



3. The origins and purpose of the Board remain vague and are the subject of ongoing FOIA litigation—*see Ams. for Prosperity Found. v. Dep’t of Homeland Sec.*, No. 22-2015 (D.D.C. filed July 12, 2022)—to say nothing of formal inquiry by members of Congress, as well as investigation by the press and other watchdog organizations. *See, e.g., DHS still won’t reveal its alleged authorities to censor ‘misinformation’*, *Ams. for Prosperity Found.*, Dec. 19, 2023, <https://americansforprosperity.org/blog/dhs-still-wont-reveal-its-alleged-authorities-to-censor-misinformation/>.

4. Continued government interference with social media and, more generally, public discourse on hotly debated policy issues is troubling. And yet, neither DHS nor Treasury has issued a timely determination on AFPF’s FOIA requests, let alone provided AFPF with records that could shed light on such matters.

5. That inaction is especially pernicious given that disclosure, in this instance, would serve the public interest. The Administration has repeatedly and continually refused to provide details about its purported authority to regulate disinformation in various fora and to elaborate on its efforts in particular cases.

### **JURISDICTION AND VENUE**

6. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

### **PARTIES**

8. Plaintiff AFPF is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. AFPF routinely files and litigates FOIA requests. It relies on the legal, investigative, and editorial experience of its staff to review the results of its FOIA requests and to produce distinct

news and educational materials that are distributed to the interested public. Among other things, AFPF believes government regulation of speech—or attempts to “monitor” speech for perceived “disinformation” or “misinformation”—threatens to chill the exercise of fundamental rights.

9. Defendant DHS is an agency within the meaning of 5 U.S.C. § 552(f)(1). DHS and its components—including the Cybersecurity and Infrastructure Security Agency—have possession, custody, and control of agency records to which AFPF seeks access and that are the subject of this Complaint.

10. Defendant Treasury is an agency within the meaning of 5 U.S.C. § 552(f)(1). Treasury has possession, custody, and control of agency records to which AFPF seeks access and that are the subject of this Complaint.

## **FACTS**

### **I. AFPF’s March 15, 2024 FOIA Request to DHS’s Office of the Executive Secretary**

11. By letter, dated March 15, 2024, AFPF submitted a FOIA request to DHS’s Office of the Executive Secretary through DHS’s online request portal seeking access to the following:

All internal and external email communications, including attachments, sent to or by the following DHS employees, including through any alias accounts:

- a. Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans
- b. Kelli Ann Burriesci, Deputy Under Secretary
- c. Samantha Vinograd, Assistant Secretary for Counterterrorism and Threat Prevention
- d. Chadwick Gilmer, Deputy Chief of Staff and Director, Executive Secretariat
- e. Iranga Kahangama, Assistant Secretary for Cyber, Infrastructure, Risk and Resilience
- f. Ricki Seidman, Advisor to the Secretary

### **Exhibit 1.**

12. AFPF explained that, “[a]long with email,” DHS should “search and provide records from any medium of communications used by DHS including but not limited to Microsoft Teams, text messaging, etc.” *Id.*

13. AFPF instructed DHS to limit its “search and processing of records” for the identified custodians to “those records containing any of the following sets of keywords”:

- a. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Social media” OR “Google” OR “Meta” OR “Facebook” OR “TikTok” OR “YouTube” OR “Instagram” OR “Microsoft” OR “Twitter” OR “X.com”)[; or]
- b. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Authority” OR “Authorities” OR “free speech” OR “First Amendment”)[; or]
- c. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Americans for Prosperity” OR “AFP”)[.]

*Id.*

14. AFPF identified the relevant time period for its request as “July 1, 2023 to the present,” and it defined the term “present” as “the date on which DHS begins its search for responsive records.” *Id.*

15. AFPF defined the term “record” as “any medium of information storage in the form and format maintained by the agency at the time of the request.” *Id.* AFPF explained that “[i]f any portion of a ‘record’ . . . is responsive to [its] request, then [DHS] should process and disclose the record in its entirety.” *Id.* Thus, “[i]f [DHS] consider[ed] a medium of information storage to contain multiple records that it believe[d] c[ould] be segmented on the basis of the subject-matter or scope of AFPF’s request,” it must process all potentially segmented records as responsive. *Id.*

16. AFPF likewise explained that, as far as email chains were concerned, it sought “the entirety of any email chain, any portion of which contains an individual email message responsive to [its] request[.]” *Id.*

17. AFPF requested a public-interest fee waiver and classification as a representative of the news media for fee purposes. *Id.*

18. By letter, dated March 15, 2024, DHS acknowledged it had received AFPF's FOIA request the same day and assigned it tracking number 2024-HQFO-01024. **Exhibit 2.**

19. DHS extended its determination deadline by ten working days because AFPF's request implicated "a voluminous amount of separate and distinct records." *Id.*

20. DHS purported to "conditionally grant" AFPF's request for a public-interest fee waiver. *Id.* The agency claimed to reserve the right to later deny AFPF's "fee waiver entirely" or "allow for a percentage reduction" based on the content of yet-to-be-processed records. *Id.*

21. DHS granted AFPF's request for treatment as a representative of the news media for fee purposes. *See id.*

22. DHS has not provided any substantive update on the processing of AFPF's request. It has neither issued a final determination nor produced responsive records. The agency has not even provided AFPF with an estimated date of completion for the agency's response.

23. Under its statutorily extended deadline, DHS was required to provide a determination on AFPF's FOIA request by April 26, 2024.

## **II. AFPF's March 15, 2024 FOIA Request to CISA**

24. By letter, dated March 15, 2024, AFPF submitted a FOIA request to DHS's Cybersecurity and Infrastructure Security Agency ("CISA") through DHS's online request portal seeking access to the following:

All internal and external email communications, including attachments, sent to or by the following CISA employees, including through any alias accounts:

- a. Jen Easterly, Director
- b. Mona Harrington, Assistant Director for the National Risk Management Center
- c. Brian Scully, National Risk Management Center
- d. Alaina Clark, Assistant Director for Stakeholder Engagement

### **Exhibit 3.**

25. AFPF explained that, “[a]long with email,” CISA should “search and provide records from any medium of communications used by CISA including but not limited to Microsoft Teams, text messaging, etc.” *Id.*

26. AFPF instructed CISA to limit its “search and processing of records” for the identified custodians to “those records containing any of the following sets of keywords”:

- a. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM” OR “switchboarding” OR “influence matters”) AND (“Social media” OR “Google” OR “Meta” OR “Facebook” OR “TikTok” OR “YouTube” OR “Instagram” OR “Microsoft” OR “Twitter” OR “X.com”) [; or]
- b. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM” OR “switchboarding” OR “influence matters”) AND (“Authority” OR “Authorities” OR “free speech” OR “First Amendment”)[; or]
- c. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM” OR “switchboarding” OR “influence matters”) AND (“Americans for Prosperity” OR “AFP”)[.]

*Id.*

27. AFPF identified the relevant time period for its request as “July 1, 2023 to the present,” and it defined the term “present” as “the date on which CISA begins its search for responsive records.” *Id.*

28. AFPF defined the term “record” as “any medium of information storage in the form and format maintained by the agency at the time of the request.” *Id.* AFPF explained that “[i]f any portion of a ‘record’ . . . is responsive to [its] request, then [CISA] should process and disclose the record in its entirety.” *Id.* Thus, “[i]f [CISA] consider[ed] a medium of information storage to contain multiple records that it believe[d] c[ould] be segmented on the basis of the subject-matter or scope of AFPF’s request,” it must process all potentially segmented records as responsive. *Id.*

29. AFPF likewise explained that, as far as email chains were concerned, it sought “the entirety of any email chain, any portion of which contains an individual email message responsive to [its] request[.]” *Id.*

30. AFPF requested a public-interest fee waiver and classification as a representative of the news media for fee purposes. *Id.*

31. By letter, dated March 26, 2024, CISA acknowledged it had received AFPF’s FOIA request on March 15, 2024 and assigned it tracking number 2024-NPFO-00289. **Exhibit 4.**

32. CISA extended its determination deadline by ten working days because AFPF’s request would “necessitate a thorough and wide-ranging search.” *Id.*

33. CISA purported to “conditionally grant” AFPF’s request for a public-interest fee waiver. *Id.* The agency claimed to reserve the right to later deny AFPF’s “fee waiver entirely” or “allow for a percentage reduction” based on the content of yet-to-be-processed records. *Id.*

34. CISA granted AFPF’s request for treatment as a representative of the news media for fee purposes. *See id.*

35. CISA has not provided any substantive update on the processing of AFPF’s request. It has neither issued a final determination nor produced responsive records. The agency has not even provided AFPF with an estimated date of completion for the agency’s response.

36. Under its statutorily extended deadline, CISA was required to provide a determination on AFPF’s FOIA request by April 26, 2024.

**III. AFPF’s March 15, 2024 FOIA Request to Treasury**

37. By letter, dated March 15, 2024, AFPF submitted a FOIA request to Treasury through the agency’s online request portal seeking access to the following:

All internal and external email communications, including attachments, sent to or by the following Treasury employees, including through any alias accounts:

- Wally Adeyemo, Deputy Secretary
- Aditi Hardikar, Deputy Chief of Staff
- Lily Adams, Assistant Secretary for Public Affairs

**Exhibit 5.**

38. AFPF explained that, “[a]long with email,” Treasury should “search and provide records from any medium of communications used by Treasury including but not limited to Microsoft Teams, text messaging, etc.” *Id.*

39. AFPF instructed Treasury to limit its “search and processing of records” for the identified custodians to “those records containing any of the following sets of keywords”:

- a. (“McDonald’s” OR “McDonalds” OR “Big Mac” OR “Inflation”) AND “TikTok”[; or]
- b. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Inflation”)[; or]
- c. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Social media” OR “Google” OR “Meta” OR “Facebook” OR “TikTok” OR “YouTube” OR “Instagram” OR “Microsoft” OR “Twitter” OR “X.com”)[; or]
- d. (“Disinfo” OR “Disinformation” OR “misinfo” OR “Misinformation” OR “Malinformation” OR “MDM”) AND (“Zients” OR “White House” OR “S1” OR “Yellen” OR “Biden”)[.]

*Id.*

40. AFPF identified the relevant time period for its request as “October 1, 2023 to the present,” and it defined the term “present” as “the date on which [Treasury] begins its search for responsive records.” *Id.*

41. AFPF defined the term “record” as “any medium of information storage in the form and format maintained by the agency at the time of the request.” *Id.* AFPF explained that “[i]f any portion of a ‘record’ . . . is responsive to [its] request, then [Treasury] should process and disclose the record in its entirety.” *Id.* Thus, “[i]f [Treasury] consider[ed] a medium of information storage to contain multiple records that it believe[d] c[ould] be segmented on the basis

of the subject-matter or scope of AFPF's request," it must process all potentially segmented records as responsive. *Id.*

42. AFPF likewise explained that, as far as email chains were concerned, it sought "the entirety of any email chain, any portion of which contains an individual email message responsive to [its] request[.]" *Id.*

43. AFPF requested a public-interest fee waiver and classification as a representative of the news media for fee purposes. *Id.*

44. By email, dated March 28, 2024, Treasury acknowledged it had received AFPF's FOIA request and assigned it tracking number 2024-FOIA-00339. **Exhibit 6.** The agency also explained it had "initiated a search" for records. **Exhibit 7.** But Treasury technically received AFPF's request nearly two weeks earlier, on March 15, 2024. *See Exhibit 8.*

45. In its formal acknowledgment letter, Treasury extended its determination deadline by ten working days after citing "unusual circumstances," namely, the "need to consult with multiple program offices, to review a voluminous quantity of records, or to search for records stored in multiple locations." Ex. 7.

46. Treasury deferred its determination on AFPF's request for a public-interest fee waiver until such time as its FOIA "office ascertains that the billable costs will exceed . . . [the agency's] \$25.00 billing threshold." *Id.*

47. Treasury failed to issue a determination on AFPF's request for treatment as a representative of the news media for fee purposes. *See id.*

48. Treasury has not provided any substantive update on the processing of AFPF's request. It has neither issued a final determination nor produced responsive records. The agency has not even provided AFPF with an estimated date of completion for the agency's response.

49. Under its statutorily extended deadline, Treasury was required to provide a determination on AFPP's FOIA request by April 26, 2024.

### COUNT I

#### Violation of the FOIA: Failure to Comply with Statutory Requirements

50. AFPP repeats all of the above paragraphs.

51. The FOIA requires an agency to accept and process any request for access to agency records that (a) "reasonably describes such records," and (b) "is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed[.]" 5 U.S.C. § 552(a)(3)(A).

52. The FOIA also requires an agency to respond to a valid request within 20 business days or, in "unusual circumstances," within 30 business days. *Id.* § 552(a)(6)(A)–(B). If an agency requires additional time to process a request, the FOIA mandates it provide the requester with "an opportunity to arrange . . . an alternative time frame for processing the request[.]" *Id.* § 552(a)(6)(B)(ii).

53. An agency is required by law to provide a requester with "an estimated date on which the agency will complete action on . . . [a FOIA] request." *Id.* § 552(a)(7)(B)(ii).

54. The requests at issue in this case seek access to agency records maintained by DHS (including through its component, CISA) and Treasury. Those requests reasonably describe the records sought by AFPP and otherwise comply with the FOIA and applicable agency regulations.

55. DHS and Treasury have both failed to issue determinations on or to promptly produce agency records responsive to the requests at issue within the applicable time limits.

56. DHS has also failed to comply with the FOIA insofar as it never "arrange[d] . . . alternative time frame[s]" for responding to AFPP's requests and never actively invited AFPP to negotiate "alternative" response deadlines.

57. DHS has also violated the FOIA and applicable DHS regulations by “conditionally” granting AFPF’s requests for public-interest fee waivers.

58. DHS and Treasury have both failed to comply with the FOIA by neglecting to provide AFPF with estimated dates of completion for the requests at issue.

59. AFPF has exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

**RELIEF REQUESTED**

WHEREFORE, Plaintiff AFPF respectfully requests and prays that this Court:

- a. Order Defendants DHS and Treasury to process AFPF’s FOIA requests and to issue determinations (including any outstanding fee determinations) within 20 business days of the date of the Order;
- b. Order Defendants DHS and Treasury to produce all agency records responsive to AFPF’s FOIA requests promptly upon issuing the foregoing determinations;
- c. Maintain jurisdiction over this case until Defendants DHS and Treasury comply with the Order and, if applicable, adequately justify their treatment of all responsive records;
- d. Award AFPF its costs and reasonable attorney fees incurred here pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant such other relief as the Court may deem just and proper.

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Dated: May 9, 2024

Respectfully submitted,

/s/ Ryan P. Mulvey

Ryan P. Mulvey

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