

December 23, 2022

VIA ELECTRONIC MAIL

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Ave. SW, LBJ 7W106A
Washington, D.C. 20202-4536
EDFOIAManager@ed.gov
ATTN: FOIA Public Liaison

Re: FOIA REQUEST: Records of the Department’s Information Control Efforts with Social Media Platforms
(DFI FOIA No. 100-38-22)

Dear FOIA Public Liaison:

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. DFI includes former U.S. Department of Education (“Department” or “ED”) and other federal agency officials who are experts in education law and policy and the operation of the Department. 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.

DFI is concerned that the Biden Administration has actively used its relationships with powerful social media platforms to suppress viewpoints and information it disfavors while propelling other, government-sanctioned viewpoints and, by so doing, may have undermined the constitutional rights of the American people.

On July 15, 2021, White House Press Secretary Jen Psaki and U.S. Surgeon General Dr. Vivek H. Murthy appeared in the James S. Brady Press Briefing Room to discuss the Biden Administration’s advisory on “health misinformation.”¹ During the briefing, Surgeon General Murthy called for an

¹ The White House, *Press Briefing by Press Secretary Jen Psaki and Surgeon General Dr. Vivek H. Murthy, July 15, 2021*, at <https://www.whitehouse.gov/briefing-room/press-briefings/2021/07/15/press-briefing-by-press-secretary-jen-psaki-and-surgeon-general-dr-vivek-h-murthy-july-15-2021/> (“White House Press Briefing”).



“all-of-society” approach to fight misinformation” after defining misinformation as “false, inaccurate, or misleading information about health, according to the best evidence at the time.”²

The Surgeon General Makes “Disinformation” Demands of Social Media Platforms and Educational Institutions

Upending the traditional role of the Surgeon General (apolitically promoting the health and safety of the American people³), Murthy led the Administration’s call for private sector social media platforms to actively suppress and promote certain viewpoints based on the government’s preferred viewpoints. The Surgeon General’s extraordinary demands that private industry and educational institutions act at the government’s behest in controlling the flow of information available to and expressed by individuals, families, and various entities, was without historical precedent in contemporary America.

Murthy bluntly asserted that “misinformation [is] literally costing us our loved ones, costing us lives” and called for action by private sector social media platforms against what he considers to be misinformation as expressed by individual Americans: “[t]he bottom line is all of us have an important role here to play, and technology companies have a particularly important role.”⁴

Murthy insisted that “[w]e must confront misinformation as a nation,” justifying his call for a society-wide effort against misinformation by repeatedly threatening that “[l]ives are depending on it.”⁵ Murthy insisted on “rais[ing] the bar for sharing health information” by individuals Americans and their families, instructing the American people that if “[i]f you’re not sure, don’t share.” He noted that he was “asking health organizations to proactively address misinformation with their patients” and lauded major organizations that were already acting to “counter health misinformation.” Murthy identified his view of the federal government’s expanded role in stamping out disinformation as merely “bringing individuals and organizations together to address misinformation, and by supporting groups that are working on this issue.”⁶

Murthy pointedly said that “[m]odern technology companies have enabled misinformation to poison our information environment with little accountability to their users. They’ve allowed people who intentionally spread misinformation – what we call ‘disinformation’ – to have extraordinary reach [W]e’re saying we expect more from our technology companies We’re asking them to monitor misinformation more closely. We’re asking them to consistently take action against misinformation super-spreaders on their platforms.”⁷

Murthy also demanded that America’s “*educational institutions* [act] to help improve health information literacy” and that “news organizations to proactively address the public’s questions

² *Id.*

³ See <https://www.hhs.gov/surgeongeneral/about/mission/index.html>.

⁴ *Id.*

⁵ See White House Press Briefing.

⁶ *Id.*

⁷ *Id.*



without inadvertently giving a platform to health misinformation that can harm their audiences” before also calling for much greater policing of health misinformation “from our technology companies.”⁸

Murthy’s unprecedented call for government-private sector coordination of information suppression and distribution was justified because Americans were dying as the voices of “credible health authorities” were being drowned out by “misinformation” and “we are asking technology companies to help lift up the voices of credible health authorities” to “reduce the misinformation that’s out there so that the true voices of experts can shine through.”⁹ Murthy said that to “reach people with accurate information, what we have to do is partner with those local trusted voices.”¹⁰

White House Press Secretary Psaki Confirms the Executive Branch’s Collusion with Social Media Platforms

Press Secretary Psaki then confirmed the Biden Administration’s coordinated efforts with social media companies to control what the Administration deems to be misinformation during an exchange with a reporter:

Reporter: “Thanks, Jen. Can you talk a little bit more about this request for tech companies to be more aggressive in policing information? Has the administration been in touch with any of these companies and are there any actions that the federal government can take to ensure their cooperation, because we’ve seen, from the start, there’s not a lot of action on some of these platforms.”

Psaki: “Sure. Well, first, we are in regular touch with these social media platforms, and those engagements typically happen through members of our senior staff, but also members of our COVID-19 team, given, as Dr. Murthy conveyed, this is a big issue of misinformation.”

Psaki: “We’re flagging problematic posts for Facebook that spread information” and noted that there “are proposed changes that we have made to social media platforms, including Facebook” and how they “measure and publicly share the impact of misinformation on their platform[s].” This was occurring to “help us ensure we’re getting accurate information to people. This should be provided not just to researchers, but to the public so that the public knows and understands what is accurate and inaccurate.”

Psaki: [I]t’s important to take faster action against harmful posts. As you all know, information travels quite quickly on social media platforms; sometimes it’s not accurate. And Facebook needs to move more quickly to remove harmful, violative

⁸ *Id* (emphasis added).

⁹ *Id*.

¹⁰ *Id*.



posts – posts that will be within their policies for removal often remain up for days. That’s too long. The information spreads too quickly.”

Psaki: “[W]e have proposed they promote quality information sources in their feed algorithm. Facebook has repeatedly shown that they have the levers to promote quality information. We’ve seen them effectively do this in their algorithm over low-quality information and they’ve chosen not to use it in this case. And that’s certainly an area that would have an impact.”

Psaki: “So these are certainly the proposals [for social media platforms]. We engage with them [social media companies] regularly and they certainly understand what our asks are.”

The Administration Threatens to Punish Uncooperative Social Media Platforms

In the absence of voluntary viewpoint suppression efforts by social media platforms, the Administration’s communications director proposed that “[s]ocial media giants should be held accountable for publishing misinformation”:

“We’re reviewing [amending the Communications Decency Act¹¹], and certainly they [social media platforms] should be held accountable” and “I think you’ve heard the president speak very aggressively about this. He understands this is an important piece of the ecosystem.”¹²

The threat followed President Biden’s accusation that social media networks were “killing people” by allowing posting of what the Biden Administration considered to be disinformation regarding COVID-19.¹³

The White House wasn’t alone in threatening action against social media companies that didn’t comply with its information suppression mandates: a bill was introduced in the U.S. Senate to strip social media companies of the Act’s liability protections unless the companies regulated “misinformation,” as defined by the U.S. Department of Health and Human Services.¹⁴ Likewise, Speaker of the U.S. House Nancy Pelosi, a powerful political ally of President Biden, described Section 230’s liability protections for social media platforms as a “gift” from Congress and

¹¹ 47 U.S.C. § 230.

¹² Jessica Bursztynsky, “White House says social media networks should be held accountable for spreading misinformation,” CNBC (July 20, 2021), <https://www.cnbc.com/2021/07/20/white-house-social-networks-should-be-held-accountable-for-spreading-misinfo.html>.

¹³ Donald Judd, Meagan Vazquez, and Donie O’Sullivan, “Biden says platforms like Facebook are ‘killing people’ with Covid misinformation, CNN (July 17, 2021), <https://www.cnn.com/2021/07/16/politics/biden-facebook-covid-19/index.html>.

¹⁴ Shannon Bond, “Democrats Want To Hold Social Media Companies Responsible For Health Misinformation,” NPR (July 22, 2021), <https://www.npr.org/2021/07/22/1019346177/democrats-want-to-hold-social-media-companies-responsible-for-health-misinformat>.



threatened that “I don’t think they [social media platform companies] are treating it with the respect that they should, and so I think that could be a question mark and in jeopardy” without a “bigger sense of responsibility on it.”¹⁵ Speaker Pelosi’s threat was crystal clear: social media platforms must act to suppress disfavored information or Section 230’s liability protections would be withdrawn.

Notably, the Administration’s efforts to both flag for removal assertions with which it disagreed and promote its preferred facts extended well beyond COVID-19 and related health “misinformation.”

The Disinformation Governance Board’s Attempt to Control Information

Dissatisfied with reliance on non-government entities to suppress disfavored information and viewpoints, the Administration brazenly set up its own official mechanism to suppress and promote favored and disfavored information and viewpoints.

The U.S. Department of Homeland Security (“DHS”) announced its creation of a “Disinformation Governance Board”¹⁶ (“DGB”) in April 2022 to “serve as the departmental forum for governance of DHS policies, plans, procedures, standards, and activities” regarding what DHS finds to be “mis-, dis-, and mal- information . . . that threatens homeland security” and to serve as DHS’s internal and external point of contact for information coordination with state and local governments, non-governmental actors, and the private sector (such as social media platforms).¹⁷ Simply put, the DGB would monitor social media posts for information that it deemed threatening and flag for removal or correction the offending posts with social media companies as well as state and local governments and non-governmental actors.

DHS announced that Nina Jankowicz would serve as DGB’s head, perhaps because of her longstanding advocacy for government and private sector censorship of disinformation. In 2020, Jankowicz openly called for the regulation of free speech in her published agenda for the Biden Administration¹⁸ including calling for creation of a “counter-disinformation czar within the

¹⁵ Emily Birnbaum, “Pelosi puts tech on notice with warning of ‘new era’ in regulation,” THE HILL (April 12, 2019), <https://thehill.com/policy/technology/438652-pelosi-warns-its-a-new-era-for-regulating-big-tech>.

¹⁶ Amanda Seitz, “Disinformation board to tackle Russia, migrant smugglers,” AP NEWS (April 28, 2022), <https://apnews.com/article/russia-ukraine-immigration-media-europe-misinformation-4e873389889bb1d9e2ad8659d9975e9d>.

¹⁷ See <https://www.hawley.senate.gov/sites/default/files/2022-06/2022-06-07%20DOCS%20ONLY%20CEG%20JH%20to%20DHS%20%28Disinformation%20Governance%20Board%29%5B1%5D.pdf>.

¹⁸ Nana Jankowicz, “How to Defeat Disinformation: An Agenda for the Biden Administration,” FOREIGN AFFAIRS (November 19, 2020), https://www.foreignaffairs.com/articles/united-states/2020-11-19/how-defeat-disinformation?check_logged_in=1&utm_medium=promo_email&utm_source=lo_flows&utm_campaign=registered_user_welcome&utm_term=email_1&utm_content=20220429.



National Security Council and setting up a corresponding directorate.”¹⁹ Jankowicz’s express desire to exercise partisan control over what she and other members of the Administration would identify as disinformation was, perhaps, most clearly demonstrated by her view that the Hunter Biden laptop story should be suppressed by treating it as a “Trump campaign product.”²⁰

Intense public surprise and reaction to DHS’s creation of the DGB (and Jankowicz’s appointment to lead it) quickly followed, eventually forcing DHS to close the DGB in August 2022.²¹ It is perhaps of equal note that even after shutting down the DGB, DHS continued to monitor social media posts, reporting disfavored posts to social media platforms for removal or to be labeled as misinformation (“Facebook even developed an online portal, accessible only with a government or law enforcement email, for reporting [disfavored] content directly”).²²

The DGB, with its unprecedented mandate, likely struck many of the American people as sounding similar to the government information control entities that our adversaries created to distort truth and promote lies against the U.S. during World War II and the Cold War. Before becoming General Secretary of the Soviet Union, Joseph Stalin was Pravda’s first editor and is credited with creation of “disinformation” as a term.²³ Under Stalin’s direction, the Soviet Union created the first special disinformation office in 1923 to shape public opinions. During the war, Nazi Germany’s Reich Ministry of Public Enlightenment and Propaganda, Imperial Japan’s Ministry of Education, and the Soviet Union’s Department of Agitation and Propaganda provided government controls to effectively suppress dissenting viewpoints while promoting government-sanctioned “information,” including by non-government media outlets in Germany and Japan.

The notion of any federal agency creating an entity such as the DGB with information suppression purposes is highly disturbing to most of the American people and quite likely violative of their free speech rights.

¹⁹ *Id.*

²⁰ Callie Patteson, “Ex-Disinformation Board chief Nina Jankowicz breaks silence, cites death threats,” NEW YORK POST (May 19, 2022), <https://nypost.com/2022/05/19/ex-disinformation-board-chief-nina-jankowicz-breaks-silence/>.

²¹ Rebecca Shabad, “Department of Homeland Security shuts down disinformation board that drew fire from GOP,” NBC NEWS (August 25, 2022),

<https://www.nbcnews.com/politics/national-security/department-homeland-security-shuts-disinformation-board-drew-fire-gop-rcna44757>.

²² Joe Lancaster, “DHS Still Policing Disinformation Despite Dissolving Disinformation Governance Board,” REASON (October 31, 2022), <https://reason.com/2022/10/31/dhs-still-policing-disinformation-despite-dissolving-disinformation-governance-board/>.

²³ Geoff Nunberg, “‘Disinformation’ Is The Word Of The Year – And A Sign Of What’s To Come,” NPR (December 30, 2019), <https://www.npr.org/2019/12/30/790144099/disinformation-is-the-word-of-the-year-and-a-sign-of-what-s-to-come>.



Social Media Platforms Have Repeatedly Appeased the Interests of Foreign Governments

Prior to the Administration’s efforts to have social media platforms influence the information that the American people could share, read, and consider, several of the same social media companies were well accustomed to doing the bidding of nations in markets where the companies, unsurprisingly, profited or sought to profit.

Bowing to the demands of a powerful central government is not new for **Facebook**, which, in 2020, complied with the censorship demands of the government of Vietnam regarding anti-government dissidents. Facebook actively increased its censorship of “anti-state” posts, “giving the government near-total control over the platform . . .”²⁴

Facebook similarly sought to curry favor with the Communist Party that rules China by banning member discussions in 2020 and 2021 of whether COVID-19 was a man-made virus that leaked from the Wuhan Institute of Virology in China,²⁵ despite evidence that the virus may have come from the Wuhan laboratory.²⁶ Facebook’s subservience to the Chinese government’s party line occurred despite being banned in China since 2009, where it nonetheless is able to reap significant ad revenues.²⁷ Later, in May 2021, Facebook reversed its ban on virus origin discussions, “[i]n light of ongoing investigations into the origin of COVID-19 and in consultation with public health experts . . .”²⁸

Another example involving Facebook occurred in 2017 when it acted in the interests of the pro-Putin, authoritarian Chechyan government by actively censoring “a group of supporters of Chechen independents for violating its community standards” even though the pro-independence group was publicly opposed to violence.²⁹

²⁴ Elizabeth Dwoskin, Tory Newmyer, and Shibani Mahtani, “The case against Mark Zuckerberg: Insiders say Facebook’s CEO chose growth over safety,” THE WASHINGTON POST (October 25, 2021), <https://www.washingtonpost.com/technology/2021/10/25/mark-zuckerberg-facebook-whistleblower/>.

²⁵ Martin Robinson and James Tapsfield, “Facebook’s censorship of Wuhan lab story shows ‘its true ugly colours’: Tech giant is condemned for ‘ingratiating itself to China’ and smothering free speech with ban – that’s only been dropped after Biden opened probe,” THE DAILY MAIL (May 27, 2021), <https://www.dailymail.co.uk/news/article-9624839/Facebook-shows-true-ugly-colours-Wuhan-censorship.html>.

²⁶ “Covid origin: Why the Wuhan lab-leak theory is being taken seriously,” BBC NEWS (May 27, 2021), <https://www.bbc.com/news/world-asia-china-57268111>.

²⁷ Leo Sun, “Facebook is Banned in China: How It Makes Money There Anyway,” THE MOTLEY FOOL (January 23, 2020), <https://www.fool.com/investing/2020/01/23/facebook-banned-in-china-how-it-makes-money-there.aspx>.

²⁸ Cristiano Lima, “Facebook no longer treating ‘man-made’ Covid as a crackpot idea,” POLITICO (May 26, 2021), <https://www.politico.com/news/2021/05/26/facebook-ban-covid-man-made-491053>.

²⁹ Julia Carrie Wong, “Facebook blocks Chechnya activist page in latest case of wrongful censorship,” THE GUARDIAN (June 6, 2017),



Twitter, similarly, has openly suppressed information and viewpoints that were offensive to certain foreign governments, such as the People’s Republic of China. For example, in 2020 Twitter suspended the account of prominent Chinese virologist Dr. Li-Meng Yan (previously with the Hong Kong School of Public Health) after she publicly described evidence supporting the view that the CORONA-19 virus originated in China’s Wuhan laboratory.³⁰ Dr. Li-Meng, a highly respected virologist, publicly presented evidence supporting her view about the virus’s likely origins.³¹ Twitter chose to banish her from its platform and in so doing, acted in the interests of Communist Party of China. This is not surprising, given the sheer business opportunity offered by China’s potentially lucrative (1.4 billion person) market.

Additionally, local and state Chinese governments were already buying ads on Twitter, thereby contributing to important Twitter revenues.³² In fact, after lifting its ban on paid advertising from Chinese political and state media in March 2022, China became Twitter’s fastest growing overseas ad market.³³ Twitter’s suppression of certain viewpoints known to be rejected or disfavored by China’s oppressive ruling party appears to be unprincipled but it is not irrational or surprising – given Twitter’s business interests.

Google, as reported in 2010, “gained entry into the Chinese search engine market . . . by agreeing to ban search results on topics deemed sensitive by the Chinese government.”³⁴ Twelve years later, “Google and YouTube often give Chinese state propaganda outlets high rankings in searches on hot-button political issues – including denials of the abuse of Muslims in Xinjiang and conspiracy

<https://www.theguardian.com/technology/2017/jun/06/facebook-chechnya-political-activist-page-deleted>.

³⁰ Jackie Salo, “Twitter suspends Chinese virologist who says COVID-19 was made in Wuhan lab,” NEW YORK POST (September 16, 2020), <https://nypost.com/2020/09/16/twitter-suspends-virologist-who-claims-covid-19-was-made-in-lab/>.

³¹ Tamar Lapin, “Chinese virologist posts report claiming COVID-19 was made in Wuhan lab,” NEW YORK POST (September 14, 2020), <https://nypost.com/2020/09/14/chinese-virologist-posts-report-claiming-covid-19-was-made-in-wuhan-lab/>.

³² Fanny Potkin, Eduardo Baptista, and Tony Munroe, “How China became big business for Twitter,” REUTERS (September 13, 2022), <https://www.reuters.com/technology/block-blue-ticks-how-china-became-big-business-twitter-2022-09-13/>.

³³ “China emerges as the fastest growing overseas ad market for Twitter,” CNBC (September 13, 2022), <https://www.cnbc.com/technology/china-emerges-as-the-fastest-growing-overseas-ad-market-for-twitter-report-14715741.htm>.

³⁴ Sean Silverthorne, “Looking Behind Google’s Stand in China,” HARVARD BUSINESS SCHOOL’S WORKING KNOWLEDGE: BUSINESS RESEARCH FOR BUSINESS LEADERS (February 8, 2010), <https://hbswk.hbs.edu/item/looking-behind-googles-stand-in-china>.



theories that the coronavirus originated in a US military lab,”³⁵ according to a report published by the Brookings Institute and the Alliance for Securing Democracy.³⁶

China has aggressively used “the global social media ecosystem to expand its already formidable influence” by creating a “network of social media personalities who parrot the government’s perspective in posts seen by hundreds of thousands of people, operating in virtual lockstep as they promote China’s virtues, deflect international criticism of its human rights abuses and advance Beijing’s talking points on world affairs like Russia’s war against Ukraine.”³⁷

Even with its ban on **YouTube**’s operations in China, “YouTube is seen by the CCP [Chinese Communist Party] as a key battlefield in its ideological contestation with the outside world, and YouTube’s use in foreign-facing propaganda efforts has intensified . . . as part of the CCP’s evolving efforts to counter criticisms of China’s human rights problems and burnish the country’s image.”³⁸ Featuring “content that closely hews to CCP narratives” . . . “carefully vetted domestic vloggers are increasingly seen as another key part of Beijing’s external propaganda arsenal. Their use of a more personal style of communication and softer presentation is expected to be more convincing than traditional party-state media content . . .”³⁹

Concurrently, the Chinese government may be using the Chinese-owned video-sharing platform **TikTok**⁴⁰ as a key part of its social media influence operations in the U.S. FBI Director Christopher Wray, speaking in December 2022, warned that because the Chinese government controls TikTok’s recommendation algorithm, it allows the Chinese government the ability to “manipulate content, and if they want to, to use it for influence operations” in addition to allowing China to collect the user data of its 136 million American users at will.⁴¹

³⁵ Theo Wayt, “China’s propaganda ranks highly on Google, YouTube searches: study,” NEW YORK POST (May 27, 2022), <https://nypost.com/2022/05/27/chinas-propaganda-gets-high-rankings-on-google-youtube-study/>.

³⁶ Jessica Brandt, Bret Schafer, Elen Aghekyan, Valerie Wirtschafter, and Adya Danaditya, “Winning the web: How Beijing exploits search results to shape views of Xinjiang and COVID-19,” THE BROOKINGS INSTITUTION (May 2022), <https://www.brookings.edu/research/winning-the-web-how-beijing-exploits-search-results-to-shape-views-of-xinjiang-and-covid-19/>.

³⁷ Amanda Seitz, Eric Tucker, and Mike Catalini, “How China’s TikTok, Facebook influencers push propaganda,” ASSOCIATED PRESS (March 30, 2022), <https://apnews.com/article/china-tiktok-facebook-influencers-propaganda-81388bca676c560e02a1b493ea9d6760>.

³⁸ Fergus Ryan, Daria Impiombato, and His-Ting Pai, “Frontier influencers: the new face of China’s propaganda,” AUSTRALIAN STRATEGIC POLICY INSTITUTE (October 20, 2022), <https://www.aspi.org.au/report/frontier-influencers>.

³⁹ *Id.*

⁴⁰ Chloe Mayer, “Is TikTok owned by the Chinese Communist Party?” NEWSWEEK (October 17, 2022), <https://www.newsweek.com/tiktok-owned-controlled-china-communist-party-ccp-influence-1752415>.

⁴¹ See <https://fordschool.umich.edu/video/2022/christopher-wray-2022-josh-rosenthal-memorial-talk>.



Following lawsuits by state attorneys general against federal agencies and social media platforms and the publication of thousands of internal records by Twitter, it is clear that federal officials in various agencies actively engaged in “flagging” of what the officials deemed to be “misinformation” with America’s largest and most influential social media platforms, including Facebook, Twitter, and Google.⁴² Federal officials have openly and actively used social media platforms to suppress certain information while promoting other, approved information to influence public opinion.⁴³

Like Other Federal Agencies, the Department May Have Coordinated Information Efforts with Social Media Platforms

It appears that the Administration’s information control efforts included acts by officials several federal agencies, including DHS, the Federal Bureau of Investigation (“FBI”), the Office of the Surgeon General, the Centers for Disease Control (“CDC”), the National Institute of Allergy and Infectious Diseases, and the Food and Drug Administration (“FDA”). As discussed *supra*, the press secretary and Surgeon General openly called for much wider coordination and control of information by social media platforms and confirmed that it was already occurring.

Twitter’s close relationship with the FBI was evidenced by the FBI’s payments to Twitter of nearly \$3.5 million for “processing requests” as part of a reimbursement program (for the employee hours Twitter spent responding to the FBI’s requests to take action against satire and “election misinformation” disliked by the FBI⁴⁴). Furthermore, Twitter has recently divulged a substantial volume of internal documents revealing the extent of the working relationship between it and the FBI relating to viewpoint suppression. The close relationship between Twitter and the FBI has stunned the American people. Independent investigative journalist Matt Taibbi succinctly described the relationship: “Twitter’s contact with the FBI was constant and pervasive, as if it were a subsidiary.”⁴⁵

⁴² Mark Lungariello and Samuel Chamberlain, “White House, Big Tech colluded to censor ‘misinformation’: lawsuit,” NEW YORK POST (September 1, 2022),

<https://nypost.com/2022/09/01/white-house-big-tech-colluded-to-censor-misinformation-lawsuit/>.

⁴³ Mary Margaret Olohan, “White House Working With Facebook to Flag ‘Disinformation,’ Psaki Says,” THE DAILY SIGNAL (July 16, 2021), <https://www.dailysignal.com/2021/07/16/white-house-working-with-facebook-to-flag-disinformation-psaki-says/>.

⁴⁴ Victor Nava, “FBI paid Twitter \$3.4M for doing its dirty work on users, damning email shows,” NEW YORK POST (December 19, 2022), <https://nypost.com/2022/12/19/fbi-reimbursed-twitter-for-doing-its-dirty-work-on-users/>.

⁴⁵ Keith Griffith and Harriet Alexander, “Twittergate deepens: FBI REFUSES to reveal how many social media firms it is secretly influencing – amid accusations it broke the law by pushing Twitter to remove accounts and hand over user location details, new trove reveals,” THE DAILY MAIL (December 16, 2022), <https://www.dailymail.co.uk/news/article-11547647/Twitter-files-FBI-sought-ban-actor-Billy-Baldwin-satire-accounts.html>.



Perhaps aware of Facebook's willingness to submit to the viewpoint suppression demands of foreign governments in countries where Facebook seeks to profit, the FBI felt able to seek Facebook's intervention on a matter of particular concern to the FBI. Facebook's chief executive officer, Mark Zuckerberg, confirmed in August 2022 that Facebook had acted at the behest of the FBI just before the 2020 election by actively removing information and discussions on the platform about evidence of possible criminal wrongdoing by the President's son, Hunter Biden.⁴⁶ Whether lawful or appropriate, the FBI's close working relationship with the social media platform unquestionably produced results - as evidenced by Facebook's acquiescence to the FBI's significant request just before the presidential election.

Facebook's pecuniary motivations were clarified in the October 2021 congressional testimony of whistleblower and former Facebook civic integrity team product manager Frances Haugen, who said that Facebook "puts astronomical profits over people" as it acts according to its business interests.⁴⁷ Haugen, who joined Facebook in 2019, should have been well aware of the company's history of acting according to the dictates of foreign governments in order to preserve its profit interests.

The shockingly symbiotic relationships between the FBI and social media platforms (such as Twitter and Facebook) in suppressing information at the behest of federal agencies may have constituted serious violations of the law and Constitution, despite the White House's hopeful disclaimer that "[i]t's up to private companies to make these type of [viewpoint suppression] decisions . . . [w]e were not involved."⁴⁸

The Administration has clearly and repeatedly called for viewpoint suppression by social media platforms. Senior Administration officials, including the White House press secretary, communications director, Surgeon General, and DHS officials have all called for such viewpoint suppression.

DFI is concerned that the Department has, like other federal agencies, also engaged in viewpoint suppression efforts either directly or through coordination with social medial platforms. This seems particularly likely, given the profound, controversial policies recently proposed and enacted by the Department and the ongoing need to enlist public support for the Administration's policy proposals.

⁴⁶ David Molloy, "Zuckerberg tells Rogan FBI warning prompted Biden laptop story censorship," BBC NEWS (August 26, 2022), <https://www.bbc.com/news/world-us-canada-62688532>.

⁴⁷ Abram Brown, "Facebook 'Puts Astronomical Profits Over People,' Whistleblower Tells Congress, FORBES (October 5, 2021),
<https://www.forbes.com/sites/abrambrown/2021/10/05/facebook-will-likely-resume-work-on-instagram-for-kids-whistleblower-tells-congress/?sh=4927c214cdac>.

⁴⁸ Jessica Chasmar, "FBI may have violated First Amendment with Twitter moderation requests, experts warn," FOX NEWS (December 14, 2022), <https://www.foxnews.com/politics/fbi-may-violated-first-amendment-twitter-moderation-requests-experts-warn>.



Since January 20, 2021, the Biden Administration has proposed and enacted highly consequential and enormously costly policy changes carried out by the Department:

- The Department supported the demands of teacher unions to keep elementary and secondary schools closed for prolonged periods of time during COVID-19, despite strong evidence of lessened health threats to school-age American children and the harmful developmental effects related to lengthy school closures.
- The Department has sharply reduced its enforcement of statutory requirements that America's colleges and universities properly report qualifying foreign gifts and contracts, despite evidence of widespread adversarial foreign access to America's research and development expertise at colleges and universities.
- The Department has embarked on rulemaking to redefine gender in America's schools such that biological boys and men who claim to be girls and women must be allowed to use the restrooms and lockers of girls and women and to participate in sex-segregated athletic competitions of girls and women.
- The Department issued an "equity" plan that would, in essence, racialize all grant-making decisions by the government and would deliberately and impermissibly insert race as a factor in important decisions, thereby denying the equal protection rights guaranteed to all Americans – in addition to clearly violating Title VI's prohibition of race-based discrimination by recipients of federal funding (*i.e.*, public schools).
- Finally, the Department has repeatedly refused its obligations to enforce collection of student loans and – shortly before the 2022 mid-term elections – announced the wholesale "forgiveness" of student loan debt for millions of Americans, all without congressional authorization to so act and in defiance of the separation of powers in our system of government.

The Department's policy shifts are undeniably profound and without precedent. Many of the policies, even in the midst of enactment by the Department, are currently under judicial review, including by the U.S. Supreme Court as well as other state and federal courts. The Department's unprecedented assertions of its regulatory powers have provoked considerable public response on various matters (*e.g.*, the submission of approximately 240,000 public comments on the Department's proposed Title IX rulemaking in September 2022).

Departmental officials, including senior officials, routinely and aggressively advocate the Department's policies on various social media platforms. As discussed *supra*, the Surgeon General specifically called on America's educational institutions to combat what he considers to be disinformation (*i.e.*, other viewpoints on COVID-19 and related school closures). Murthy also called for an aggressive, all-of-society battle against that disinformation and promotion of other, preferred information. Remarkably, Murthy even called for suppressing the free exchange of



disfavored information between individuals and families. The White House press secretary was equally blunt in describing the compelling need for social media platforms to enforce the Administration’s efforts to suppress certain viewpoints and information sharing while promoting officially-sanctioned information and views.

It is both troubling and inconceivable to DFI that these same approaches to suppressing disfavored information and promoting other, officially-sanctioned information has not occurred between Departmental officials and employees of various social media platforms. The White House has directed as much in its public admonitions (described *supra*) and the now-revealed extensive coordination that has occurred between multiple federal agencies and social media platforms.

Since President Biden became president and Secretary Cardona assumed the leadership of the Department, there has been no identifiable difference or distinction between the White House’s policymaking and strategies for enacting those policies. In light of the public statements of the Surgeon General and press secretary and recent profound revelations regarding collusion between the executive branch and social media platforms, DFI believes there is tremendous public concern with the Department’s own efforts to flag and suppress disfavored information and to promote other, officially-preferred information on social media platforms – all in possible violation of the First Amendment to the U.S. Constitution⁴⁹ (*i.e.*, the government may not coerce or induce private entities to take action the government itself would not be permitted to do, including censoring free expression of viewpoints⁵⁰).

DFI believes the American people have a deep and compelling interest in the external communications between Departmental officials and social media platform companies since January 20, 2021.

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* and the implementing regulations of ED, 34 C.F.R. Part 5 (“Availability of Information to the Public”), DFI makes the following requests for provision of records within your possession and/or control:

Requested Records

DFI requests that ED produce the following records within **twenty (20) business days** as required by statute:

1. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation between any Departmental official and any social media company listed below (known email domain addresses likely associated with the social media companies have been listed), including but not limited to the following, from January 20, 2021, through the date the search is conducted:

⁴⁹ U.S. Const. amend. I.

⁵⁰ *Biden v. Knight First Amendment Institute at Columbia Univ.*, 141 S. Ct. 1220, 1226 (2021) (Thomas, J., concurring).



- a. Twitter (“@twitter.com”)
 - b. Facebook (“@facebook.com”)
 - c. TikTok (“@tiktok.com”)
 - d. Douyin
 - e. Google (“@google.com”)
 - f. Baidu Tieba
 - g. Instagram (“@instagram.com”)
 - h. LinkedIn (“@linkedin.com”)
 - i. YouTube (“@youtube.com”)
 - j. Tumblr (“@tumblr.com”)
 - k. Pinterest (“@pinterest.com”)
 - l. Snapchat (“@snapchat.com”)
 - m. Reddit (“@reddit.com”)
 - n. WeChat
 - o. Little Red Book
 - p. Sina Weibo
 - q. Tencent Video
 - r. Zhihu
2. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation between any Departmental official and any person using a White House email address, including those ending in “@who.eop.gov” or “@nsc.eop.gov” regarding or related in any way to the information posted on any of the social media platforms listed in Item 1, from January 20, 2021, through the date the search is conducted.
3. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation between any Departmental official and any person using an Office of the Surgeon General email address, including those ending in “@hhs.gov” regarding or related in any way to the information posted on any of the social media platforms listed in Item 1, from January 20, 2021, through the date the search is conducted.
4. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation by Departmental officials indicating which Departmental officials determine whether particular information contained in a social media post constitutes “misinformation” or “disinformation,” from January 20, 2021, through the date the search is conducted.
5. All communications and correspondence, including but not limited to electronic mail (“email”), email attachments, texts, letters, memoranda, and other documentation by Departmental officials indicating the criteria used to determine how Departmental officials determine whether particular information contained in a social media post



constitutes “misinformation” or “disinformation,” from January 20, 2021, through the date the search is conducted.

6. All records necessary to reveal the identities of each Departmental employee engaged in disinformation research and tracking by the Department.

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 ED, as a covered agency under 5 U.S.C. § 551(1), to timely disclose requested agency records to the requestor⁵¹ if ED (1) created or obtained the requested materials, and, (2) is “in control of the requested materials at the time the FOIA request [was] made.”⁵² Upon request, ED must “promptly” make the requested records available to the requester.⁵³ Notably, covered agency records include materials provided to ED by both private and governmental organizations.⁵⁴ Upon receipt of a FOIA request that “reasonably” describes the records sought and is in compliance with ED’s published rules regarding the time, place, any fees, and procedures to be followed,⁵⁵ ED must conduct a search calculated to find responsive records in ED’s control at the time of the request.⁵⁶ In addition, the records produced by ED are required to be provided in

⁵¹ 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).

⁵² *Department of Justice (DOJ) v. Tax Analysts*, 492 U.S. 136 at 144-45 (1989).

⁵³ 5 U.S.C. § 552(a)(3)(A).

⁵⁴ *Id.* at 144.

⁵⁵ 5 U.S.C. § 552(a)(3)(A)(i).

⁵⁶ *Wilbur v. C.I.A.*, 355 F.3d 675, 678 (D.C. Cir. 2004).



“any form or format requested . . . if the record is readily reproducible by the agency in that form or format.”⁵⁷

Upon receipt of this request, ED 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 ED.⁵⁸

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

- ED 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.
- ED 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 ED’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, ED 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.
- ED should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding ED’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. ED 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 ED’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

⁵⁷ 5 U.S.C. § 552(a)(3)(B).

⁵⁸ 5 U.S.C. § 552(a)(6)(A)(i).



responsive to this request from such unofficial systems would constitute a knowing concealment by ED calculated to deflect its compliance with FOIA’s requirements.

- ED 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 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).
- ED should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If ED determines that any portions of otherwise responsive records are statutorily exempt from disclosure, DFI requests that ED disclose reasonably segregable portions of the records.
- For any responsive records withheld in whole or part by ED, ED 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”⁵⁹ 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 ED’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 34 C.F.R. § 5.33 and 34 C.F.R. § 5.32(b)(1)(ii), 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

⁵⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



disclosure of the information contained within the requested records is not primarily in the commercial interests of DFI.

The disclosed materials are likely to contribute significant information to the public's understanding of the Department's disinformation policies regarding social media platform viewpoint suppression and promotion activities related to Departmental policymaking that are highly relevant to the interests of American students, families, teachers, and taxpayers. Disclosure of the requested materials will illuminate ED's policies and planning (e.g., rulemaking and enforcement decisions). 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 ED operations and governance), but will benefit the general public and other groups and entities with non-commercial interests in ED'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 on ED policies widely distributed by one of the nation's largest news providers in February 2022, a March 2022 analysis of DOJ policies distributed by a leading news magazine, and multiple widely-published analyses and news stories involving recent ED policy announcements regarding the student loan repayment program and Title IX proposed rulemaking. DFI personnel also frequently offer commentary and analyses on radio and television news programs and in various public forums.

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 34 C.F.R. § 5.32(b)(1)(ii).

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.”⁶⁰ DFI provides exactly

⁶⁰ See *Cause of Action v. FTC*, 799 F.3d 1108, at 1115-16 (D.C. Cir. 2015).



this service to the general public and other audiences with an interest in those materials and analyses. Upon receipt of the requested materials from ED, 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 ED policies widely distributed by one of the nation's largest news providers in February 2022 and more recently, a March 2022 analysis of DOJ policies, and several more recent published and widely distributed news stories regarding DFI's analyses of ED's Title IX rulemaking and student loan debt cancellation program, among other news stories. DFI personnel also frequently appear as guests or panelists to offer commentary and analyses on radio and television news programs and in various other public forums.

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 the external communications of the Department with social media platforms regarding the Department's disinformation policies, if any, regarding social media platform viewpoint suppression and promotion activities related to Departmental policymaking that are highly relevant to the interests of American students, families, teachers, and taxpayers. Provision of the requested records will meaningfully inform the general public about significant Departmental communication policies, which affect millions of American students, families, and taxpayers. These are significant policy issues with tremendous impact on the general public and worthy of transparency in service of the public's right to know.

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 ED's prompt attention to this request for records pursuant to FOIA, which will provide important information to the American people regarding the Department's disinformation and viewpoint suppression and promotion policies regarding significant Departmental proposals, which are of tremendous interest to students, families, and taxpayers.



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.