

EXHIBIT A



July 8, 2020

VIA Electronic Delivery

Chief FOIA Officer
U.S. Agency for Global Media
Room 3349
330 Independence Avenue, SW
Washington, DC 20237
foia@usagm.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. Agency for Global Media (“USAGM”)¹ FOIA regulations, beginning at 22 C.F.R. Part 503, Democracy Forward Foundation submits this request for records.

Background

On June 4, 2020, Michael Pack, a conservative filmmaker with close ties to former Breitbart News executive and White House advisor Stephen Bannon, was confirmed by the United States Senate to lead USAGM. His confirmation, long delayed out of concern that he would fail to adhere to the journalistic norms of independence and integrity that have long guided USAGM’s work, proceeded only after President Trump personally intervened on his behalf.² In the course of his campaign on Mr. Pack’s behalf, President Trump suggested that the leadership change was necessary because the Voice of America (VOA)—an outlet under USAGM’s purview—was filled with “communists” serving as the “voice of the Soviet Union.”³

¹ Prior to an August 2018 rebranding, the USAGM was known as the Board of Broadcasting Governors or BBG. See Press Release, *U.S. Government Media Agency Rebrands: Statement from CEO John F. Lansing* (Aug. 22, 2018), <https://www.prnewswire.com/news-releases/us-government-media-agency-rebrands-300701142.html>. Nevertheless, USAGM is still referred to by its previous name in certain official records. See, e.g., 22 C.F.R. Part 503. Accordingly, and for purposes of this request, please construe the terms “U.S. Agency for Global Media” and “USAGM” to also include the terms “Board of Broadcasting Governors” and “BBG” where it is reasonable and appropriate to do so.

² Catie Edmondson, *Senate Confirms Conservative Filmmaker to Lead U.S. Media Agency*, N.Y. Times (June 4, 2020), <https://www.nytimes.com/2020/06/04/us/politics/senate-confirms-michael-pack-voa.html>.

³ See Paul Farhi and Elahe Izadi, *Top Voice of America Editors Resign Amid Strife With White House, Arrival of New Trump-appointed Director*, Wash. Post (June 15, 2020), <https://www.washingtonpost.com/lifestyle/media/top-voice->

Concerns that Mr. Pack's leadership of USAGM would result in seismic and troubling shifts in its operation are now being realized.⁴ Mere weeks after his confirmation, senior leadership at many of the outlets USAGM oversees either felt compelled to resign, were "stripp[ed] ... of their authority," or were fired outright by Mr. Pack.⁵ In particular, VOA's Director (Amanda Bennett) and Deputy Director (Sandy Sugawara) resigned on June 15, 2020, and in a single evening on June 17, 2020, Mr. Pack fired the officials in charge of Middle East Broadcasting (MEB), Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), the Office of Cuban Broadcasting (OCB), and the Open Technology Fund (OTF).⁶ Press reports also indicate that Jeffrey Shapiro, who is also closely connected to Mr. Bannon, will soon be named to lead OCB.⁷ James M. Miles has been appointed as the interim chief executive of OTF.⁸

Records Requested

In an effort to understand and explain the staffing and policy changes that are now taking place at USAGM, Democracy Forward requests that USAGM produce the following within twenty (20) business days:

1. All records sent or received by Michael Pack discussing leadership changes at USGAM or any of its subsidiaries, including, without limitation, VOA, MEB, RFA, RFE/RL, OCB, and OTF. Please search for records created between June 4, 2020 and the date on which the search is completed.
2. All records sent between Michael Pack and Jeffrey Shapiro created between June 4, 2020 and the date on which the search is completed.
3. All records sent between Michael Pack and James M. Miles created between June 4, 2020 and the date on which the search is completed.
4. All records sent between Michael Pack and Amanda Bennett created between June 4, 2020 and June 18, 2020.

[of-america-editors-resign-amid-strife-with-white-house-arrival-of-new-trump-appointed-director/2020/06/15/5880a684-af1f-11ea-8758-bfd1d045525a_story.html](https://www.washingtonpost.com/archive/local/2020/06/15/5880a684-af1f-11ea-8758-bfd1d045525a_story.html).

⁴ See David Folkenflik, *Morning Edition: Trump's New Foreign Broadcasting CEO Fires News Chiefs, Raising Fears Of Meddling*, NPR (June 18, 2020), <https://www.npr.org/2020/06/18/879873926/trumps-new-foreign-broadcasting-ceo-fires-news-chiefs-raising-fears-of-meddling>.

⁵ *Id.*

⁶ *Id.*

⁷ Jennifer Hansler and Brian Stelter, *'Wednesday Night Massacre' as Trump Appointee Takes Over at Global Media Agency*, CNN (June 17, 2020), <https://www.cnn.com/2020/06/17/media/us-agency-for-global-media-michael-pack/index.html>.

⁸ Pranshu Verma and Edward Wong, *New Trump Appointee Puts Global Internet Freedom at Risk, Critics Say*, N.Y. Times (July 4, 2020), <https://www.nytimes.com/2020/07/04/us/politics/michael-pack-china-internet.html>.

5. All records sent between Michael Pack and Sandy Sugawara created between June 4, 2020 and June 18, 2020.
6. Copies of a June 17, 2020 memorandum sent by then-RFE/RL director Jamie Fly regarding his departure,⁹ as well as any and all communications discussing or responding to that memorandum. Please search for records created between June 4, 2020 and the date on which the search is completed.
7. Copies of a June 15, 2020 memorandum sent by Amanda Bennet or Sandy Sugawara to VOA staff regarding their departure,¹⁰ as well as any and all communications discussing or responding to that memorandum. Please search for records created between June 4, 2020 and the date on which the search is completed.
8. All records sent between Michael Pack and any individuals affiliated with Fox News, Breitbart News Network, or One America News Network or using email addresses with @foxnews.com, @foxbusiness.com, @breitbart.com, or @oann.com website domains. Excluding news stories or press releases from these organizations that do not contain commentary added by Mr. Pack, please search for records created between June 4, 2020 and the date on which the search is completed.
9. All records sent between Michael Pack and Stephon Bannon created between June 4, 2020 and the date on which the search is completed.
10. All records sent between USAGM officials and anyone affiliated with The Public Media Lab or Manifold Productions, including emails sent using the website domain @manifoldproductions.com. Please search for records created between June 1, 2018 and the date on which the search is completed.

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. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

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* 5 U.S.C. § 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

⁹ *See* Folkenflik, *supra* note 4.

¹⁰ Farhi and Izadi, *supra* note 3.

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.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

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).

Request for Fee Waiver

Democracy Forward requests a waiver of document search, review, and duplication fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees “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 discussed above, news accounts underscore the substantial public interest in the records sought through this request. 5 U.S.C. § 552(a)(4)(A)(iii). Given the ongoing and widespread media attention, the disclosure of records sought will contribute significantly to public understanding of an issue of profound public importance.

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).

Democracy Forward has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records Democracy Forward receives that contribute significantly to the public’s understanding of staffing and policy changes at USAGM.

Democracy Forward operates a dedicated communications staff with deep relations with a wide variety of national publications. When Democracy Forward obtains materials through FOIA requests that are of significant public interest, Democracy Forward’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 Democracy Forward staff about those materials and their relevance to policy issues of public interest.¹¹

¹¹ 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*

Additionally, Democracy Forward 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 Democracy Forward through its FOIA requests.¹² In addition, Democracy Forward operates a verified Twitter account with over 9,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.¹³

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

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>.

¹² 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/>.

¹³ 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, Democracy Forward frequently incorporates documents received through FOIA into related legal actions brought by Democracy Forward on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.¹⁴

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 Democracy Forward 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" pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, Democracy Forward 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.¹⁵

¹⁴ *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.11; 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.11.

¹⁵ *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/>

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 to releasing fully the requested records within the 20-day period, please contact Benjamin Seel as soon as possible at foia@democracyforward.org or (202) 448-9090.

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

Sincerely,

/s/ Benjamin Seel

Benjamin Seel

Counsel, Democracy Forward Foundation

Democracy Forward Foundation

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 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).