Foundation qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation

Women Are Suing Trump to Help End the Gender Pay Gap, Teen Vogue (Nov. 28, 2017), <https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF's staff).

EXHIBIT B



April 23, 2020

VIA Electronic Delivery

FOIA Officer / Director, Freedom of Information and Privacy Acts Division
Department of Health and Human Services
Hubert H. Humphrey Building, Suite 729H
200 Independence Avenue, SW
Washington, DC 20201

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the U.S. Department of Health and Human Services (“HHS”) FOIA regulations at 45 C.F.R., Subchapter A, Part 5, Democracy Forward Foundation makes this request for records.

Background

In November 2018, *the Daily Beast* reported that in advance of an appearance by then-EPA Administrator Scott Pruitt, the cable news program “Fox & Friends” shared its interview script and questions for approval from EPA political officials.¹ This undisclosed collaboration between government officials and a media outlet was troubling and unethical, according to experts cited in the *Daily Beast* story. It may also have been unlawful. The facts documented in the *Daily Beast* story raise serious concerns about how government officials are deceiving the American people as to their role in creating the material the public receives through the news media.

Records Requested

In an effort to better understand and explain to the public the Department’s undisclosed collaboration with media outlets, Democracy Forward Foundation requests that HHS produce the following within twenty (20) working days:

1. All records containing or documenting communications sent to or received by political appointees in the HHS Office of the Assistant Secretary for Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:

¹ Maxwell Tani, ‘Fox & Friends’ Fed Interview Script to Trump’s EPA Chief, Emails Show, *The Daily Beast* (Nov. 27, 2018), <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

- Fox News or @foxnews.com, @foxbusiness.com
- Breitbart News Network or @breitbart.com
- Blaze Media or @blazemedia.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmax.com
- Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sbgi.net
- The Rush Limbaugh Show or @rushlimbaugh.com

The search period is January 1, 2019 to the date of search. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms, unless the records contain additional discussion or commentary from HHS employees or contacts at the organizations listed above.

Scope of Search

For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we

request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “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.” 5 U.S.C. § 552(a)(4)(A).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

As described above, the learning of any undisclosed collaboration between government officials and media outlets is an issue of significant and ongoing public attention, and the records requested will contribute to the public’s understanding of the operation and activities of the government. In particular, these records can illuminate the role government press offices have in creating the material the public receives through the news media.

Democracy Forward Foundation is able to, and regularly does, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see *id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of any undisclosed collaboration between government officials and media outlets.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF's communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.²

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list, discussing ongoing legal

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⁵ See, e.g., Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n. 2; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n. 2.

Democracy Forward Foundation is a purely noncommercial requester.

Democracy Forward Foundation is not filing this Request to further its commercial interest, and any information disclosed by DFF as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.⁶

⁶ See, e.g., *A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), <https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019),

For all the foregoing reasons, Democracy Forward Foundation qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation

<https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-20190213-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017), <https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF's staff).

EXHIBIT C



April 23, 2020

VIA Electronic Delivery

Chief Privacy Officer/Chief FOIA Officer
The Privacy Office, Mail Stop 0655
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528-065
foia@hq.dhs.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the U.S. Department of Homeland Security (“DHS”) FOIA regulations at 6 C.F.R. Part 5, Democracy Forward Foundation makes this request for records.

Background

In November 2018, *the Daily Beast* reported that in advance of an appearance by then-EPA Administrator Scott Pruitt, the cable news program “Fox & Friends” shared its interview script and questions for approval from EPA political officials.¹ This undisclosed collaboration between government officials and a media outlet was troubling and unethical, according to experts cited in the *Daily Beast* story. It may also have been unlawful. The facts documented in the *Daily Beast* story raise serious concerns about how government officials are deceiving the American people as to their role in creating the material the public receives through the news media.

Records Requested

In an effort to better understand and explain to the public the Department’s undisclosed collaboration with media outlets, Democracy Forward Foundation requests that DHS produce the following within twenty (20) working days:

1. All records containing or documenting communications sent to or received by political appointees in the DHS Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:

¹ Maxwell Tani, ‘Fox & Friends’ Fed Interview Script to Trump’s EPA Chief, Emails Show, *The Daily Beast* (Nov. 27, 2018), <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

- Fox News or @foxnews.com, @foxbusiness.com
- Breitbart News Network or @breitbart.com
- Blaze Media or @blazemedia.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmax.com
- Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sbgi.net
- The Rush Limbaugh Show or @rushlimbaugh.com

The search period is January 1, 2019 to the date of search. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms, unless the records contain additional discussion or commentary from DHS employees or contacts at the organizations listed above.

Scope of Search

For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we

request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “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.” 5 U.S.C. § 552(a)(4)(A).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

As described above, the learning of any undisclosed collaboration between government officials and media outlets is an issue of significant and ongoing public attention, and the records requested will contribute to the public’s understanding of the operation and activities of the government. In particular, these records can illuminate the role government press offices have in creating the material the public receives through the news media.

Democracy Forward Foundation is able to, and regularly does, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see *id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of any undisclosed collaboration between government officials and media outlets.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF's communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.²

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list, discussing ongoing legal

² See, e.g., Alexander Nazaryan, *Why did right-wing troll Charles C. Johnson meet with Commerce Secretary Wilbur Ross?*, Yahoo News (May 14, 2019), <https://news.yahoo.com/why-did-rightwing-troll-charles-c-johnson-want-to-meet-with-commerce-secretary-wilbur-ross-090000636.html>; Derek Kravitz and Jack Gillum, *"Happy to Do It": Emails Show Current FAA Chief Coordinated With Ex-Lobbyist Colleagues on Policy*, ProPublica (Mar. 27, 2019), <https://www.propublica.org/article/dan-elwell-current-faa-chief-coordinated-with-ex-lobbyist-colleagues-on-policy>; Hamid Aleaziz, *Emails Show US Border Officials Didn't Receive "Zero Tolerance" Guidance Until After the Policy Was Enacted*, BuzzFeed News (Feb. 28, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/zero-tolerance-policy-guidance-dhs-family-separation>; Jonathan Cohn and Jeffrey Young, *Emails Show Trump Administration Was Told Obamacare Ad Cuts Could Hurt Enrollment*, HuffPost (Dec. 17, 2018), https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut_us_5c115061e4b084b082ff8dba; Madison Pauly, *When the Biggest Prison Company Complained About a California Sanctuary Law, ICE Listened*, Mother Jones (Dec. 7, 2018), <https://www.motherjones.com/politics/2018/12/geo-memo-private-prison-california-immigration/>; Eliza Rellman, *'Just answer the question and kill this story': In internal emails, Heather Nauert criticized Rex Tillerson's refusal to deny reports that he called Trump a 'moron.'* Business Insider (Nov. 2, 2018), <https://www.businessinsider.com/heather-nauert-rex-tillerson-trump-moron-2018-11>; Rebecca Klein, *Lawsuit Accuses Betsy DeVos And Her Deputies Of Being Motivated By Sexism*, HuffPost (Oct. 31, 2018), https://m.huffpost.com/us/entry/us_5bd9ff6ee4b01abe6a1ad4a9; Nick Penzenstadler, *A year after Vegas shooting, ATF emails reveal blame, alarm over bump stocks*, USA Today (Oct. 1, 2018), <https://www.usatoday.com/story/news/2018/10/01/year-after-vegas-shooting-atf-emails-reveal-blame-alarm-over-bump-stocks/1432137002/>; Jessica Kwong, *Ivanka Trump was more than complicit in Obama equal pay rollback-she had a hand in it, watchdog alleges*, Newsweek (Aug. 29, 2018), <https://www.newsweek.com/ivanka-trump-equal-pay-complicit-obama-1093833>; Vera Bergengruen, *New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump*, BuzzFeed News (July 25, 2018), <https://www.buzzfeednews.com/article/verabergengruen/these-emails-show-what-happens-when-the-white-house-keeps>; Erin Dooley, *Exclusive: Former for-profit college executive shaped Education Department policy that could benefit former employers: Documents*, ABC News (May 15, 2017), <https://abcnews.go.com/US/exclusive-profit-college-executive-shaped-education-department-policy/story?id=55108981>; Heidi Przybyla, *Notes, emails reveal Trump appointees' war to end HHS teen pregnancy program*, NBC News (Mar. 20, 2018), <https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686>; Dominic Holden, *Documents Show The Trump Administration Approved Bump Stocks Before It Opposed Them*, BuzzFeed News (Mar. 22, 2018), <https://www.buzzfeednews.com/article/dominicholden/trump-administration-bump-stocks>; Bernard Condon, *Trump Advisor Denies He Cheered End of Tunnel Funding Deal*, Associated Press (Feb. 13, 2018), available at <https://www.usnews.com/news/business/articles/2018-02-13/trump-adviser-denies-he-cheered-end-of-tunnel-funding-deal>; Celeste Katz, *Interior Department tapped wildfire preparedness funds for Ryan Zinke helicopter tour*, Newsweek (Dec. 29, 2017), <https://www.newsweek.com/ryan-zinke-interior-department-helicopters-wildfires-757857>

developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.³ In addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.⁴

DFF's website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF's website logged over 187,000 pageviews in 2018 alone.

Finally, DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.⁵

³ See, e.g., *BREAKING: At Congressional Hearing, Sec. DeVos Confronted With Records Revealing Trump Administration's Unlawful Decision to Permit Federal Funds to Arm Teachers* (Apr. 10, 2019), <https://democracyforward.org/press/breaking-at-congressional-hearing-sec-devos-confronted-with-records-revealing-trump-administrations-unlawful-decision-to-permit-federal-funds-to-arm-teachers/>;

BREAKING: New Evidence Reinforces Claim Trump's Title IX Policy Was Based on Sexist Stereotypes, Rendering it Unconstitutional (Nov. 1, 2018),

<https://democracyforward.org/press/breaking-new-evidence-reinforces-claim-trumps-title-ix-policy-was-based-on-sexist-stereotypes-rendering-it-unconstitutional/>; *On 1-Year Anniversary of Equal Pay Roll Back, New Documents Reveal Ivanka Trump's Role in Trump Administration Decision to Roll Back Protections for Women and Working Families* (Aug. 29, 2018),

<https://democracyforward.org/press/on-1-year-anniversary-of-equal-pay-roll-back-new-documents-reveal-ivanka-trumps-role-in-trump-administration-decision-to-roll-back-protections-for-women-and-working-families/>; *Democracy Forward Demands Ethics Investigation into White House Official's Role in Developing Special Drug Pricing Project With Novartis* (July 11, 2018),

<https://democracyforward.org/press/democracy-forward-demands-ethics-investigation-into-white-house-officials-role-in-developing-special-drug-pricing-project-with-novartis/>; *BREAKING: New Records Reveal DeVos Senior Advisor And Former For-Profit College Executive Directed Rollback of Protections Against Predatory Student Loans* (May 15, 2018),

<https://democracyforward.org/press/breaking-new-records-reveal-devos-senior-advisor-former-profit-college-executive-directed-rollback-protections-predatory-student-loans/>; *BREAKING: New Records Suggest Trump-Appointed Political Officials Drove HHS Decision To End Program Grants That Have Helped Reduce Teen Pregnancy Rates To All-Time Low* (Mar. 20, 2018),

<https://democracyforward.org/press/breaking-new-records-suggest-trump-appointed-political-officials-drove-hhs-decision-end-program-grants-helped-reduce-teen-pregnancy-rates-time-low/>.

⁴ See, e.g., the following tweets and tweet threads from @DemocracyFwd:

<https://twitter.com/DemocracyFwd/status/910123899035226112> (Sep. 19, 2017);

<https://twitter.com/DemocracyFwd/status/976991060680462336> (Mar. 22, 2018);

<https://twitter.com/DemocracyFwd/status/996480908877271042> (May 15, 2018);

<https://twitter.com/DemocracyFwd/status/998986714105483264> (May 22, 2018);

<https://twitter.com/DemocracyFwd/status/1022870550769754112> (July 27, 2018);

<https://twitter.com/DemocracyFwd/status/1035144352345903105> (Aug. 30, 2018);

<https://twitter.com/DemocracyFwd/status/1053294640382779392> (Oct. 19, 2018);

<https://twitter.com/DemocracyFwd/status/1071105652867690496> (Dec. 7, 2018).

⁵ See, e.g., Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n. 2; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n. 2.

Democracy Forward Foundation is a purely noncommercial requester.

Democracy Forward Foundation is not filing this Request to further its commercial interest, and any information disclosed by DFF as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.⁶

⁶ *See, e.g., A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018), <https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019),

For all the foregoing reasons, Democracy Forward Foundation qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation

<https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-20190213-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017), <https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF's staff).

EXHIBIT D



April 23, 2020

VIA Electronic Delivery

Departmental Offices
Director, FOIA and Transparency
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
FOIA@treasury.gov

Re: Freedom of Information Act Records Request

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552 *et seq.*, and the U.S. Department of Treasury (“Treasury”) FOIA regulations at 31 C.F.R. Part 1, Democracy Forward Foundation makes this request for records.

Background

In November 2018, *the Daily Beast* reported that in advance of an appearance by then-EPA Administrator Scott Pruitt, the cable news program “Fox & Friends” shared its interview script and questions for approval from EPA political officials.¹ This undisclosed collaboration between government officials and a media outlet was troubling and unethical, according to experts cited in the *Daily Beast* story. It may also have been unlawful. The facts documented in the *Daily Beast* story raise serious concerns about how government officials are deceiving the American people as to their role in creating the material the public receives through the news media.

Records Requested

In an effort to better understand and explain to the public the Department’s undisclosed collaboration with media outlets, Democracy Forward Foundation requests that Treasury produce the following within twenty (20) working days:

¹ Maxwell Tani, ‘Fox & Friends’ Fed Interview Script to Trump’s EPA Chief, Emails Show, *The Daily Beast* (Nov. 27, 2018), <https://www.thedailybeast.com/fox-and-friends-fed-interview-script-to-trumps-epa-chief-emails-show>.

1. All records containing or documenting communications sent to or received by political appointees in the Treasury Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:
 - Fox News or @foxnews.com, @foxbusiness.com
 - Breitbart News Network or @breitbart.com
 - Blaze Media or @blazemedia.com
 - CRTV.com or @crtv.com
 - The Blaze or @theblaze.com
 - NewsMax or @newsmax.com
 - Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
 - Daily Wire or @dailywire.com
 - One America News or @oann.com
 - Sinclair Broadcast Group or @sbgi.net
 - The Rush Limbaugh Show or @rushlimbaugh.com

The search period is January 1, 2019 to the date of search. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms, unless the records contain additional discussion or commentary from Treasury employees or contacts at the organizations listed above.

Scope of Search

For responsive records, please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 31 C.F.R. § 1.7, Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “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.” 5 U.S.C. § 552(a)(4)(A).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

As described above, the learning of any undisclosed collaboration between government officials and media outlets is an issue of significant and ongoing public attention, and the records requested will contribute to the public’s understanding of the operation and activities of the government. In particular, these records can illuminate the role government press offices have in creating the material the public receives through the news media.

Democracy Forward Foundation is able to, and regularly does, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” *Cause of Action v. F.T.C.*, 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see *id.*, or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. *Larson v. C.I.A.*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public's understanding of any undisclosed collaboration between government officials and media outlets.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF's communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.²

² See, e.g., Alexander Nazaryan, *Why did right-wing troll Charles C. Johnson meet with Commerce Secretary Wilbur Ross?*, Yahoo News (May 14, 2019), <https://news.yahoo.com/why-did-rightwing-troll-charles-c-johnson-want-to-meet-with-commerce-secretary-wilbur-ross-090000636.html>; Derek Kravitz and Jack Gillum, "Happy to Do It": Emails Show Current FAA Chief Coordinated With Ex-Lobbyist Colleagues on Policy, ProPublica (Mar. 27, 2019), <https://www.propublica.org/article/dan-elwell-current-faa-chief-coordinated-with-ex-lobbyist-colleagues-on-policy>; Hamid Aleaziz, *Emails Show US Border Officials Didn't Receive "Zero Tolerance" Guidance Until After the Policy Was Enacted*, BuzzFeed News (Feb. 28, 2019), <https://www.buzzfeednews.com/article/hamedaleaziz/zero-tolerance-policy-guidance-dhs-family-separation>; Jonathan Cohn and Jeffrey Young, *Emails Show Trump Administration Was Told Obamacare Ad Cuts Could Hurt Enrollment*, HuffPost (Dec. 17, 2018), https://www.huffingtonpost.com/entry/trump-verma-obamacare-advertising-cut_us_5c115061e4b084b082ff8dba; Madison Pauly, *When the Biggest Prison Company Complained About a California Sanctuary Law, ICE Listened*, Mother Jones (Dec. 7, 2018), <https://www.motherjones.com/politics/2018/12/geo-memo-private-prison-california-immigration/>; Eliza Rellman, 'Just answer the question and kill this story': In internal emails, Heather Nauert criticized Rex Tillerson's refusal to deny reports that he called Trump a 'moron,' Business Insider (Nov. 2, 2018), <https://www.businessinsider.com/heather-nauert-rex-tillerson-trump-moron-2018-11>; Rebecca Klein, *Lawsuit Accuses Betsy DeVos And Her Deputies Of Being Motivated By Sexism*, HuffPost (Oct. 31, 2018), https://m.huffpost.com/us/entry/us_5bd9ff6ee4b01abe6a1ad4a9; Nick Penzenstadler, *A year after Vegas shooting, ATF emails reveal blame, alarm over bump stocks*, USA Today (Oct. 1, 2018), <https://www.usatoday.com/story/news/2018/10/01/year-after-vegas-shooting-atf-emails-reveal-blame-alarm-over-bump-stocks/1432137002/>; Jessica Kwong, *Ivanka Trump was more than complicit in Obama equal pay rollback-she had a hand in it, watchdog alleges*, Newsweek (Aug. 29, 2018), <https://www.newsweek.com/ivanka-trump-equal-pay-complicit-obama-1093833>; Vera Bergengruen, *New Emails Show What Happens When The Pentagon Has To Scramble To Catch Up To Trump*, BuzzFeed News (July 25, 2018), <https://www.buzzfeednews.com/article/verabergengruen/these-emails-show-what-happens-when-the-white-house-keeps>; Erin Dooley, *Exclusive: Former for-profit college executive shaped Education Department policy that could benefit former employers: Documents*, ABC News (May 15, 2017), <https://abcnews.go.com/US/exclusive-profit-college-executive-shaped-education-department-policy/story?id=55108981>; Heidi Przybyla, *Notes, emails reveal Trump appointees' war to end HHS teen pregnancy program*, NBC News (Mar. 20, 2018), <https://www.nbcnews.com/politics/politics-news/notes-emails-reveal-trump-appointees-war-end-hhs-teen-pregnancy-n857686>; Dominic Holden, *Documents Show The Trump Administration Approved Bump Stocks Before It Opposed Them*, BuzzFeed News (Mar. 22, 2018), <https://www.buzzfeednews.com/article/dominicholden/trump-administration-bump-stocks>; Bernard Condon, *Trump Advisor Denies He Cheered End of Tunnel Funding Deal*, Associated Press (Feb. 13, 2018), available at <https://www.usnews.com/news/business/articles/2018-02-13/trump-adviser-denies-he-cheered-end-of-tunnel-funding-deal>; Celeste Katz, *Interior Department tapped wildfire preparedness funds for Ryan Zinke helicopter tour*,

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization's email list, discussing ongoing legal developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.³ In addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.⁴

DFF's website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF's website logged over 187,000 pageviews in 2018 alone.

Newsweek (Dec. 29, 2017),

<https://www.newsweek.com/ryan-zinke-interior-department-helicopters-wildfires-757857>

³ See, e.g., *BREAKING: At Congressional Hearing, Sec. DeVos Confronted With Records Revealing Trump Administration's Unlawful Decision to Permit Federal Funds to Arm Teachers* (Apr. 10, 2019),

<https://democracyforward.org/press/breaking-at-congressional-hearing-sec-devos-confronted-with-records-revealing-trump-administrations-unlawful-decision-to-permit-federal-funds-to-arm-teachers/>;

BREAKING: New Evidence Reinforces Claim Trump's Title IX Policy Was Based on Sexist Stereotypes, Rendering it Unconstitutional (Nov. 1, 2018),

<https://democracyforward.org/press/breaking-new-evidence-reinforces-claim-trumps-title-ix-policy-was-based-on-sexist-stereotypes-rendering-it-unconstitutional/>; *On 1-Year Anniversary of Equal Pay Roll Back, New Documents Reveal Ivanka Trump's Role in Trump Administration Decision to Roll Back Protections for Women and Working Families* (Aug. 29, 2018),

<https://democracyforward.org/press/on-1-year-anniversary-of-equal-pay-roll-back-new-documents-reveal-ivanka-trumps-role-in-trump-administration-decision-to-roll-back-protections-for-women-and-working-families/>; *Democracy Forward Demands Ethics Investigation into White House Official's Role in Developing Special Drug Pricing Project With Novartis* (July 11, 2018),

<https://democracyforward.org/press/democracy-forward-demands-ethics-investigation-into-white-house-officials-role-in-developing-special-drug-pricing-project-with-novartis/>; *BREAKING: New Records Reveal DeVos Senior Advisor And Former For-Profit College Executive Directed Rollback of Protections Against Predatory Student Loans* (May 15, 2018),

<https://democracyforward.org/press/breaking-new-records-reveal-devos-senior-advisor-former-profit-college-executive-directed-rollback-protections-predatory-student-loans/>; *BREAKING: New Records Suggest Trump-Appointed Political Officials Drove HHS Decision To End Program Grants That Have Helped Reduce Teen Pregnancy Rates To All-Time Low* (Mar. 20, 2018),

<https://democracyforward.org/press/breaking-new-records-suggest-trump-appointed-political-officials-drove-hhs-decision-end-program-grants-helped-reduce-teen-pregnancy-rates-time-low/>.

⁴ See, e.g., the following tweets and tweet threads from @DemocracyFwd:

<https://twitter.com/DemocracyFwd/status/910123899035226112> (Sep. 19, 2017);

<https://twitter.com/DemocracyFwd/status/976991060680462336> (Mar. 22, 2018);

<https://twitter.com/DemocracyFwd/status/996480908877271042> (May 15, 2018);

<https://twitter.com/DemocracyFwd/status/998986714105483264> (May 22, 2018);

<https://twitter.com/DemocracyFwd/status/1022870550769754112> (July 27, 2018);

<https://twitter.com/DemocracyFwd/status/1035144352345903105> (Aug. 30, 2018);

<https://twitter.com/DemocracyFwd/status/1053294640382779392> (Oct. 19, 2018);

<https://twitter.com/DemocracyFwd/status/1071105652867690496> (Dec. 7, 2018).

Finally, DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.⁵

Democracy Forward Foundation is a purely noncommercial requester.

Democracy Forward Foundation is not filing this Request to further its commercial interest, and any information disclosed by DFF as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch*, 326 F.3d at 1312 ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that "publishes or otherwise disseminates information to the public," and in particular one that "gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public." *Nat'l Sec. Archive v. US Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Representatives of the news media qualify for a waiver of all fees except "reasonable standard charges for document duplication" as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.⁶

⁵ See, e.g., Second Amended Complaint for Injunctive Relief at 31, *SurvJustice, Inc., et al. v. DeVos et al.*, No. 3:18-cv-00535-JSC (N.D. Cal. Oct. 31, 2018), ECF No. 86, reported on in Klein, *supra* n. 2; Memorandum of Law in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction at 14-15, *Healthy Teen Network and Mayor and City Council of Baltimore v. Azar and U.S. Dep't of Health and Human Services*, No. 1:18-cv-00468-CCB (D. Md. Mar. 27, 2018), ECF No. 18-1, reported on in Przybyla, *supra* n. 2.

⁶ See, e.g., *A Blueprint for Cronyism: President Trump's Illegal Infrastructure Plan to Enrich His Friends*, Democracy Forward Foundation (Jan. 30, 2018), <https://democracyforward.org/wp-content/uploads/2018/01/Infrastructure-Report.pdf>; Elana Schor, *Trump critics seize on developer ties to infrastructure plan*, Politico (Jan. 30, 2018), <https://www.politico.com/story/2018/01/30/trump-infrastructure-developers-state-of-union-376326> (press coverage of DFF's report on White House infrastructure policy); *Airlines and the Trump Administration*, Democracy Forward Foundation (Jan. 11, 2018), <https://democracyforward.org/updates/airlines-and-the-trump-administration/>; Bart Jansen, *Lost bags, airline fees: Protections for travelers rights stall under Trump*, USA Today (Jan. 19, 2018),

For all the foregoing reasons, Democracy Forward Foundation qualifies for a fee waiver.

If the request for a waiver is denied, we are willing to pay all reasonable fees incurred for searching and duplicating records in responding to this request, up to \$100. If the costs of responding to this request should exceed that amount, please contact us before incurring costs exceeding that amount.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation

<https://www.usatoday.com/story/news/2018/01/19/lost-bags-airline-fees-protections-travelers-rights-stall-under-trump/1043879001/> (press coverage utilizing the information DFF organized regarding regulatory changes); *What Has Trump Done on Guns? A Lot.*, Democracy Forward Foundation (Feb. 21, 2018), <https://democracyforward.org/updates/trump-done-guns-lot/>; Christi Parsons, *Trump 'supportive' of tougher gun law, but his record suggests that may not mean much*, LA Times (Feb. 20, 2018) (press coverage utilizing the information DFF organized regarding regulatory changes); Anne Harkavy and Farhana Khera, *When the Trump administration lies, it might literally be illegal: Learn about the Information Quality Act*, NY Daily News (Feb. 14, 2019), <https://www.nydailynews.com/opinion/ny-oped-when-the-trump-administration-lies-it-might-literally-be-illegal-2019-02-13-story.html> (piece co-authored by DFF executive director); Meg Uzzell and Rachael Klarman, *Why These Women Are Suing Trump to Help End the Gender Pay Gap*, Teen Vogue (Nov. 28, 2017), <https://www.teenvogue.com/story/women-sue-trump-gender-pay-gap> (piece authored by two members of DFF's staff).



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

April 28, 2020

RE: 2020-04-260

Mr. Nitin Shah
Democracy Forward Foundation

Email: foia@democracyforward.org

Dear Mr. Shah:

This concerns your Freedom of Information Act (FOIA) request submitted to the Department of the Treasury, dated April 23, 2020. You seek, all records from January 1, 2019 to the date of the search containing or documenting communications sent to or received by political appointees in the Treasury Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:

- Fox News or @foxnews.com, @foxbusiness.com
- Breitbart News Network or @breitbart.com
- Blaze Media or @blazemedia.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmax.com
- Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sbgi.net
- The Rush Limbaugh Show or @rushlimbaugh.com

Upon review of your request, I have determined your request is too broad to be processed. It is unclear what specific records you seek from Department of the Treasury. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason §1.2(b) of Treasury's FOIA regulations at 31 C.F.R. Part 1, Subpart A require that you describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Department. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, timeframe and subject matter of the record.

Please resubmit your request containing a reasonable description of each records you seek by including a subject matter or topic of interest.

If we do not receive an amended request from you within 30 days from the date of this letter,

June 10, 2020, we will assume you are no longer interested in this FOIA request and will consider your request withdrawn. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

You may reach me via telephone at 202-622-0930, extension 2; or via email at FOIA@treasury.gov. Please reference the FOIA number at the top of this letter when contacting our office about this request. If you choose to mail your response, please use the following address:

FOIA and Transparency
Privacy, Transparency, and Records
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

Sincerely,

Cawana Pearson

Cawana Pearson
FOIA Case Manager, FOIA and Transparency
Privacy, Transparency, and Records (PTR)



VIA E-MAIL

April 28, 2020

Ms. Cawana Pearson
FOIA Case Manager
Privacy, Transparency, and Records
U.S. Department of the Treasury
Washington, D.C. 20220
Cawana.Pearson@treasury.gov, FOIA@treasury.gov

RE: Treasury FOIA Request No. 2020-04-260

Dear Ms. Pearson,

We have received your letter of this date in which you indicate that Treasury will not process the above-referenced Freedom of Information Act request, and instead, you invite us to resubmit our request to include “a subject matter or topic of interest.”

We decline your invitation. The Freedom of Information Act does not require that a request be limited to a specific “subject matter or topic of interest.” A request must reasonably describe the records sought, and this we have done. Our request seeks all records created from January 1, 2019 to the date of search containing or documenting communications between (i) political appointees in three specific offices of Treasury and (ii) a specific list of conservative media entities, with the relevant e-mail domains included. Put simply, we could not have identified the records we seek any more clearly.

We note, moreover, that Treasury has previously processed a FOIA request that is substantially similar to the subject request. *See* Treasury FOIA Request No. 2018-12-063 (seeking records of communications between all Office of Public Affairs employees and specific list of conservative media entities). Especially considering its prior practice, Treasury’s refusal to process this request is arbitrary, capricious, and contrary to law.

Based on the foregoing, and as required by law, we trust that Treasury will reconsider its decision and comply with our request within twenty business days of April 23, 2020.

Sincerely,

/s/

Nitin Shah

Senior Counsel

foia@democracyforward.org



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 1, 2020

Re: 2020-04-260

Mr. Nitin Shah
Democracy Forward Foundation

Email: foia@democracyforward.org

Dear Mr. Shah :

This letter acknowledges your Freedom of Information Act (FOIA) request submitted to Department of the Treasury, dated April 23, 2020. You seek, records from January 1, 2019 to the date of search containing or documenting communications sent to or received by political appointees in the Treasury Office of Public Affairs, Office of the Secretary, and Office of the Deputy Secretary with the following organizations and domains:

- Fox News or @foxnews.com, @foxbusiness.com
- Breitbart News Network or @breitbart.com
- Blaze Media or @blazemedia.com
- CRTV.com or @crtv.com
- The Blaze or @theblaze.com
- NewsMax or @newsmax.com
- Daily Caller or @dailycaller.com, @dailycallernewsfoundation.org
- Daily Wire or @dailywire.com
- One America News or @oann.com
- Sinclair Broadcast Group or @sbgi.net
- The Rush Limbaugh Show or @rushlimbaugh.com

I have initiated a search within Departmental Offices (DO), for records that would be responsive to your request. I will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding the search for and review of potentially responsive records. The unusual circumstances are due to the consultation required between two or more program offices and/or a search is expected to result in voluminous records and/or a search is required to be conducted for records stored in field offices or warehouses off site; therefore, an additional processing extension of (10) days is required to process your request. As with all FOIA requests, I invite you to consider contacting our office to discuss limiting the scope of your request which could significantly reduce the processing time of your request.

We will review your request for a fee waiver once our office ascertains that the billable costs will exceed our \$25.00 billing threshold.

You may seek dispute resolution services from Treasury's FOIA Public Liaison by contacting FOIA and Transparency at (202) 622-8098 or email FOIAPL@treasury.gov.

A FOIA Public Liaison is a supervisory official to whom FOIA requesters can raise questions or concerns about the agency's FOIA process. FOIA Public Liaisons can explain agency records, suggest agency offices that may have responsive records, provide an estimated date of completion, and discuss how to reformulate and/or reduce the scope of requests in order to minimize fees and expedite processing time.

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may contact the agency directly at the following address, emails, fax or telephone numbers:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll free: 1-877-684-6448
Fax: 202-741-5769

You may reach me via telephone at 202-622-0930, extension 2; or via email at FOIA@treasury.gov. Please reference the FOIA number at the top of this letter when contacting our office about this request.

Sincerely,

Cawana Pearson

Cawana Pearson
FOIA Case Manager, FOIA and Transparency
Privacy, Transparency, and Records (PTR)

CIVIL COVER SHEET

JS-44 (Rev. 6/17 DC)

I. (a) PLAINTIFFS Democracy Forward Foundation (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS Office of Management and Budget, U.S. Department of Homeland Security, U.S. Department of the Treasury, U.S. Department of Health and Human Services COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Nitin Shah, Benjamin Seel, Sean Lev Democracy Forward Foundation 1333 H St NW Suite 1000 Washington, DC 20005 (202) 448-9090	ATTORNEYS (IF KNOWN)																								
II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY) <input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table border="0"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DFT</td> </tr> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
<input type="radio"/> E. General Civil (Other) OR <input type="radio"/> F. Pro Se General Civil			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 FOIA, 5 U.S.C. Section 552. Defendants are in possession of records unlawfully withheld.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 6/23/2020	SIGNATURE OF ATTORNEY OF RECORD: /s/ Nitin Shah
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Hon. William Barr, Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Homeland Security
Office of the General Counsel
2707 Martin Luther King Jr. Ave, SE
Washington, D.C. 20528-0485

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of Health and Human Services
Office of the General Counsel
200 Independence Avenue, S.W.
Room 713-F
Washington, D.C. 20201

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

Democracy Forward Foundation

Plaintiff

v.

Office of Management and Budget, et al.

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Civil Process Clerk
U.S. Attorney's Office for the District of Columbia
555 4th Street, N.W.
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nitin Shah
Democracy Forward Foundation
1333 H St NW Suite 1100
Washington, DC 20005

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: