

EMPOWER OVERSIGHT

Whistleblowers & Research



April 19, 2022

VIA ELECTRONIC TRANSMISSION: FOIA@StateOIG.Gov

Gina Goldblatt, Government Information Specialist
Office of General Counsel
Office of Inspector General
U.S. Department of State
1700 North Moore Street
Suite 1400
Arlington, VA 22209

RE: OIG FOIA REQUEST No. 2022-F-012

Dear Ms. Goldblatt:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Empower Oversight filed with the Department of State’s Office of Inspector General (“DOS-OIG”) a request for records under the Freedom of Information Act (“FOIA”).¹ The DOS-OIG acknowledged receipt of the request and assigned it a tracking number, but to date it has not advised Empower Oversight about the volume of the records that the DOS-OIG possesses that are responsive to the request; whether the responsive records are subject to one or more FOIA exemptions and, if so, which exemption(s); and when the DOS-OIG will produce any responsive, non-exempt records.

¹ The FOIA is codified at 5 U.S.C. § 552.

Empower Oversight respectfully requests that the DOS-OIG promptly apprise it of when it can expect to receive a determination concerning FOIA Request Number 2022-F-012 as required by 5 U.S.C. § 552(a)(6)(A)(i) and (B).

Background

According to the Office of Personnel Management (“OPM”), the vast majority of Federal agencies use the Defense Counterintelligence and Security Agency—and previously used OPM’s National Background Investigations Bureau—to conduct background investigations of employees.² However, about 20 agencies or agency subcomponents—most of which are in the intelligence community—have their own designated authority to conduct background investigations and other security services.³ At one time, the United States Agency for Global Media (“USAGM”) was one such agency subcomponent with delegated authority from OPM to conduct background investigations of its personnel.⁴

However, for more than a decade OPM audits reported deficiencies in USAGM’s compliance with the conditions of its delegation from OPM.⁵ These unresolved findings culminated in an August 2019 OPM report that identified 37 “recommendations requiring corrective action and provided USAGM 90 days to bring all program areas into compliance.”⁶ OPM advised USAGM that its failure timely to achieve compliance could result in the revocation of its delegated authority.⁷

In February 2020, OPM conducted a follow-up review.⁸ It determined that USAGM had taken corrective action on only 18 of OPM’s 37 recommendations, and had failed to address 19 recommendations.⁹ OPM also made six new recommendations for accomplishing USAGM’s compliance with the conditions of its delegated authority, and advised USAGM that it would

² Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>; see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 13, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

³ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>.

⁴ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>; see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program* (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁵ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, pp. 2 – 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁶ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁷ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁸ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁹ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 4, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

revoke its delegated authority “until such time as USAGM can demonstrate to OPM’s satisfaction that USAGM has taken all [required] corrective actions.”¹⁰

Among its findings, OPM determined that USAGM’s delegation to conduct and adjudicate background investigations had expired in 2012.¹¹ OPM began reporting this failing to USAGM in September of 2015, to no avail.¹² Additionally, in connection with such background investigations, OPM found that USAGM had failed to follow the applicable OPM regulations, *i.e.*, 5 C.F.R. § 731.106(a) and 5 C.F.R. Part 1400, which required it to designate its various job categories as high, moderate, or low risk.¹³ Such designations reflect what sort of background investigation is necessary and how closely to screen an individual for a specific job.¹⁴ Again, USAGM had been aware of its failure to designate its many job categories since at least September of 2015, but failed to properly remedy the deficiency.¹⁵

Further, for several years, DOS-OIG has reported deficiencies with USAGM’s contracting and grants management. With respect to contracting, the DOS-OIG has reported successful prosecutions of USAGM’s Chief Strategy Officer for theft of more than \$40,000 in government funds in connection with a travel fraud scheme, and of a contracting officer who provided preferential treatment to a contractor in exchange for the contractor hiring a relative of the contracting officer to fill a “no-show” position.¹⁶ It also reported that two USAGM employees had converted government-purchased computers for their personal use and accepted gifts from a contractor, which improperly billed the government for \$31,142 in equipment expenses that were not within the scope of its contract.¹⁷

Regarding grants management, the DOS-OIG has consistently reported that the independent auditor reports concerning USAGM’s fiscal year 2017 through 2020 annual financial statements have disclosed significant deficiencies in internal control over its monitoring

¹⁰ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 4, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹¹ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>; see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹² OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14 – 15, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹³ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 16, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹⁴ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 15, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹⁵ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 17, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹⁶ DOS-OIG, *Semiannual Report to the Congress, October 1, 2020, to March 31, 2021*, p. 39, available at https://www.stateoig.gov/system/files/spring_2021_semiannual_report_to_the_congress_0.pdf; DOS-OIG, *Semiannual Report to the Congress, October 1, 2019, to March 31, 2020*, p. 39, available at https://www.stateoig.gov/system/files/spring_2020_semiannual_report_to_the_congress_0.pdf.

¹⁷ DOS-OIG, *Semiannual Report to the Congress, October 1, 2018, to March 31, 2019*, p. 37, available at https://www.stateoig.gov/system/files/spring_2019_semiannual_report_to_the_congress_0.pdf.

of grantees.¹⁸ Such independent auditor reports have also repeatedly disclosed instances of noncompliance with Federal grant regulations.¹⁹

Similarly, with respect to human resources issues, in 2019 the DOS-OIG reported a massive deficiency: USAGM senior managers were not enforcing Federal requirements to assess employee performance.²⁰ Specifically, a DOS-OIG targeted inspection report disclosed:

OIG found that USAGM senior managers did not enforce timely completion of performance reviews, as required by law. At the time of the inspection, only 67 percent of the agency's 1,454 Civil Service employees had received performance reviews for the most recent rating period (from May 1, 2017 to April 30, 2018)....

OIG found that despite having performance management policies, procedures, and training to guide supervisors on their responsibilities, senior managers did not hold supervisors accountable for completing annual performance reviews within 60 days of the end of the rating period. Failure to provide timely performance reviews can harm employee development, morale, and overall organizational efficiency as well as prevent employees from receiving merited within-grade and quality salary step increases and promotions.²¹

Additionally, stakeholders have criticized the USAGM's (and its predecessor's) efforts to ensure that the broadcasters that it regulates present an accurate, balanced, effective, and objective picture of America and its institutions, policies, and thoughts. For example, the charter of the Voice of America ("VOA"), one of the broadcasters under USAGM's supervision established three principles that govern the VOA's broadcasting:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively, and will also present responsible discussions and opinion on these policies.²²

¹⁸ DOS-OIG, *Semiannual Report to the Congress, October 1, 2020, to March 31, 2021*, p. 36, available at https://www.stateoig.gov/system/files/spring_2021_semiannual_report_to_the_congress_0.pdf; DOS-OIG, *Semiannual Report to the Congress, October 1, 2019, to March 31, 2020*, p. 38, available at https://www.stateoig.gov/system/files/spring_2020_semiannual_report_to_the_congress_0.pdf; DOS-OIG, *Semiannual Report to the Congress, October 1, 2018, to March 31, 2019*, p. 36, available at https://www.stateoig.gov/system/files/spring_2019_semiannual_report_to_the_congress_0.pdf.

¹⁹ DOS-OIG, *Semiannual Report to the Congress, October 1, 2020, to March 31, 2021*, p. 36, available at https://www.stateoig.gov/system/files/spring_2021_semiannual_report_to_the_congress_0.pdf; DOS-OIG, *Semiannual Report to the Congress, October 1, 2019, to March 31, 2020*, p. 38, available at https://www.stateoig.gov/system/files/spring_2020_semiannual_report_to_the_congress_0.pdf; DOS-OIG, *Semiannual Report to the Congress, October 1, 2018, to March 31, 2019*, p. 36, available at https://www.stateoig.gov/system/files/spring_2019_semiannual_report_to_the_congress_0.pdf.

²⁰ DOS-OIG, *Targeted Inspection of the Governance of the United States Agency for Global Media*, p. 15, (April 2019), available at https://www.stateoig.gov/system/files/isp-ib-19-22_0.pdf.

²¹ DOS-OIG, *Targeted Inspection of the Governance of the United States Agency for Global Media*, p. 15, (April 2019), available at https://www.stateoig.gov/system/files/isp-ib-19-22_0.pdf (footnote omitted).

²² 22 U.S.C. § 6202(c) (emphasis added).

The VOA and its affiliated broadcasters have a checkered history of complying with these principles. Almost a decade ago, during testimony before the House Foreign Affairs Committee, former Secretary of State Hillary Clinton described the Broadcasting Board of Governors—the predecessor of USAGM—as “practically defunct in terms of its capacity to tell a message around the world.”²³ She went on to explain that USAGM’s predecessor was abdicating “the ideological arena” and:

We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting [competing narratives] fill a void. We have to get in there and compete and we can do it successfully.²⁴

Further, as the broadcasters under the USAGM’s jurisdiction were abdicating the external ideological arena to the United States’ competitors, internally they meddled in domestic politics. In the midst of the 2020 Presidential election, USAGM leadership was alerted to a video that was posted on the VOA’s Urdu Service, which encouraged Muslims *in Michigan* to vote for the Biden-Harris Presidential ticket.²⁵ The VOA offered no context for the video, which USAGM’s then leader determined violated the VOA’s charter.²⁶

In June of 2020, a new Chief Executive Officer (“CEO”), Michael Pack (“CEO Pack”), was installed at USAGM. And, according to a USAGM press release, on his first day CEO Pack “effected a series of significant and long-overdue actions to keep assurances to restructure the agency, fully in accordance with the law.”²⁷ Soon thereafter, USAGM announced that CEO Pack had “ordered a comprehensive investigation of USAGM operations” because he was concerned that “systemic, severe, and fundamental security failures, many of which have persisted for years,” “compromise the agency’s ability to fulfill its mission, undermine the efficiency and effectiveness of the federal workforce, and pose a threat to U.S. national security.”²⁸ Additionally, he publicly released OPM’s scathing 2020 report,²⁹ suspended the security

²³ House Foreign Affairs Committee, Recording of Oversight Hearing Concerning the Broadcasting Board of Governors, Opening Statement of Chairman Ed Royce, minute mark 5:06, (June 26, 2013), available at <https://www.c-span.org/video/?313590-1/house-holds-oversight-hearing-voice-america>; see also, BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013).

²⁴ BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013) (quoting former Secretary of State Clinton as saying, “Our Broadcasting Board of Governors is practically defunct in terms of its capacity to tell a message around the world. So we’re abdicating the ideological arena and we need to get back into it. We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting the Jihadist narrative fill a void. We have to get in there and compete and we can do it successfully”).

²⁵ Pack, Michael, *The Death of Democracy* (November 15, 2021)(emphasis added), available at <https://www.washingtonexaminer.com/restoring-america/fairness-justice/the-death-of-democracy>.

²⁶ Pack, Michael, *The Death of Democracy* (November 15, 2021), available at <https://www.washingtonexaminer.com/restoring-america/fairness-justice/the-death-of-democracy>.

²⁷ USAGM, *USAGM CEO Implements Critical Changes on Day One to Fulfill Legislative Mandate* (June 18, 2020), available at <https://www.usagm.gov/2020/06/18/usagm-ceo-implements-critical-changes-on-day-one-to-fulfill-legislative-mandate/>.

²⁸ USAGM, *USAGM CEO Pack Announces Investigation into Long-term Security Failures* (July 23, 2020), available at <https://www.usagm.gov/2020/07/23/usagm-ceo-pack-announces-investigation-into-long-term-security-failure/>.

²⁹ USAGM, *CEO Pack Releases OPM Report Detailing Long-Standing USAGM Security Failures* (August 4, 2020), available at <https://www.usagm.gov/2020/08/04/ceo-pack-releases-opm-report-detailing-long-standing-usagm-security-failures/>.

clearances of six senior USAGM officials who had led the agency during the period in question, and placed the senior officials on administrative leave.³⁰

In further regard to USAGM's suspension of the senior officials' security clearances and placement of them on administrative leave, the Government Accountability Project ("GAP")—an organization, which like Empower Oversight, advocates on behalf of whistleblowers—filed multiple whistleblower complaints with the U.S. Office of Special Counsel ("OSC") alleging that CEO Pack and others at USAGM engaged in gross mismanagement; abused their authority; violated laws, rules, or regulations; and threatened public health and safety.³¹ According to GAP, "OSC reviewed the allegations and, following its independent assessment, determined there was a substantial likelihood of wrongdoing" and "ordered [USAGM to investigate and] to provide a written response to OSC within 60 days for further evaluation."³²

On January 21, 2021, USAGM announced that the incoming Biden Administration had requested and accepted CEO Pack's resignation.³³ Additionally, President Biden designated Kelu Chao as Acting CEO of USAGM, pending the nomination, Senate confirmation, and appointment of a permanent CEO.³⁴ Soon thereafter, Acting CEO Chao is reported to have brought back five of the six senior USAGM officials whom CEO Pack reportedly had placed on administrative leave; the sixth official is reported to have opted to retire.³⁵

In further regard to the six senior USAGM officials whom CEO Pack reportedly placed on administrative leave after suspending their security clearances, on July 9, 2021, GAP reported that the DOS-OIG had concluded that:

- The officials qualified as whistleblowers because they had raised concerns about CEO Pack's actions;
- CEO Pack retaliated against the officials when he suspended their security clearances, a prerequisite for their positions; and

³⁰ Government Accountability Project ("GAP"), *Government Accountability Project Applauds U.S. Office of Counsel for Finding "Substantial Likelihood of Wrongdoing by Voice of America/U.S. Agency for Global Media Political Leadership"* (December 2, 2020), available at <https://whistleblower.org/press-release/government-accountability-project-applauds-us-office-of-special-counsel-for-finding-substantial-likelihood-of-wrongdoing-by-voice-of-america-us-agency-for-global-media-political-leadership/>.

³¹ GAP, *Government Accountability Project Applauds U.S. Office of Counsel for Finding "Substantial Likelihood of Wrongdoing by Voice of America/U.S. Agency for Global Media Political Leadership"* (December 2, 2020), available at <https://whistleblower.org/press-release/government-accountability-project-applauds-us-office-of-special-counsel-for-finding-substantial-likelihood-of-wrongdoing-by-voice-of-america-us-agency-for-global-media-political-leadership/>.

³² GAP, *Government Accountability Project Applauds U.S. Office of Counsel for Finding "Substantial Likelihood of Wrongdoing by Voice of America/U.S. Agency for Global Media Political Leadership"* (December 2, 2020), available at <https://whistleblower.org/press-release/government-accountability-project-applauds-us-office-of-special-counsel-for-finding-substantial-likelihood-of-wrongdoing-by-voice-of-america-us-agency-for-global-media-political-leadership/>.

³³ USAGM, *Biden Administration Requests USAGM CEO Pack's Resignation* (January 21, 2021), available at <https://www.usagm.gov/2021/01/21/biden-administration-requests-usagm-ceo-packs-resignation/>.

³⁴ USAGM, *Biden Administration Requests USAGM CEO Pack's Resignation* (January 21, 2021), available at <https://www.usagm.gov/2021/01/21/biden-administration-requests-usagm-ceo-packs-resignation/>.

³⁵ GAP, *US Government Media Whistleblowers Cleared of Wrongdoing* (July 9, 2021), available at <https://whistleblower.org/in-the-news/voice-of-america-us-government-media-whistleblowers-cleared-of-wrongdoing/>.

- CEO “Pack’s actions were ‘without a legitimate basis.’”³⁶

Records Request

Empower Oversight submitted to DOS-OIG a request for records pursuant to the FOIA on December 9, 2021.³⁷ The request noted “that the public has a significant interest in understanding CEO Pack’s efforts to reform long-reported deficiencies within USAGM’s operations, the reactions of USAGM senior managers to such efforts [including allegations of whistleblower retaliation from June 2020 through January 20, 2021], and the DOS-OIG’s response to any allegations of whistleblower retaliation that may have arisen.”

Empower Oversight’s FOIA December 9th FOIA request seeks:

1. Copies of all reports of investigation prepared by DOS-OIG related to allegations—made between June 1, 2020, and January 21, 2021—of whistleblower retaliation within USAGM.
2. All records relating to communications between DOS-OIG personnel and Capitol Hill about Michael Pack, including emails to and from “@house.gov” or “@senate.gov” email addresses.
3. All records relating to communications between DOS-OIG personnel and USAGM personnel about Michael Pack, including emails to and from “@usagm.gov” email addresses.

Empower Oversight also requested a waiver of all fees that may be assessed in connection with the DOS-OIG’s processing of its request.

By letter dated December 16, 2021, the DOS-OIG acknowledged receipt of Empower Oversight’s December 9th FOIA request, designated it FOIA Request Number 2022-F-012, and deferred action on Empower Oversight’s request for a fee waiver until “after we determine whether fees will be assessed for this request.”³⁸ Additionally, claimed the existence of “unusual circumstances” under subsection a(6)(B) of the FOIA, extending the deadline for rendering a determination under the FOIA to 30 business days, as follows:

As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DOS-OIG hereby invokes this 10-day extension for your request, and estimates a response to your request to be provided within 30 business days.

Finally, in spite of the additional time to respond to Empower Oversight’s FOIA request that the DOS-OIG appropriated for itself pursuant to its unusual circumstances contention, it stated “[u]nfortunately, we cannot predict exactly when your request will be processed as we currently have a backlog of requests.”

More than 80 business days later, Empower Oversight has received no further correspondence concerning FOIA Request Number 2022-F-012 from the DOS-OIG.

³⁶ GAP, *US Government Media Whistleblowers Cleared of Wrongdoing* (July 9, 2021), available at <https://whistleblower.org/in-the-news/voice-of-america-us-government-media-whistleblowers-cleared-of-wrongdoing/>.

³⁷ Empower Oversight’s December 9, 2021, FOIA request is attached as Exhibit 1.

³⁸ The DOS-OIG’s December 16, 2021, letter acknowledging Empower Oversight’s December 9th FOIA request is attached as Exhibit 2.

Analysis

As a consequence of the DOS-OIG failing to render a determination on Empower Oversight's December 9th FOIA request within 30 business days, Empower Oversight has exhausted its administrative remedies and its FOIA request is ripe for judicial review.³⁹ Without waiving its right to pursue judicial review, however, Empower Oversight respectfully requests the DOS-OIG's prompt response concerning its progress processing the FOIA request. Specifically, please apprise Empower Oversight concerning:

- How many records the DOS-OIG possesses that are responsive to the December 9th FOIA request;
- Whether the responsive records are subject to one or more FOIA exemptions;
- If particular records are subject to FOIA exemption, which exemption; and
- When the DOS-OIG will produce responsive, non-exempt records.

Department of Justice Transparency Directive

By a March 15, 2022, memorandum the Attorney General advised the heads of all agencies and departments (hereinafter "agency" or "agencies") of the Federal Executive Branch of the United States of new FOIA guidelines that they must adhere to, at the risk of the Department of Justice ("DOJ") refusing to defend such them in litigation.⁴⁰

The core of the Attorney General's new guidelines is a presumption of openness to ensure transparency in government operations. Accordingly, the Attorney General reminds agency heads that the 2016 amendments to the FOIA provide that a Federal agency may withhold responsive records only if:

- (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or
- (2) disclosure is prohibited by law.⁴¹

³⁹ In Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm'n, the Court of Appeals for the District of Columbia Circuit instructed that:

in order to make a "determination" within the statutory time periods and thereby trigger the administrative exhaustion requirement, the agency must at least: (i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the "determination" is adverse.

Citizens for Responsibility & Ethics in Washington, 711 F.3d 180, 188 (D.C. Cir. 2013).

⁴⁰ See generally, Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject "Freedom of Information Act Guidelines, (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

⁴¹ Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject "Freedom of Information Act Guidelines, p. 1 (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

Explaining the “foreseeable harm” standard of the 2016 amendments for agencies that process FOIA requests, the Attorney General added:

Information that might technically fall within an exemption should not be withheld from a FOIA requester unless the agency can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail. Moreover, agencies are strongly encouraged to make discretionary disclosures of information where appropriate.⁴²

The Controlling Provisions of the FOIA

In relevant part, Subsection a(6) of the FOIA requires agencies to make determinations on FOIA requests, and to notify the requesters of such determinations, within 20 business days, unless “unusual circumstances” exist (*i.e.*, “[i]n unusual circumstances”) and the agencies provide the requesters with written notice “setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched,” as follows:

(6)

(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of—

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination—

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

...

(B)

(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension

⁴² Memorandum for Heads of Executive Departments and Agencies from Attorney General Merrick B. Garland, with the Subject “Freedom of Information Act Guidelines, p. 1 (March 15, 2022), available at <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-issues-new-foia-guidelines-favor-disclosure-and> (last accessed on April 12, 2022).

and the date on which a determination is expected to be dispatched.
...⁴³

For purposes of the FOIA, “unusual circumstances” are limited to the need to search for and collect the records from facilities or establishments that are separate from the office processing the request; to search for, collect, and appropriately examine a voluminous amount of records; or to consult with another agency, or two or more components of the same agency, that has a substantial interest in the determination on the records request.⁴⁴

The extension of the 20 business day deadline because of “unusual circumstances” is confined to no more than 10 additional business days, unless the agency notifies the requester that it cannot process the FOIA request within 30 business days and provides the requester with the an opportunity to narrow the scope of his/her/its request so that it may be processed within the deadline, or arrange an alternative time period for processing, as follows:

(B)

(i) . . . No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency, and notify the requester of the right of the requester to seek dispute resolution services from the Office of Government Information Services. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C). . . .⁴⁵

If an agency fails to comply with the applicable FOIA deadlines, then the requester “shall be deemed to have exhausted his administrative remedies” and may seek judicial review.⁴⁶

The DOS-OIG Has Exceeded FOIA’s 30-business Day Deadline for Rendering a Determination

On December 16, 2021, the DOS-OIG acknowledged receipt of Empower Oversight’s December 9th FOIA request and claimed the existence of “unusual circumstances,” which enabled it to invoke “a 10-day extension” to render a determination and estimate that it would respond to the request “within 30 business days under subsection a(6)(B) of the FOIA.” Thirty business days expired on or about February 2, 2022.

⁴³ 5 U.S.C. § 552(a)(6).

⁴⁴ 5 U.S.C. § 552(a)(6)(B)(iii).

⁴⁵ 5 U.S.C. § 552(a)(6); *see also*, 28 C.F.R. § 16.5(c).

⁴⁶ 5 U.S.C. § 552(a)(6)(C)(i).

Moreover, the DOS-OIG added that it could not predict when it would begin processing Empower Oversight’s FOIA request because of its backlog of pending FOIA requests. The DOS-OIG failed to cite an exception to Subsection a(6) of the FOIA that would authorize it to exceed the 30-business day deadline.⁴⁷ Thirty business days having expired on or about February 2nd, FOIA Request Number 2022-F-012 is ripe for judicial review.

Nonetheless, to avoid litigation that may be unnecessary if the DOS-OIG’s determination on FOIA Request Number 2022-F-012 is imminent (but without waiving Empower Oversight’s right to seek judicial review now or at any future time), Empower Oversight respectfully requests the DOS-OIG’s prompt response concerning its progress processing the FOIA request, as described above.

Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President

⁴⁷ Indeed, it cannot cite such authorization; it does not exist. Although the FOIA authorizes agencies to establish multi-track processing regimes, *see*, 5 U.S.C. § 552(a)(6)(D)(i), such authorization does not alter the “due diligence” requirement for the “exceptional circumstances” analysis under 5 U.S.C. § 552(a)(6)(C)(i). In other words, the FOIA’s authorization for multi-track processing regimes expressly contemplates that if processing under such regimes exceeds the 20- or 30-business day deadlines, then requesters can seek judicial review, but the reviewing court will consider whether the agency is diligently processing requests within the applicable track when determining whether to allow the agency additional time to complete its “review” of—not search for—records. *See*, 5 U.S.C. § 552(a)(6)(C)(i) and (D)(iii).

Exhibit 1

EMPOWER OVERSIGHT

Whistleblowers & Research



December 9, 2021

VIA ELECTRONIC TRANSMISSION: FOIA@StateOIG.Gov

FOIA Officer
Office of General Counsel
Office of Inspector General
U.S. Department of State
1700 North Moore Street
Suite 1400
Arlington, VA 22209

**RE: FREEDOM OF INFORMATION ACT REQUEST FOR RECORDS RELATED TO
DOS-OIG REVIEW OF ALLEGATIONS OF WHISTLEBLOWER RETALIATION
WITHIN USAGM**

Dear FOIA Officer:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Background

According to the Office of Personnel Management (“OPM”), the vast majority of Federal agencies use the Defense Counterintelligence and Security Agency—and previously used OPM’s National Background Investigations Bureau—to conduct background investigations of employees.¹ However, about 20 agencies or agency subcomponents—most of which are in the

¹ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation->

intelligence community—have their own designated authority to conduct background investigations and other security services.² At one time, the United States Agency for Global Media (“USAGM”) was one such agency subcomponent with delegated authority from OPM.³

However, for more than a decade OPM audits reported deficiencies in USAGM’s compliance with the conditions of its delegation from OPM.⁴ These unresolved findings culminated in an August 2019 OPM report that identified 37 “recommendations requiring corrective action and provided USAGM 90 days to bring all program areas into compliance.”⁵ OPM advised USAGM that its failure timely to achieve compliance could result in the revocation of its delegated authority.⁶

In February 2020, OPM conducted a follow-up review.⁷ It determined that USAGM had taken corrective action on only 18 of OPM’s 37 recommendations, but had failed to remedy 19 recommendations.⁸ OPM also made six new recommendations for accomplishing USAGM’s compliance with the conditions of its delegated authority, and advised USAGM that it would revoke its delegated authority “until such time as USAGM can demonstrate to OPM’s satisfaction that USAGM has taken all [required] corrective actions.”⁹

Among its findings, OPM determined that USAGM’s delegation to conduct and adjudicate background investigations had expired in 2012.¹⁰ OPM began reporting this failing to USAGM in September of 2015, to no avail.¹¹ Additionally, in connection with such background investigations, OPM found that USAGM had failed to follow the applicable OPM regulations, *i.e.*, 5 C.F.R. § 731.106(a) and 5 C.F.R. Part 1400, which required it to designate its various job categories as high, moderate, or low risk.¹² Such designations reflect what sort of background investigation is necessary and how closely to screen an individual for the job.¹³

[and-vetting-authorities/](https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf); see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 13, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

² *Id.*

³ *Id.*

⁴ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, pp. 2 – 3, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Ogrysko, Nicole, *In Rare Move, OPM Strips Broadcasting Agency of Background Investigation and Vetting Authorities*, (August 12, 2020), available at <https://federalnewsnetwork.com/workforce/2020/08/in-rare-move-opm-strips-broadcasting-agency-of-background-investigation-and-vetting-authorities/>; see also, OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹¹ OPM, *Suitability Executive Agent Programs, Follow-Up Review of the U.S. Agency for Global Media Suitability Program*, p. 14 – 15, (July 2020), available at <https://www.usagm.gov/wp-content/uploads/2020/08/OPM-SuitEA-July-2020.pdf>.

¹² *Id.*

¹³ *Id.*

Again, USAGM had been aware of its failure to designate its many job categories since at least September of 2015, but failed to properly remedy the deficiency.¹⁴

Further, over at least the last four years, the Department of State's Office of Inspector General ("DOS-OIG") has reported deficiencies with USAGM's contracting and grants management. With respect to contracting, the DOS-OIG has reported successful prosecutions of USAGM's Chief Strategy Officer for theft of more than \$40,000 in government funds in connection with a travel fraud scheme, and of a contracting officer who provided preferential treatment to a contractor in exchange for the contractor hiring a relative of the contracting officer to fill a "no-show" position.¹⁵ It also reported that two USAGM employees had converted government-purchased computers for their personal use and accepted gifts from a contractor, which improperly billed the government for \$31,142 in equipment expenses that were not within the scope of its contract.¹⁶

Regarding grants management, the DOS-OIG has consistently reported that the independent auditor reports concerning USAGM's fiscal year 2017 through 2020 annual financial statements have disclosed significant deficiencies in internal control over it monitoring grantees.¹⁷ Such independent auditor reports have also repeatedly disclosed instances of noncompliance with Federal grant regulations.¹⁸

Similarly, with respect to human resources issues, in 2019 the DOS-OIG reported a massive deficiency: USAGM senior managers were not enforcing Federal requirements to assess employee performance.¹⁹ Specifically, a DOS-OIG targeted inspection report disclosed:

...OIG found that USAGM senior managers did not enforce timely completion of performance reviews, as required by law. At the time of the inspection, only 67 percent of the agency's 1,454 Civil Service employees had received performance reviews for the most recent rating period (from May 1, 2017 to April 30, 2018). . .

OIG found that despite having performance management policies, procedures, and training to guide supervisors on their responsibilities, senior managers did not hold supervisors accountable for completing annual performance reviews within 60 days of the end of the rating period. Failure to provide timely performance reviews can harm employee development, morale, and overall organizational efficiency as well as prevent employees from receiving merited within-grade and quality salary step increases and promotions.²⁰

¹⁴ *Id.*

¹⁵ DOS-OIG, *Semiannual Report to the Congress, October 1, 2020, to March 31, 2021*, p. 39, available at https://www.stateoig.gov/system/files/spring_2021_semiannual_report_to_the_congress_0.pdf.

¹⁶ *Id.* at 37.

¹⁷ *Id.* at 36, 38.

¹⁸ *Id.*

¹⁹ DOS-OIG, *Targeted Inspection of the Governance of the United States Agency for Global Media*, p. 15, (April 2019), available at https://www.stateoig.gov/system/files/isp-ib-19-22_0.pdf.

²⁰ *Id.* (footnote omitted).

Additionally, stakeholders have criticized the USAGM’s (and its predecessor’s) efforts to ensure that the broadcasters that it regulate present an accurate, balanced, effective, and objective picture of America and its institutions, policies, and thoughts. For example, the charter of the Voice of America (“VOA”), one of the broadcasters under USAGM’s jurisdiction establishes three principles that govern the VOA’s broadcasting:

1. VOA will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.
2. VOA will represent America, not any single segment of American society, and will therefore present a balanced and comprehensive projection of significant American thought and institutions.
3. VOA will present the policies of the United States clearly and effectively, and will also present responsible discussions and opinion on these policies.²¹

The VOA and its affiliated broadcasters have a checkered history of complying with these principles. Almost a decade ago, during testimony before the House Foreign Affairs Committee, former Secretary of State Hillary Clinton described the Broadcasting Board of Governors—the predecessor of USAGM—as “practically defunct in terms of its capacity to tell a message around the world.”²² She went on to explain that USAGM’s predecessor was abdicating “the ideological arena...”; adding:

We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting [competing narratives] fill a void. We have to get in there and compete and we can do it successfully.²³

Further, as the broadcasters under the USAGM’s jurisdiction were abdicating the external ideological arena to the United States’ competitors, internally they meddled in domestic politics. In the midst of the 2020 Presidential election, USAGM leadership was alerted to a video that was posted on the VOA’s Urdu Service, which encouraged Muslims *in Michigan* to vote for the Biden-Harris Presidential ticket.²⁴ The VOA offered no context for the video, which USAGM’s then leader determined violated the VOA’s charter.²⁵

In June of 2020, a new Chief Executive Officer (“CEO”), Michael Pack (“CEO Pack”), was installed at USAGM. And, according to a USAGM press release, on his first day CEO Pack “effected a series of significant and long-overdue actions to keep assurances to restructure the

²¹ 22 U.S.C. § 6202(c) (emphasis added).

²² House Foreign Affairs Committee, Recording of Oversight Hearing Concerning the Broadcasting Board of Governors, Opening Statement of Chairman Ed Royce, minute mark 5:06, (June 26, 2013), available at <https://www.c-span.org/video/?313590-1/house-holds-oversight-hearing-voice-america>; see also, BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013).

²³ BBG-USAGM Watch, *Clinton – Broadcasting Board of Governors Is Practically Defunct* (January 23, 2013) (quoting former Secretary of State Clinton as saying, “Our Broadcasting Board of Governors is practically defunct in terms of its capacity to tell a message around the world. So we’re abdicating the ideological arena and we need to get back into it. We have the best values. We have the best narrative. Most people in the world just want to have a good decent life that is supported by a good decent job and raise their families and we’re letting the Jihadist narrative fill a void. We have to get in there and compete and we can do it successfully”).

²⁴ Pack, Michael, *The Death of Democracy* (November 15, 2021)(emphasis added), available at <https://www.washingtonexaminer.com/restoring-america/fairness-justice/the-death-of-democracy>.

²⁵ *Id.*

agency, fully in accordance with the law.”²⁶ Soon thereafter, USAGM announced that CEO Pack had “ordered a comprehensive investigation of USAGM operations” because he was concerned that “systemic, severe, and fundamental security failures, many of which have persisted for years,” “compromise the agency’s ability to fulfill its mission, undermine the efficiency and effectiveness of the federal workforce, and pose a threat to U.S. national security.”²⁷ Additionally, he publicly released OPM’s scathing report,²⁸ suspended the security clearances of six senior USAGM officials who had led the agency during the period in question, and placed the senior officials on administrative leave.²⁹

In further regard to USAGM’s suspension of the senior officials’ security clearances and placement of them on administrative leave, the Government Accountability Project (“GAP”)—an organization, which like Empower Oversight, advocates on behalf of whistleblowers—filed multiple whistleblower complaints with the U.S. Office of Special Counsel (“OSC”) alleging that CEO Pack and others at USAGM engaged in gross mismanagement; abused their authority; violated laws, rules, or regulations; and threatened public health and safety.³⁰ According to GAP, “OSC reviewed the allegations and, following its independent assessment, determined there was a substantial likelihood of wrongdoing” and “ordered [USAGM to investigate and] to provide a written response to OSC within 60 days for further evaluation.”³¹

On January 21, 2021, USAGM announced that the incoming Biden Administration had requested and accepted CEO Pack’s resignation.³² Additionally, President Biden designated Kelu Chao as Acting CEO of USAGM, pending the nomination, Senate confirmation, and appointment of a permanent CEO.³³ Soon thereafter, Acting CEO Chao is reported to have brought back five of the six senior USAGM officials whom CEO Pack reportedly had placed on administrative leave; the sixth official is reported to have opted to retire.³⁴

In further regard to the six senior USAGM officials whom CEO Pack reportedly placed on administrative leave after suspending their security clearances, on July 9, 2021, GAP reported that the DOS-OIG had concluded that:

²⁶ USAGM, *USAGM CEO Implements Critical Changes on Day One to Fulfill Legislative Mandate* (June 18, 2020), available at <https://www.usagm.gov/2020/06/18/usagm-ceo-implements-critical-changes-on-day-one-to-fulfill-legislative-mandate/>.

²⁷ USAGM, *USAGM CEO Pack Announces Investigation into Long-term Security Failures* (July 23, 2020), available at <https://www.usagm.gov/2020/07/23/usagm-ceo-pack-announces-investigation-into-long-term-security-failure/>.

²⁸ USAGM, *CEO Pack Releases OPM Report Detailing Long-Standing USAGM Security Failures* (August 4, 2020), available at <https://www.usagm.gov/2020/08/04/ceo-pack-releases-opm-report-detailing-long-standing-usagm-security-failures/>.

²⁹ Government Accountability Project (“GAP”), *Government Accountability Project Applauds U.S. Office of Counsel for Finding “Substantial Likelihood of Wrongdoing by Voice of America/U.S. Agency for Global Media Political Leadership* (December 2, 2020), available at <https://whistleblower.org/press-release/government-accountability-project-applauds-us-office-of-special-counsel-for-finding-substantial-likelihood-of-wrongdoing-by-voice-of-america-us-agency-for-global-media-political-leadership/>.

³⁰ *Id.*

³¹ *Id.*

³² USAGM, *Biden Administration Requests USAGM CEO Pack’s Resignation* (January 21, 2021), available at <https://www.usagm.gov/2021/01/21/biden-administration-requests-usagm-ceo-packs-resignation/>.

³³ *Id.*

³⁴ GAP, *US Government Media Whistleblowers Cleared of Wrongdoing* (July 9, 2021), available at <https://whistleblower.org/in-the-news/voice-of-america-us-government-media-whistleblowers-cleared-of-wrongdoing/>.

- The officials qualified as whistleblowers because they had raised concerns about CEO Pack’s actions;
- CEO Pack retaliated against the officials when he suspended their security clearances, a prerequisite for their positions; and
- CEO “Pack’s actions were ‘without a legitimate basis.’”³⁵

Empower Oversight has been unable to locate a copy of the DOS-OIG report that GAP referenced. The report does not appear to be published on the DOS-OIG’s website. However, the DOS-OIG’s semiannual reports for the period ending September 30, 2021 provides:

During the reporting period, OIG conducted six investigations under Presidential Policy Directive 19 regarding complaints that the security clearances of six USAGM employees were suspended in retaliation for whistleblowing activity. OIG substantiated that retaliation had occurred in all six cases and referred the cases to USAGM for remedial action.³⁶

Records Request

To shed light allegations of whistleblower retaliation within the USAGM from June 2020 through January 20, 2021, and the DOS-OIG’s response to such allegations, Empower Oversight respectfully requests, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552:

1. Copies of all reports of investigation prepared by DOS-OIG related to allegations—made between June 1, 2020, and January 21, 2021—of whistleblower retaliation within USAGM.
2. All records relating to communications between DOS-OIG personnel and Capitol Hill about Michael Pack, including emails to and from “@house.gov” or “@senate.gov” email addresses.
3. All records relating to communications between DOS-OIG personnel and USAGM personnel about Michael Pack, including emails to and from “@usagm.gov” email addresses.

Definitions

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or

³⁵ *Id.*

³⁶ DOS-OIG, *Semiannual Report to the Congress, April 1, 2021, to September 30, 2021*, p. 4, available at https://www.stateoig.gov/system/files/semiannual_report_to_congress_-_fall_2021_508.pdf.

neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The time period of the requested records is June 1, 2020, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”³⁷ and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

³⁷ As the Securities Exchange Commission recently conceded, with its issuances of ‘press releases’ describing its activities and findings, and its emails of research papers, FOIA updates, and news accounts of its activities to an address list more than 9,400 members of the press, Capitol Hill staff, and key thought leaders, Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA.

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations and activities of USAGM and DOS-OIG. Specifically, the public has a significant interest in understanding CEO Pack's efforts to reform long-reported deficiencies within USAGM's operations, the reactions of USAGM senior managers to such efforts, and the DOS-OIG's response to any allegations of whistleblower retaliation that may have arisen.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the DOJ's practices will be disclosed publicly via its website, and shared copies with other news media for public dissemination.³⁸

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format.

Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President

³⁸ "Mission," Empower Oversight (<http://empowr.us/mission>).

Exhibit 2



Office of Inspector General
United States Department of State

December 16, 2021

SENT VIA EMAIL TO: bsaddler@empowr.us

Mr. Bryan Saddler
Empower Oversight Whistleblowers & Research
601 King Street
Suite 200
Alexandria, VA 22314-3151

Subject: OIG Freedom of Information Act Request No. 2022-F-012 –
Acknowledgement Letter

Dear Mr. Saddler:

This letter acknowledges receipt of your Freedom of Information Act or Privacy Act (FOIA/PA) request to the Department of State (DOS) Office of Inspector General (OIG), dated December 9, 2021. You requested investigations of alleged whistleblower retaliation within the United States Agency for Global Media. Specifically, you requested the following:

- 1) Copies of all reports of investigation prepared by DOS-OIG related to allegations—made between June 1, 2020, and January 21, 2021—of whistleblower retaliation within USAGM;
- 2) All records relating to communications between DOS-OIG personnel and Capitol Hill about Michael Pack, including emails to and from “@house.gov” or “@senate.gov” email addresses;
- 3) All records relating to communications between DOS-OIG personnel and USAGM personnel about Michael Pack, including emails to and from “@usagm.gov” email addresses.

DOS-OIG received your request on December 9, 2021, and assigned it the above-referenced tracking number.

Although DOS-OIG’s goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period under 5 U.S.C. § 552(a)(6)(B) for unusual circumstances. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DOS-OIG hereby invokes this 10-day extension for your request, and estimates a response to your request to be provided within 30 business days. Please note, however, that the actual time required to respond to your request depends on how many responsive records and the types of records identified and located in our records search.



Office of Inspector General
United States Department of State

Unfortunately, we cannot predict exactly when your request will be processed as we currently have a backlog of requests. If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Fee Waiver

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

Should you have questions please contact us at foia@stateoig.gov and provide the above-referenced tracking number.

Sincerely,

/s/ Gina Goldblatt

Gina Goldblatt
Government Information Specialist