

February 25, 2022

VIA ONLINE PORTAL AND ELECTRONIC MAIL

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Re: FOIA Request: Records Related to Ending DOJ's China Initiative
(DFI FOIA No. 100-6-22)

Dear DOJ and FBI FOIA OFFICERS:

The Defense of Freedom Institute for Policy Studies, Inc. (“DFI”) is a 501(c)(3) nonprofit, nonpartisan organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting civil and constitutional rights



at schools and in the workplace. For the benefit of the public, DFI’s mission includes obtaining records related to the consideration and implementation of policies imposed by the federal government and its officials on the American people.

On February 23, 2022, the U.S. Department of Justice’s (“DOJ”) Assistant Attorney General (“AAG”) for the National Security Division (“NSD”), Matthew Olsen, announced that DOJ was ending its national security initiative (“China Initiative”) to counter Chinese national security threats posed to the United States (“US”) by the People’s Republic of China (“PRC”).¹

According to DOJ’s now-archived materials, “[a]bout 80 percent of all economic espionage prosecutions brought by the U.S. Department of Justice (DOJ) allege conduct that would benefit the Chinese state, and there is at least some nexus to China in around 60 percent of all trade secret theft cases In addition to identifying and prosecuting those engaged in trade secret theft, hacking, and economic espionage, the Initiative focuses on protecting our critical infrastructure against external threats through foreign direct investment and supply chain compromises, as well as combatting covert efforts to influence the American public and policymakers without proper transparency.”²

DOJ’s announcement came just weeks after FBI Director Christopher Wray’s January 31, 2022, warning that the threat to the U.S. from China is “more brazen” than ever before, noting that “I [FBI Director Wray] want to focus on it here tonight because it’s reached a new level – more brazen, more damaging, than ever before, and it’s vital – vital – that all of us focus on that threat together.”³ Director Wray noted that the Chinese Communist Party (“CCP”) intends “to undermine our democratic process by influencing our elected officials” and that “China may be the first government to combine authoritarian ambitions with cutting-edge technical capability,” as if “the surveillance nightmare of East Germany combined with the tech of Silicon Valley.”⁴

¹ Ronn Blitzer and Jake Gibson, “Biden DOJ ending national security initiative aimed at countering China amid complaints about bias,” FOX NEWS (February 23, 2022), <https://www.foxnews.com/politics/doj-ending-china-initiative-national-security-program-bias>.

² See “INFORMATION ABOUT THE DEPARTMENT OF JUSTICE’S CHINA INITIATIVE AND A COMPILATION OF CHINA-RELATED PROSECUTIONS SINCE 2018,” (last updated November 18, 2021), U.S. DEPARTMENT OF JUSTICE ARCHIVES, <https://www.justice.gov/archives/nsd/information-about-department-justice-s-china-initiative-and-compilation-china-related>.

³ Eric Tucker, “FBI Director says the threat from China is ‘more brazen’ than ever before,” THE ASSOCIATED PRESS (January 31, 2022), <https://www.npr.org/2022/01/31/1077174231/fbi-director-says-the-threat-from-china-is-more-brazen-than-ever-before>.

⁴ See “China’s Quest for Economic, Political Domination Threatens America’s Security[;] Director Wray Discusses Threats Posed by Government of China,” FBI NEWS (February 1, 2022), <https://www.fbi.gov/news/stories/director-wray-addresses-threats-posed-to-the-us-by-china-020122>.



Director Wray's warning came days after China's ambassador to the U.S. warned of pending military conflict between the U.S. and China ("[i]f the Taiwanese authorities, emboldened by the United States, keep going down the road for independence, it most likely will involve China and the United States, the two big countries, in a military conflict").⁵ In October 2021, a U.S. Deputy Secretary of Defense noted that China's military capabilities posed threats not only to Japan and Australia, but to Guam and Hawaii.⁶

On July 1, 2021, in a televised speech marking the 100th anniversary of the CCP, China's President Xi Jinping publicly threatened that any nation getting in the way of China's priorities "will find their heads bashed bloody against a great wall of steel."⁷ Weeks after Xi's warning, China issued a videotaped threat to use nuclear weapons against Japan if Japan supported the people of Taiwan ("[w]e will use nuclear bombs first, we will use nuclear bombs continuously").⁸ China also continues to threaten another important U.S. ally, India, with ongoing skirmishes, threats, and a sizable military buildup along its border with India.⁹

DOJ's announcement occurred as the Centers for Disease Control and Prevention ("CDC") indicated a total of 936,162 U.S. deaths from COVID-19.¹⁰ Just last year, Secretary of State Antony Blinken noted that China's failure to provide cooperation once the COVID outbreak began led to "much more egregious results" than would otherwise have occurred.¹¹ American lives were clearly lost as a result of China's intransigence.

China's military, economic, and health threats to the U.S. follow decades of intensive Chinese efforts to spread CCP propaganda and exert its interests on U.S. college campuses at "Confucius

⁵ Demetri Sevastopulo, "China warns of risk of military conflict with US over Taiwan," FINANCIAL TIMES (January 28, 2022), <https://www.ft.com/content/5e2ac2b5-47c5-4f8d-8a57-17bf26d5fc8d>.

⁶ John Grady, "Hicks: Chinese Military Expansion Poses Threats to Guam, Hawaii," U.S. NAVAL INSTITUTE NEWS (October 4, 2021), <https://news.usni.org/2021/10/04/hicks-chinese-military-expansion-poses-threats-to-guam-hawaii>.

⁷ Charles Creitz, "Pompeo: China's Xi is 'serious' about 'bash heads bloody' warning" FOX NEWS (July 1, 2021), <https://www.foxnews.com/media/pompeo-chinas-xi-is-serious-in-bash-heads-bloody-alert>.

⁸ "China threatens to nuke Japan over possible Taiwan intervention," THE TIMES OF INDIA (July 20, 2021), <https://timesofindia.indiatimes.com/world/china/china-threatens-to-nuke-japan-over-possible-taiwan-intervention/articleshow/84583002.cms>.

⁹ Jack Detsch, "Pentagon Worries About Chinese Buildup Near India," FOREIGN POLICY (December 15, 2021), <https://foreignpolicy.com/2021/12/15/pentagon-india-china-border-buildup/>.

¹⁰ See COVID Data Tracker, CENTERS FOR DISEASE CONTROL AND PREVENTION (February 23, 2022), <https://covid.cdc.gov/covid-data-tracker/#pregnancy-data>.

¹¹ Ben Kamisar, "Blinken: China's early 'failure' on Covid cooperation helped speed pandemic," NBC NEWS (April 11, 2021), <https://www.nbcnews.com/politics/meet-the-press/blinken-china-s-early-failure-covid-cooperation-helped-speed-pandemic-n1263749>.



Institutes” (“CI”).¹² In 2019, a bipartisan Senate report warned of the nefarious presence of CI’s at more than 100 U.S. college campuses, prompting free speech and espionage concerns.¹³ Reflecting the growing bipartisan concern regarding the CI’s, on March 4, 2021, the Senate unanimously passed a bill to increase federal oversight of CI’s and to cut funding to universities and colleges that fail to comply.¹⁴

Nonetheless, despite the alarming clarity of the gathering Chinese threat to the American people and our allies, DOJ claimed in its announcement that reports of “anti-Asian bias” justified its decision to disband the China Initiative.¹⁵ AAG Olsen lamented, without substantiation, that the China Initiative “helped give rise to a harmful perception that the Department applies a lower standard to investigate and prosecute criminal conduct related to that country [China] or that we in some way view people with racial, ethnic, or family ties to China differently.”¹⁶ AAG Olsen failed to offer proof in support of this defamatory suggestion regarding the reputation and integrity of countless federal agents and prosecutors professionally dedicated to the China Initiative’s important counter-espionage efforts.

DOJ’s announcement bore surprising resemblance to comments by the CCP’s Foreign Ministry spokesperson, who, in May 2021, said China was “furious” and condemned U.S. treatment of “Asian Americans, including against the Chinese,” alleging (in the wake of the George Floyd murder) that discrimination against minorities had been on the rise in the U.S.¹⁷ China’s purported fury is notable primarily for coming from an authoritarian government that only recently crushed democracy in Hong Kong, arbitrarily detains millions of Uyghurs and other Turkic Muslims, conducts mass surveillance on its own people, suppresses religious freedom, speech, movement,

¹² Rachele Peterson, “China’s Confucius Institutes Might Be Closing, But They Succeeded,” REALCAREEDUCATION.COM (March 31, 2021), https://www.realcleareducation.com/articles/2021/03/31/chinas_confucius_institutes_might_be_closing_but_they_succeeded_110559.html.

¹³ Josh Lederman, “Senate investigators warn of Chinese state-run centers at more than 100 U.S. colleges,” NBC NEWS (February 27, 2019), <https://www.nbcnews.com/politics/national-security/senate-investigators-warn-chinese-state-run-centers-more-100-u-n977351>.

¹⁴ Christian Nunley, “Senate approves bill to tighten controls on China-funded Confucius Institutes on U.S. university campuses,” CNBC (March 5, 2021), <https://www.cnbc.com/2021/03/05/us-senate-approves-bill-against-china-funded-confucius-institutes.html>.

¹⁵ Eric Tucker, “U.S. drops name of Trump’s ‘China Initiative’ after criticism of anti-Asian bias,” THE ASSOCIATED PRESS (February 23, 2022), <https://www.inquirer.com/news/nation-world/china-initiative-academic-espionage-racial-profiling-trump-justice-department-20220223.html>.

¹⁶ Pete Williams and Ken Dilanian, “DOJ abandons Trump-era program aimed at Chinese spying,” NBC NEWS (February 23, 2022), <https://www.nbcnews.com/politics/national-security/doj-abandons-trump-era-program-aimed-chinese-spying-rcna17406>.

¹⁷ Tom O’Connor, “China Says It’s ‘Furious and Sad’ Over Anti-Asian Hate Crime Spike in U.S.,” NEWSWEEK (March 18, 2021), <https://www.newsweek.com/china-furious-sad-asian-hate-crime-spike-1577196>.



and assembly across China and in Tibet, routinely disappears dissidents who express contrary opinions, and insists that the CCP is the “arbiter of people’s spiritual life.”¹⁸

The Chinese Foreign Ministry’s allegation of anti-Asian bias was joined in January 2022 by 192 Yale University faculty members writing to Attorney General Merrick Garland, requesting termination of the China Initiative (and advocating “an alternative response to the challenges posed by the US relations with the People’s Republic of China”).¹⁹ In February 2022, over 150 University of Pennsylvania (“UPenn”) faculty members followed with their own letter with the same demands.²⁰

Notably, Yale University was one of the prominent universities subject to federal investigations in 2020 over failure to disclose massive foreign contributions from, among other sources, undisclosed donors in China.²¹ The U.S. Department of Education (“ED”) subsequently reported that its investigations revealed billions of dollars in undisclosed foreign source contributions to American colleges and universities.²²

UPenn, similarly, appears to enjoy strong, often undisclosed, financial support from the PRC. In fact, on February 1, 2017, UPenn announced²³ the formation of the “Penn Biden Center for Diplomacy & Global Engagement” (“Biden Center”), describing its mission as engaging “with its faculty and global centers to convene world leaders, develop and advance smart policy, and strengthen the national debate for continued American global leadership in the 21st century.”²⁴ The

¹⁸ See China (Events of 2020), HUMAN RIGHTS WATCH (World Report 2021), https://www.hrw.org/world-report/2021/country-chapters/china-and-tibet?gclid=Cj0KCCQIA09eQBhCxAARIsAAyRiymPWb9V8GLZawGirQjGsYQRyoZ0wU2v8g19rB8VPkFNvLhR_RiChpoaAsGwEALw_wcB#ada87c.

¹⁹ See “Open Letter to Attorney General,” (January 10, 2021), https://docs.google.com/document/d/10ksy8l2MfWZS_JMtXaXj_IaK8lVzQihM/edit.

²⁰ Emi Tuyetnhi Tran, “Over 150 Penn faculty rebuke U.S. government for racial profiling of Chinese academics,” THE DAILY PENNSYLVANIAN (February 11, 2022), <https://www.thedp.com/article/2022/02/168-penn-faculty-sign-open-letter-merrick-garland-china-initiative>.

²¹ Erica L. Green and Ellen Barry, “Harvard and Yale Ensnared in Education Dept. Crackdown on Foreign Funding,” THE NEW YORK TIMES (February 12, 2020), <https://www.nytimes.com/2020/02/12/us/politics/harvard-yale-foreign-funding.html>.

²² Lauren Camera, “Billions in Foreign Aid to Colleges and Universities Goes Undetected,” U.S. NEWS & WORLD REPORT (October 20, 2020), <https://www.usnews.com/news/education-news/articles/2020-10-20/billions-in-foreign-aid-to-colleges-and-universities-goes-undetected>.

²³ “Vice President Joe Biden to lead the Penn Biden Center for Diplomacy and Global Engagement,” *Penn Today* (February 1, 2017), <https://penntoday.upenn.edu/spotlights/vice-president-joe-biden-lead-penn-biden-center-diplomacy-and-global-engagement>.

²⁴ See Penn Biden Center for Diplomacy & Global Engagement, <https://global.upenn.edu/penn-biden-center>. In addition to President Biden, the Biden Center maintains close ties with others in



Biden Center opened a Washington, D.C. office in 2018. The next year, UPenn received an astonishing 389% higher reportable foreign contributions (compared to 2018).²⁵ *The Philadelphia Inquirer* reported that foreign source contributions to UPenn increased by at least \$258 million.²⁶ Another analysis revealed that between 2013 and 2019, UPenn was the third highest university recipient of foreign funding from groups in the PRC and that approximately 40% of those gifts (approximately \$27.1 million) came from anonymous PRC donors.²⁷

ED's online portal for foreign disclosure reporting shows that from the time of the announcement by UPenn of the establishment of the Biden Center on February 1, 2017, through September 2020, UPenn received approximately \$21,187,333 in reportable foreign gifts and contracts from China.²⁸ Although not referenced in the UPenn faculty letter to the Attorney General, the esteemed faculty signatories are surely aware of the PRC's ongoing financial support for UPenn's many missions.

Regrettably, it appears to DFI that despite the growing and pervasive military and economic threats posed to the U.S and its allies by China, DOJ has chosen to abandon the focus and clarity of a critical national security function at the urging of self-interested parties, including, potentially, the PRC and the universities that failed to report billions of dollars in foreign contributions including substantial undisclosed contributions from China. The timing of DOJ's announcement is also of tremendous concern, given current world tensions regarding Ukraine and Taiwan. DOJ's de-emphasis of the importance of the China Initiative's mission raises important questions regarding the how this decision was made and the input related to the decision.

The American people have a fundamental interest in DOJ's decisions implicating the national security of their country. Degrading a key NSD program at a time when FBI Director Wray's assessment regarding China's threat is quite grim raises tremendous concerns. The American people also have a right to know if DOJ's decisions regarding eliminating the China Initiative program were informed by mere anecdotal allegations and insinuations of anti-Asian bias by DOJ

the Biden Administration. Antony Blinken, its former managing director, currently serves as the Secretary of State. Amy Gutmann, UPenn's president for nearly two decades, recently became the Ambassador to Germany.

²⁵ Analytics Staff, "Penn received 389% more foreign donations in 2019 than in 2018, DP analysis finds," *The Daily Pennsylvanian* (April 20, 2021), <https://www.thedp.com/article/2021/04/foreign-donations-penn-analysis-china>.

²⁶ Catherine Dunn, "Penn got \$258 million in foreign money, and there may be more it hasn't disclosed," *The Philadelphia Inquirer* (February 24, 2020), <https://www.inquirer.com/business/university-pennsylvania-foreign-donations-china-saudi-arabia-20200224.html>.

²⁷ Janet Lorin and Brandon Kochkodin, "Harvard Leads U.S. Colleges That Received \$1B from China," *Bloomberg | Quint* (February 6, 2020), <https://www.bloombergquint.com/global-economics/harvard-leads-u-s-colleges-that-received-1-billion-from-china>.

²⁸ See Section 117 of the Higher Education Act – Public Records, Foreign Funding Disclosure Reports, searchable at <https://sites.ed.gov/foreigngifts/>



and FBI prosecutors and investigators (DOJ's Civil Rights Division could, after all, investigate allegations of racial and ethnic discrimination, if any occurred pursuant to the China Initiative). The AAG's statement and action implied that such bias and discriminatory treatment has occurred in the course of the China Initiative investigations. Consequently, the public has a right to know if its prosecutors acted improperly and, if not, what reliable information formed the basis for the AAG's implication that anti-Asian activities have occurred under DOJ's China Initiative investigatory structure.

The American people also have a right to know the degree to which DOJ's decision to terminate the China Initiative was made at the behest of America's most powerful universities and the organizations which act at their behest.

DFI's mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it for the public's benefit. DFI posts its analyses on social media sites and regularly provides its analyses of public records for the benefit of the public.

Here, where the national security interests of the country are at issue, DFI now seeks records and information related to DOJ's China Initiative policies implemented since January 20, 2021.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, DFI makes the following request for records within your possession and/or control:

Custodians

1. Office of the Assistant Attorney General, National Security Division
2. Office of the Attorney General
3. Office of the Deputy Attorney General
4. Office of Legislative Affairs
5. Office of the White House Liaison
6. Office of Public Affairs
7. Executive Office for United States Attorneys
8. Criminal Division
9. Civil Division
10. Civil Rights Division



11. Federal Bureau of Investigation

Requested Records

DFI requests that DOJ produce the following records within twenty (20) business days:

1. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation from the following entities and individuals to any and all DOJ officials from January 20, 2021, through the date the search is conducted, which reference “China Initiative” or “Chinese investigations” or “PRC espionage” or “Senate Permanent Subcommittee on Investigations Report on Confucius Institutes” or “Portman-Carper Report” or “20 U.S.C. § 1011f” or “Section 117 investigations” or “university investigations” or “university compliance” or “Lieber effect” or “Yale University” or “University of Pennsylvania” or “UPenn” or “Stanford University” or “Harvard University” or “Cornell University” or “Rutgers University” or “Massachusetts Institute of Technology” or “MIT” or “University of Maryland” or “Case Western Reserve University” or “Fordham University” or “anti-Asian” or “diversity” or “equity” or “inclusion” or “race” or “ethnicity” or “nationality” or “national origin”:
 - a. American Council on Education
 - b. American Federation of Teachers
 - c. American College Personnel Association
 - d. American Educational Research Association
 - e. Association for Institutional Research
 - f. Association of American Universities
 - g. Association of International Educators
 - h. American Association of State Colleges and Universities
 - i. Association of Governing Boards of Universities and Colleges
 - j. Association of American Colleges and Universities
 - k. Association of Community College Trustees
 - l. Association of Public and Land-grant Universities
 - m. Association of Independent California Colleges and Universities
 - n. Association of Independent Colleges and Universities in Massachusetts
 - o. Association of Catholic Colleges and Universities
 - p. Association of Jesuit Colleges and Universities
 - q. American Indian Higher Education Consortium
 - r. American Dental Education Association
 - s. Brennan Center for Justice
 - t. Brookings Institution
 - u. Carnegie Endowment for International Peace
 - v. Center for Strategic and International Studies
 - w. Coalition for International Education



- x. College and University Professional Association for Human Resources
 - y. Council for Advancement and Support of Higher Education
 - z. Council of Graduate Schools
 - aa. Council of Independent Colleges
 - bb. Council on Foreign Relations
 - cc. Council on Government Relations
 - dd. Council on International Educational Exchange
 - ee. EDUCAUSE
 - ff. Higher Education Consultants Association
 - gg. Hispanic Association of Colleges and Universities
 - hh. NAFSA: Association of International Educators
 - ii. National Association for Equal Opportunity in Higher Education
 - jj. National Association of College and University Business Officers
 - kk. National Association of College Stores
 - ll. National Association of Independent Colleges and Universities
 - mm. National Association of Student Financial Aid Administrators
 - nn. National Education Association
2. All records, including but not limited to email, texts, letters, memoranda, and other documentation from any and all DOJ officials to any and all of the entities listed in Item 1, from January 20, 2021, through the date the search is conducted, which reference “China Initiative” or “Chinese investigations” or “PRC espionage” or “Senate Permanent Subcommittee on Investigations Report on Confucius Institutes” or “Portman-Carper Report” or “20 U.S.C. § 1011f” or “Section 117 investigations” or “university investigations” or “university compliance” or “Lieber effect” or “Yale University” or “University of Pennsylvania” or “UPenn” or “Stanford University” or “Harvard University” or “Cornell University” or “Rutgers University” or “Massachusetts Institute of Technology” or “MIT” or “University of Maryland” or “Case Western Reserve University” or “Fordham University” or “anti-Asian” or “diversity” or “equity” or “inclusion” or “race” or “ethnicity” or “nationality” or “national origin”.
3. All records, including but not limited to electronic mail (“email”), texts, letters, memoranda, and other documentation between any and all DOJ officials and any person with an email address containing “eop.gov” or “house.gov” or “senate.gov” from January 20, 2021, through the date the search is conducted, which reference “China Initiative” or “Chinese investigations” or “PRC espionage” or “Senate Permanent Subcommittee on Investigations Report on Confucius Institutes” or “Portman-Carper Report” or “20 U.S.C. § 1011f” or “Section 117 investigations” or “university investigations” or “university compliance” or “Lieber effect” or “Yale University” or “University of Pennsylvania” or “UPenn” or “Stanford University” or “Harvard University” or “Cornell University” or “Rutgers University” or “Massachusetts Institute of Technology” or “MIT” or “University of Maryland” or “Case Western Reserve University” or “Fordham University” or “anti-Asian” or



“diversity” or “equity” or “inclusion” or “race” or “ethnicity” or “nationality” or “national origin”.

Definitions

Absent contrary statutory directives, words and phrases contained herein should be accorded their usual, plain, and ordinary meaning. Please note the following statutory definition:

“**Records**” are defined at 44 U.S.C. § 3301(a)(1-2) as including “all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them” and further “includes all traditional forms of records, regardless of physical form or characteristics, including information created, manipulated, communicated, or stored in digital or electronic form, such as emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

Identification and Production of the Requested Records

FOIA imposes a burden on DOJ, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor²⁹ if DOJ (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”³⁰ Upon request, DOJ must “promptly” make the requested records available to the requester.³¹ Notably, covered agency records include materials provided to DOJ by both private and governmental organizations.³² Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with DOJ’s published rules regarding the time, place, any fees, and procedures to be followed,³³ DOJ must conduct a search calculated to find responsive records in DOJ’s control at the time of the request.³⁴ In addition, the records produced by DOJ are required to be provided in “any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”³⁵

²⁹ FOIA requires the disclosure of nonexempt agency records to any person, which includes an individual, partnership, corporation, association, or public or private organization other than an agency. 5 U.S.C. § 551(2).

³⁰ *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

³¹ 5 U.S.C. § 552(a)(3)(A).

³² *Id.* at 144.

³³ 5 U.S.C. § 552(a)(3)(A)(i)

³⁴ *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).

³⁵ 5 U.S.C. § 552(a)(3)(B).



Upon receipt of this request, DOJ has twenty business days to “determine . . . whether to comply with [the] request” and “shall immediately notify” the requester of its determination and the reasons therefor,” the right to seek assistance from the agency’s FOIA public liaison, and the requester’s right to appeal any “adverse determination” by DOJ.³⁶

Consistent with FOIA guidelines, DFI requests the following regarding the provision of the requested records:

- DOJ should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request. This matter may be subject to litigation, making the immediate initiation of a litigation hold on the requested materials necessary.
- DOJ should search all record systems that may contain responsive records, promptly consulting with its information technology (IT) officials to ensure the completeness of the records search by using the full range of DOJ’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, DOJ should not rely solely on a search of a likely custodian’s files by the custodian or representations by that likely custodian, but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian’s possible deletion or modification of responsive records.
- DOJ should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding DOJ’s business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to FOIA. DOJ should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as DOJ’s official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voice mail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack. Failure to identify and produce records responsive to this request from such unofficial systems would constitute a knowing concealment by DOJ calculated to deflect its compliance with FOIA’s requirements.
- DOJ should timely provide entire records responsive to this request, broadly construing what information may constitute a “record” and avoiding unnecessarily omitting portions of potentially responsive records as they may provide important context for the requested

³⁶ 5 U.S.C. § 552(a)(6)(A)(i).



records (e.g., if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).

- DOJ should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If DOJ determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that DOJ disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by DOJ, DOJ should provide a clear and precise enumeration of those records in index form presented with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA”³⁷ and provide a sufficiently detailed justification and rationale for each non-disclosure and the statutory exemption upon which the non-disclosure relies.
- Please provide responsive records in electronic format by email, native format by mail, or PDF or TIH format on a USB drive. If it helps speed production and eases DOJ’s administrative burden, DFI welcomes provision of the records on a rolling basis. Responsive records sent by mail should be addressed to the Defense of Freedom Institute for Policy Studies, 1455 Pennsylvania Avenue NW, Suite 400, Washington, D.C. 20004.

Fee Waiver Request

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10, DFI requests a waiver of all fees associated with this FOIA request for agency records.

Disclosure of the requested records is in the public interest.

Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and because disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI (a nonprofit, nonpartisan organization interested in the transparency of DOJ operations and governance).

The disclosed materials are likely to contribute significant information to the public’s understanding of DOJ’s China Initiative policies, which policies are highly relevant to America’s national security and the integrity of DOJ prosecutors and investigators. Disclosure of the requested materials will illuminate DOJ’s decisions related to its February 23, 2022,

³⁷ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



announcement regarding the China Initiative. Further, the requested information does not otherwise appear to be in the public domain (in duplicative or substantially identical form).

Provision of the requested records will not commercially benefit DFI (a nonprofit, nonpartisan organization interested in the transparency of DOJ operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in DOJ's operations and governance.

DFI will review and analyze the requested records and make the records and analyses available to the general public and other interested groups through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story regarding another prominent federal agency's policies widely distributed by one of the nation's largest news providers in February 2022).

Federal law makes clear that when the disclosure is in the public interest and the information contained within the disclosed records is not primarily in the commercial interests of the requester (here, DFI), statutory fee waiver is appropriate.

DFI is a representative of the news media.

In addition to the fee waiver request based upon the public interest, DFI also requests a fee waiver on the basis that DFI is a **representative of the news media**, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10.

FOIA (as amended) provides that a representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that to an audience.”³⁸ DFI provides exactly this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from DOJ, DFI will review and analyze those materials and will extract and otherwise distill particularly useful information from those materials for the benefit of the general public and other interested audiences.

DFI will provide its analyses to the general public and other interested audiences through publication on DFI's website and social media platforms such as Facebook and Twitter (distribution functions it has already demonstrated a capacity to provide since its formation in September 2021, including a detailed news story on another prominent federal agency's policies widely distributed by one of the nation's largest news providers in February 2022).

³⁸ See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



As a qualified non-commercial public education and news media requester with demonstrated ability to review and analyze publicly-available information and to provide insight regarding that information, DFI is thus entitled to a fee waiver under FOIA as a representative of the news media.

Conclusion

The subject of this request regards identifiable operations and activities of DOJ and, more specifically, its decision to end its China Initiative investigatory structure. Provision of the requested records will meaningfully inform the general public about significant developments in DOJ policies with tremendous national security implications, including the impact of special interest groups (enumerated in Item 1) on DOJ's decision to terminate its China Initiative. The decision occurred despite FBI Director Wray's recent warning that China continues to pose a significant threat to the national security interests of the American people. These are significant issues with tremendous impact on the general public worthy of transparency in service of the public's right to know how DOJ may have been pressured to terminate its China Initiative.

DFI is an independent 501(c)(3) nonprofit organization without a commercial purpose primarily engaged in the dissemination of information about government policies to the public. DFI is engaged in the collection, analysis, and dissemination of information to educate the public about government policies that impact the civil and constitutional rights of American families, students, entrepreneurs, and workers. DFI actively publishes information and related analyses on its public website and promotes access to that information and analyses on social media platforms, including but not limited to distribution via Facebook and Twitter.

DFI appreciates DOJ's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding DOJ's withdrawn China Initiative. Please contact me immediately if DFI's request for a fee waiver is not granted in full.

If you have any questions or I can further clarify DFI's request, please contact me at your earliest convenience at paul.moore@dfipolicy.org.

Sincerely yours,

/s/ Paul R. Moore

Paul R. Moore, Senior Counsel

Defense of Freedom Institute for Policy Studies, Inc.