



July 19, 2024

**VIA FOIA PORTAL**

U.S. Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington, DC 20420

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), 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.<sup>1</sup> AFPF is investigating the origins and mandate of the [“Red Team” Executive Roundtable Report](#) on “The Urgent Need to Address VHA Community Care Spending and Access Strategies.” Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPF hereby requests the following records.<sup>2</sup>

1. All records regarding the “Red Team” including but not limited to:
  - a. Presentation materials
  - b. Meeting agendas
  - c. Meeting minutes
  - d. Meeting videos
  - e. Other records reflecting the Team’s:
    - i. Mission and goals
    - ii. Funding sources
    - iii. Scope of authority
    - iv. Statutory authority for formation
2. All internal and external communications (e-mails, text messages, Teams chats, or other electronic messaging platforms) to or from the following Veterans Health Administration employees
  - a. VA Under Secretary for Health Shereef Elnahal
  - b. VHA Chief of Staff Ryung Suh
  - c. Deputy Under Secretary for Health Steven Lieberman

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<sup>1</sup> See AMS. FOR PROSPERITY FOUND., [www.americansforprosperityfoundation.org](http://www.americansforprosperityfoundation.org) (last visited July 19, 2024).

<sup>2</sup> For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.” Accordingly, with respect to email records, the agency should treat parent email and attachments as a single, indivisible record; AFPF seeks access to the entire record or document family.

That return as responsive to any of the follow keyword search commands<sup>3</sup>:

1. “Red Team” AND (“Community Care” OR “Empower Oversight”)
2. “Kizer” OR “Perlin” OR “Guice” OR “Granger” OR “Safran” OR “Friesen”

The time period for Item 2 is December 1, 2023, to present.

Please note that AFPF does not seek copies of the final Red Team report, nor any drafts.

## Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and relevant regulations provide that the VA shall furnish requested records without or at reduced charge 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.”<sup>4</sup> In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they relate to the [“Red Team” panel](#) on Community Care set up by the VA Under Secretary for Health Shereef Elnahal.

AFPF intends to educate the public with the results of this request and similar requests filed with other federal agencies. It has the intent and ability to make those results available to a reasonably broad public audience through various media. AFPF’s staff has significant experience and relevant expertise; these professionals will analyze responsive records, if any, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public. Finally, AFPF is a non-profit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, and it therefore has no commercial interest in making this request.

## Request to Be Classified as a Representative of the News Media

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.<sup>5</sup> As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.<sup>6</sup> AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct

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<sup>3</sup> Again, insofar as any electronic communication from the three identified custodians returns as responsive to either of the provided keyword search commands, that communication should be processed for disclosure. AFPF intends these keyword searches to determine the responsiveness of a record. The agency should refrain from subject-matter scoping or responsiveness review, except to confirm that a potentially responsive record does, in fact, contain the search terms set out in this request. *Cf. NBC 7 San Diego v. Dep’t of Homeland Sec.*, No. 19-11496, 2022 WL 17820557 (D.D.C. Dec. 20, 2022).

<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(iii); *see* 38 C.F.R. § 1.561(n)(2); *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015).

<sup>5</sup> 38 C.F.R. § 1.561(b)(7).

<sup>6</sup> *See Cause of Action*, 799 F.3d at 1121.

work product, including press releases, blog posts, reports, and other informative materials.<sup>7</sup> These distinct works are distributed to the public through various online outlets, such as websites, X.com, and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>8</sup>

## Record Preservation Requirement

AFPF requests that the disclosure officer responsible for the processing of this request immediately issue a preservation hold on all records responsive, or potentially responsive, to this request so as to prevent their disposal until such time as the VA issues a final determination and AFPF has exhausted all administrative remedies, including appeal. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.<sup>9</sup>

## Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain number of responsive records can be produced more readily, AFPF requests that those records be produced first and the remaining records

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<sup>7</sup> See, e.g., *Records Reveal Biden Administration Budget Officials Questioned Legal Authority to Cancel ANWR Lease Sale*, Ams. for Prosperity (May 3, 2024), <https://americansforprosperityfoundation.org/records-reveal-biden-administration-budget-officials-questioned-legal-authority-to-cancel-anwr-lease-sale/>; *AFPF Ramps Up Challenge to Biden Administration Censorship Regime with New FOIA Requests*, Ams. for Prosperity (Mar. 15, 2024), <https://americansforprosperity.org/press-release/afpf-ramps-up-challenge-to-biden-administration-censorship-regime-with-new-foia-requests/>; *DHS still won't reveal its alleged authorities to censor 'misinformation'*, Ams. for Prosperity (Dec. 19, 2023), <https://bit.ly/3NUghoP>; *New federal memos raise concern over social media censorship and free speech online*, Ams. for Prosperity (Sept. 26, 2023), <https://bit.ly/3HeMIL3>; *AFP Foundation Files Suit for ANWR Lease Sale Cancellation Documents*, Ams. for Prosperity (Oct. 31, 2023), <https://bit.ly/3vxsZ6S>; *4 outstanding questions the federal government needs to answer about its Disinformation Governance Board*, Ams. for Prosperity (July 26, 2023), <https://bit.ly/3TUSkBE>; *AFPF Obtains Over 400 Pages of Secretary Mayorkas Using Personal Email for Government Business*, Ams. for Prosperity (May 19, 2023), <https://bit.ly/3DdcqgZ>; *AFP Foundation investigates DHS secretary's use of private email while creating Disinformation Governance Board*, AMS. FOR PROSPERITY (Jan. 12, 2023), <https://bit.ly/3HTpOJe>; *New emails undermine official reason for cancelling key oil and gas lease*, AMS. FOR PROSPERITY (Sept. 8, 2022), <https://bit.ly/3te6boa>; *AFP Foundation launches FOIA investigation into Disinformation Governance Board*, AMS. FOR PROSPERITY (May 9, 2022), <https://bit.ly/3GRBgWn>; *More evidence the VA is improperly delaying or denying community care to eligible veterans*, AMS. FOR PROSPERITY (Jan. 28, 2022), <https://bit.ly/37mDnlX>; *AFP Foundation gets CMS to release state-level Medicaid improper payment data after years of stonewalling*, AMS. FOR PROSPERITY (Jan. 20, 2022), <https://bit.ly/34sz7A2>; AMS. FOR PROSPERITY FOUND., *PERMISSION TO CARE: HOW CERTIFICATE OF NEED LAWS HARM PATIENTS AND STIFLE HEALTHCARE INNOVATION* (Oct. 2021), available at <https://bit.ly/3Zrjpg7>; *Records confirm VA's use of inaccurate wait time numbers*, AMS. FOR PROSPERITY (Oct. 1, 2021), <https://bit.ly/3a9KGeL>; *Government documents reveal Export-Import Bank fails to protect taxpayers . . . again*, AMS. FOR PROSPERITY (Oct. 30, 2020), <https://bit.ly/3hD09Jn>; *Kansas Shut Down Businesses That Were Willing and Able to Comply with Safety Guidelines*, AMS. FOR PROSPERITY FOUND. (July 21, 2020), <https://bit.ly/3vbj7eC>; AMS. FOR PROSPERITY FOUND., ET AL., *GONE IN AN INSTANT: HOW INSTANT MESSAGING THREATENS THE FREEDOM OF INFORMATION ACT* (Mar. 2020), AMS. FOR PROSPERITY FOUND., available at <https://bit.ly/2zQOEKI>.

<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</sup> See 38 C.F.R. § 1.560; cf. 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

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be produced on a rolling basis as circumstances permit. If you have any questions about this request, please contact me at [KSchmidt@afphq.org](mailto:KSchmidt@afphq.org). Thank you for your attention to this matter.

*Kevin Schmidt*

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Kevin Schmidt

Director of Investigations, AFPF