

# EMPOWER OVERSIGHT

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*Whistleblowers & Research*



February 23, 2024

**VIA DOJ AND FBI ELECTRONIC PORTALS**

FOIA Public Liaison Stephanie Logan  
U.S. Department of Justice  
Civil Division  
1100 L Street, NW  
Washington, DC 20035

Section Chief Michael Seidel  
Record/Information Dissemination Section  
Information Management Division  
Federal Bureau of Investigation  
200 Constitution Drive  
Winchester, VA 22602

**RE: Request for Records Pursuant to the Freedom of Information Act, 5  
U.S.C. § 552**

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**

Empower Oversight represents Mr. Marcus Allen, a suspended employee of the Federal Bureau of Investigation (“FBI”). As discussed in greater detail in a previous Freedom of Information Act (“FOIA”) request, the FBI suspended Mr. Allen’s security clearance in reprisal

for protected whistleblowing.<sup>1</sup> After suspending his clearance, the FBI suspended him indefinitely without pay. During this suspension without pay, the FBI has made other unlawful decisions that aggravate Mr. Allen's financial distress by depriving him of other sources of income. The crux of the FBI's unlawful actions to interfere with Mr. Allen's ability to obtain another income is that—although the FBI has suspended Mr. Allen from all duties for *two years* and has stated its intention to revoke his clearance and never return him to a duty status—it simultaneously claims that he remains an “employee” subject to various FBI restrictions and approvals necessary for outside income. The FBI's claim is plainly contrary to the statutory definition of a federal employee. The law defines a federal employee as someone who, among other things, is “*engaged in the performance of a Federal function under authority of law or an Executive act; and...subject to the supervision of an individual...while engaged in the performance of the duties of his position.*” 5 U.S.C. § 2105(a)(2),(3).

In defiance of this statutory definition, the FBI baldly asserts the authority to require Mr. Allen to obtain permission from the FBI before accepting outside employment. When he asked for such permission, the FBI unreasonably delayed responding to Mr. Allen's good faith request for permission, causing him to lose an opportunity to mitigate the loss of his FBI income and causing him significant financial harm.

The FBI also claims that, despite the statutory definition of an employee, Mr. Allen and his family are not allowed to accept charitable contributions solicited by others to assist them in their time of need, causing them significant financial harm.

On November 1, 2023, counsel for Mr. Allen asked FBI Office of Integrity and Compliance (“OIC”) Ethics and Integrity Unit Chief Kevin Chenail for the FBI's position on allowing Mr. Allen's family to accept charitable contributions solicited by others without his knowledge or acquiescence. Following a month with no reply, counsel reiterated and escalated the request. The FBI responded on December 8, 2023, referencing various general guidelines and prohibitions regarding gifts to federal employees that failed to address the specific questions raised in Mr. Allen's circumstances. Counsel for Mr. Allen and the FBI then exchanged a series of emails through December 21, 2023 seeking clarity on the FBI's position.

On December 18, 2023, counsel for Mr. Allen wrote:

We note that Mr. Allen has declined to cash a check written to him by the creator of the fundraiser for many months while seeking legal advice and trying to understand whether and how accepting the funds might impact his ability to continue to challenge the FBI's baseless and retaliatory suspension. Instead, he and his family have been living on early withdrawals from their retirement plans while the FBI delayed meeting its obligations to provide his clearance revocation file for four months and dithered on responding to requests to approve outside income until it was too late.

\* \* \*

As we have argued, the limits are not binding in these circumstances in our view because the FBI—for all relevant purposes—wrongfully ended Mr. Allen's employment when it suspended him without pay and with no duties in February 2022. We only requested guidance to seek clarity on the FBI's view in good faith. 5. U.S.C. 2105 defines an employee as “...an individual who is engaged in the performance of a Federal function under authority of law...” The FBI has

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<sup>1</sup> The previous FOIA request with the full background is available here. [https://empowr.us/wp-content/uploads/2024/02/2024-02-12-TL-to-DOJ-FOIA-MA-Outside-Employment-Emails\\_Redacted.pdf](https://empowr.us/wp-content/uploads/2024/02/2024-02-12-TL-to-DOJ-FOIA-MA-Outside-Employment-Emails_Redacted.pdf).

prohibited Mr. Allen from performing any duties for nearly two years and there is no reasonable prospect that will change given the Bureau's Kafkaesque procedures for internal appeals, which impose time limits and procedural obligations on employees suspended without pay but which provide no constraints on the FBI's own interminable delays. Functionally, there is no difference between a terminated employee and an employee in Mr. Allen's position other than a technical entry in the FBI's files—and the FBI's desire to continue punishing him for making protected disclosures.

In response the FBI asserted on December 20, 2023, "Given that Mr. Allen is an FBI employee, he is subject to the Standards of Ethical Conduct as issued by the Office of Government Ethics (OGE)," and on December 21, 2023, "we are consulting with the Departmental Ethics Office (DEO) and the Office of Government Ethics (OGE) and will reach out when we have further information to share."

On January 25, 2024, the FBI provided a final response to Mr. Allen's request. The FBI notified him that the Departmental Ethics Office agreed with the FBI's prior guidance, that Mr. Allen's family was not allowed to accept the charitable contributions for their necessary personal expenses and claimed that "Mr. Allen remains an employee....."

Neither the FBI nor the Departmental Ethics Office explained how Mr. Allen could remain an employee when he is suspended from FBI duties and is not being paid by the FBI.

## **RECORDS REQUEST**

In order to shed light on possible FBI and DOJ wrongdoing as well as law enforcement policy, specifically the FBI and DOJ's handling of requests from the families of individuals who have been suspended from duty without pay to accept charitable contributions, which causes substantial further financial distress, Empower Oversight requests the following records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552:

1. All records in the custody of any FBI employee or official ranked as a GS-14 or higher, or an appointee, or any agent or immediate staff of any such person, created in the past two (2) years, regarding the FBI's position or policy regarding charitable contributions and individuals on unpaid suspension.
2. Records of any communications, during the period from May 11, 2023 through the present, by or with any FBI Office of Integrity and Compliance personnel including, but not limited to, Catherine Bruno, Betty DeVall, Kevin Chenail, and Margaret Davis, discussing Marcus Allen and charitable contributions.
3. Records of any communications, during the period from October 31, 2023 through the present, by or with any DOJ Civil Division personnel including, but not limited to, Sarah Suwanda and Christopher Hall, discussing Marcus Allen and charitable contributions.

**Mr. Allen has executed a Form DOJ-361 authorizing the release of information to Empower Oversight, which is attached as Exhibit A.**

## **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, Slack 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 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.

“INCLUDING” means comprising part of, but not being limited to, the whole.

### **INSTRUCTIONS**

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 [REDACTED] by e-mail at [REDACTED].

### **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” 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).

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.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public's understanding of the Department's handling of allegations that it or its employees was negligent or engaged in wrongdoing.

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 subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

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 do not hesitate to contact me with any questions.

Cordially,

[/Tristan Leavitt/](#)  
Tristan Leavitt  
President