

May 6, 2019

Via eFOIA and Certified Mail

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843
Fax: (540) 868-4391/4997

To Whom It May Concern:

This letter constitutes a request under the Freedom of Information Act, 5 U.S.C. § 552, et. seq and is submitted on behalf of Defending Rights & Dissent and the Brennan Center for Justice at NYU School of Law (the “Brennan Center”). Defending Rights & Dissent and the Brennan Center would be happy to discuss this request via phone or e-mail in order to answer any questions regarding the scope or substance.

Background

In Autumn of 2017, FBI Director Christopher Wray directed the FBI to create a “Foreign Influence Task Force” (“FITF”).¹ In January of 2018, Jeffrey Tricoli, an FBI official involved with the FITF, made public comments that the FITF would alert social media companies and the public at large about foreign disinformation and social media manipulation. According to the same public comments, the FBI was cognizant of potential First Amendment issues and did not intend to act as the “thought police.”² The FITF was again in the news when Mr. Tricoli resigned in July 2018.³

On August 2, 2018, Director Wray spoke about the FITF at a joint press conference with National Security Advisor John Bolton, Director of National Intelligence Dan Coats,

¹ See Press Release, Federal Bureau of Investigation, The FBI Launches a Combating Foreign Influence Webpage (Aug. 30, 2018), available at <https://www.fbi.gov/news/pressrel/press-releases/the-fbi-launches-a-combating-foreign-influence-webpage> [hereinafter Combating Foreign Influence Webpage].

² Chris Strohm, *FBI Task Force to Expose Russian Social Media Manipulation*, Bloomberg (Jan. 10, 2018), <https://www.bloomberg.com/news/articles/2018-01-10/fbi-plans-task-force-to-expose-russian-social-media-manipulation>.

³ Emily Birnbaum, *FBI official overseeing election-meddling task force leaves agency: report*, Hill (July 16, 2018), <https://thehill.com/policy/cybersecurity/397172-fbi-agent-in-charge-of-election-meddling-task-force-leaves-position>.

then Secretary of Homeland Security Kirstjen Nielsen, and Director of the National Security Agency General Paul Nakasone. At the press conference, Wray cited as examples of foreign influence: “overtly and covertly manipulating news stories, spreading disinformation, leveraging economic resources, and escalating divisive issues.”⁴ Director Wray also mentioned that part of the FBI’s strategy included cooperation with the private sector. Director Wray said, “This year, we’ve met with top social media and technology companies several times. We’ve given them classified briefings, and we’ve shared specific threat indicators and account information, so they can better monitor their own platforms.”⁵

The press conference happened just days after Facebook removed 32 pages and accounts it determined were engaged in “coordinated inauthentic activity.”⁶ This included a controversial decision to remove the event page of an anti-racist rally that had a number of co-sponsors who were local, DC anti-racist activists.⁷ Director Wray was asked about the removal of the 32 pages and accounts during the press conference, but declined to comment on the specifics of the question. However, the FITF presumably will carry out its mission at least in part by monitoring, collecting, and analyzing information from social media platforms and networks.⁸

In late August, the FBI announced the creation of web pages designed for public consumption in conjunction with the FITF.⁹ The web pages describe the mission of the FITF to combat foreign influence operations as following a three-pronged approach: “investigations and operations,” in which the FITF works with local field offices to “counter the extensive influence and operations of our foreign adversaries”; “information and intelligence sharing,” in which the FITF and FBI coordinate with other intelligence agencies to “ensure a common understanding of the threat and a unified strategy to address it”; and “private sector partnerships,” in which the FITF engages strategically with private technology companies, including through “threat indicator sharing.”¹⁰

The FBI has disclosed little additional public information on the activities of the FITF since August 2018.

⁴ See Press Release, Federal Bureau of Investigation, FBI Director Christopher Wray’s Statement at Press Briefing on Election Security (Aug. 2, 2018), <https://www.fbi.gov/news/pressrel/press-releases/fbi-director-christopher-wrays-statement-at-press-briefing-on-election-security>.

⁵ *Id.*

⁶ Issie Lapowsky, *Fake Facebook Accounts Are Getting Harder to Trace*, Wired (July 31, 2018), <https://www.wired.com/story/facebook-uncovers-new-fake-accounts-ahead-of-midterm-elections/>.

⁷ Taylor Hatmaker, *Activists push back on Facebook’s decision to remove a DC protest event*, TechCrunch (Aug. 1, 2018), <https://techcrunch.com/2018/08/01/facebook-organizers-protest-no-unite-the-right-2/>.

⁸ Chip Gibbons, *The FBI is Setting Up a Task Force to Monitor Social Media* (Feb. 1, 2018), <https://www.thenation.com/article/the-fbi-is-setting-up-a-task-force-to-monitor-social-media/>

⁹ See Combating Foreign Influence Webpage, *supra* note 1.

¹⁰ *Id.*

Request

Date Range of Request: From January 1, 2017, to the present.

Description of Request: We are requesting the following categories of documents pertaining to the FITF's formation and mission to combat foreign influence operations:

1. All communications between the FITF, or any FBI personnel acting on behalf of the FITF, and employees or representatives of social media platforms or networks, including but not limited to Facebook, Twitter, Instagram, YouTube, LinkedIn, and WhatsApp, relating to the FITF and/or its mission;
2. All communications between the FITF, or any FBI personnel acting on behalf of the FITF, and private businesses concerning any product or service that searches, analyzes, monitors, or collects content posted on any social media platforms or networks relating to the FITF and/or its mission;
3. All agreements between the FBI and/or FITF and private businesses relating to the FITF and/or its mission pertaining to any product or service that searches, analyzes, monitors, or collects content posted on any social media platforms or networks.
4. All communications between the FITF, or any FBI personnel acting on behalf of the FITF, and state and local law enforcement relating to the FITF and/or its mission;
5. All communications between the FITF, or any FBI personnel acting on behalf of the FITF, and other federal agencies relating to the FITF and/or its mission;
6. Records reflecting the process for selecting social media accounts for monitoring or observation by the FITF, in connection with its mission, including key words or other search terms used in locating such accounts; and
7. Policies, procedures, or guidelines related to the protection of the First Amendment rights of US persons in connection with the FITF and/or its mission, including documents, records, or contractual provisions provided to vendors or contractors.

Request for Fee Waiver

Defending Rights & Dissent and the Brennan Center request a waiver of all fees for document search, duplication, and review associated with this request.

Defending Rights & Dissent is a non-profit organized under 26 U.S.C. § 501(c)(3) and a representative of the news media. Defending Rights & Dissent is the publisher of the Dissent NewsWire, an online publication that publishes original reporting about news pertaining to civil liberties. Defending Rights & Dissent has received an award from Project Censored for its original reporting and is a member of The Media Consortium.¹¹ In the past, Defending Rights & Dissent has produced original works based on information it has received through Freedom of Information Act requests, state level public records requests, or other similar requests.¹² Defending Rights & Dissent has engaged in extensive first hand reporting of the arrest and prosecutions of the Trump Inauguration protesters.¹³ Defending Rights & Dissent is routinely granted a fee waiver when filing FOIA requests.

The Brennan Center is also a non-profit organized under 26 U.S.C. § 501(c)(3), and likewise plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost. The Brennan Center qualifies as a “representative of the news media” for the same reasons that it is “primarily engaged in dissemination of information”—i.e., because the Brennan Center “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 work to an audience.”¹⁴ The Brennan Center has released over 100 publications in the form of reports and papers on various issues of public importance in the period since January 2011.¹⁵ The

¹¹ See Alexander Reid Ross, *Why Is the FBI Harassing Activists in Cascadia?*, Defending Rights & Dissent (Jan. 5, 2015), <https://rightsanddissent.org/news/why-is-the-fbi-harassing-activists-in-cascadia/>; See Member Directory, The Media Consortium, <https://www.themediaconsortium.org/member-directory> (last visited Oct. 26, 2018).

¹² See News Release, Defending Rights & Dissent, DRAD, DC NLG FOIA Request Uncovers That DC Police Spent Over \$300,000 in Weapons, Ammunition to Use against Inauguration Day Protesters (Oct. 30, 2017), available at <https://rightsanddissent.org/news/dr-ad-dg-nlg-foia-request-uncovers-dc-police-spent-300000-weapons-ammunition-use-inauguration-day-protesters/>; Chip Gibbons, *Who is Robert Wells and Why Did The FBI Consider Him A National Security Threat?*, Defending Rights & Dissent (June 3, 2016), <https://rightsanddissent.org/news/who-is-robert-wells-and-why-did-the-fbi-consider-him-a-national-security-threat/>; Chip Gibbons, *Senate Passes Bill Aimed at Silencing Pro-Palestinian Activism on Campuses*, Defending Rights & Dissent (Dec. 6, 2016), <https://rightsanddissent.org/news/senate-passes-bill-aimed-silencing-pro-palestinian-speech-campuses/>.

¹³ See Archive of J20 Articles, Defending Rights & Dissent, <https://rightsanddissent.org/news/topics/free-speech-assembly/j20/> (last accessed Oct. 26, 2018).

¹⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(III); 28 C.F.R. § 16.10(b)(6); *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.C. Cir. 2003).

¹⁵ For representative examples of the Brennan Center's previous publications on issues of public concern, see Rachel Levinson-Waldman, *What the Government Does with Americans' Data* (2013), available at <https://www.brennancenter.org/sites/default/files/publications/Data%20Retention%20-%20FINAL.pdf>; Michael Price, *National Security and Local Police* (2013), available at https://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf; cf. *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); see also *Nat'l Sec. Archive*, 880 F.2d at 1386 (deeming National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy).

Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(d)(1).

As a noncommercial requester, the Brennan Center also qualifies for waivers as an “educational institution” pursuant to 28 C.F.R. § 16.10 (c)(1)(i). The Brennan Center qualifies as an educational institution because it is affiliated with the NYU School of Law, which is plainly an educational institution under the definition provided in 28 C.F.R. § 16.10(b)(4).¹⁶ Moreover, disclosure is not primarily in the Brennan Center’s commercial interests.¹⁷ As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress’s legislative intent that FOIA be “liberally construed in favor of waivers for noncommercial requesters.”¹⁸

Request for Expedited Handling

Under the relevant regulations, expedited processing is appropriate where there is “widespread and exceptional media interest” in the information we are requesting and where “there exist possible questions about the government’s integrity which affect public confidence.”¹⁹ These factors are present here.

First, there has been a steady stream of stories about the FITF.²⁰ As such, there exists wide and exceptional media interest in the FITF. However, since the creation of the FITF’s webpage in August 2018, little or no information regarding its activities has been publicly disclosed.

In addition, there exist two sets of possible questions about the government’s integrity in regards to the FITF, both of which affect public confidence. First, there exist questions about the possibility that overly broad efforts to combat disinformation or improper foreign influence on social media could infringe on First Amendment protected rights. Observers have suggested that allegations of foreign influence have been used to silence disfavored points of view,²¹ including by removing social media pages.²² The FITF

¹⁶ See also *Nat’l Sec. Archive*, 880 F.2d at 1381.

¹⁷ See 28 C.F.R. § 16.10 (d)(1).

¹⁸ *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. 27, 190 (1986) (Statement of Sen. Leahy)).

¹⁹ 28 C.F.R. § 16.5 (e)(1)(iv).

²⁰ Strom, *supra* note 2; see also Gibbons, *supra* note 8; Birnbaum, *supra* note 3.

²¹ See, e.g. Matt Taibbi, *The New Blacklist*, Rolling Stone (Mar. 5, 2018),

<https://www.rollingstone.com/politics/politics-news/the-new-blacklist-202612/>; James Carden, *Russiagate Is Devolving Into an Effort to Stigmatize Dissent*, Nation (Dec. 28, 2017),

<https://www.thenation.com/article/russiagate-is-devolving-into-an-effort-to-stigmatize-dissent/>; Anoa Changa, *Please Stop Calling Black Activism ‘Divisive,’* Nation (Nov. 2, 2017),

<https://www.thenation.com/article/please-stop-calling-black-activism-divisive/>.

²² See, e.g. Rhet Jones, *Facebook Tempts Political Backlash With Massive Purge of 810 Pages and Accounts*, Gizmodo (Oct. 11, 2018), <https://gizmodo.com/facebook-tempts-political-backlash-with-massive-purge-o-1829690016>; Jillian C. York & Karen Gullo, *Facebook Deletes Anti-Unite the Right Event, Claiming Foreign*

potentially puts the FBI in the position of monitoring social media accounts and making determinations about what constitutes foreign propaganda and what constitutes legitimate speech.²³ The FBI clearly realizes the serious implications here, given their public assurances that they are not playing “thought police.” Nonetheless, questions about the FITF’s ability to impartially handle sensitive political speech, as well as its role in monitoring such speech, affects public confidence. Second, questions have also been raised that the FITF is not adequately addressing election interference.²⁴ Such concerns not only impact the public confidence in the FBI, but in the integrity of US elections.

Accordingly, Defending Rights & Dissent and the Brennan Center urgently need access to this information to inform the public of federal government activity that concerns the general public interest.

Conclusion

In the event that we are denied a fee waiver, we are willing to pay up to \$50 in costs for the reproduction of the records requested. Should the cost exceed \$50 we ask to be contacted. Should any part of this request be withheld in whole or in part, we ask that specific statutory exemptions to disclosure be cited. Any part of this request is segregable.

We would prefer the records requested in electronic copy. All records should be sent to Kara Ford at karaford@eversheds-sutherland.com. Alternatively, documents can be sent to:

Kara Ford
Eversheds Sutherland (US) LLP
1114 Avenue of the Americas
Grace Building, 40th Floor
New York, NY 10036

Please feel free to contact me with any questions at that email address above or at (212) 389-5016.

Sincerely,



Kara Ford

KDF/kf

Involvement, Elec. Frontier Found. (Aug. 3, 2018), <https://www.eff.org/deeplinks/2018/08/facebook-deletes-anti-unite-right-event-claiming-russian-involvement>.

²³ See Gibbons, *supra* note 18.

²⁴ See, e.g. Birnbaum, *supra* note 3.