

EMPOWER OVERSIGHT

Whistleblowers & Research



June 20, 2024

VIA ONLINE PORTAL

Director Bobak Talebian
Office of Information Policy
U.S. Department of Justice
441 G Street, NW, Sixth Floor
Washington, DC 20530

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

RE: FOIA REQUEST FOR RECORDS RELATING TO THE FBI'S LEAKING OF WHISTLEBLOWER INFORMATION

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. It works to help 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.

BACKGROUND

Beginning in the spring of 2022, House Judiciary Committee Ranking Member Jim Jordan wrote a series of letters to Federal Bureau of Investigation (“FBI”) Director Christopher Wray and Attorney General Merrick Garland regarding whistleblower allegations that the FBI had become increasingly politicized and was improperly suspending the security clearances of its employees either because of their whistleblower disclosures or simply because their views deviated from those of FBI leadership.¹ Empower Oversight represents several of the whistleblowers cited in Jordan’s letters.

¹ See, e.g., letter from Jim Jordan to Christopher A. Wray, May 6, 2022, available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/legacy_files/wp-content/uploads/2022/05/2022-05-06-JDJ-Letter-to-Wray-re-WB-disclosures_Redacted.pdf; letter from Jim Jordan to Christopher A. Wray, June 7, 2022, available at https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/2022-06/2022-06-07-JDJ-follow-up-letter-to-Wray-re-WB-disclosures_Redacted.pdf; letter from Jim Jordan to Christopher A. Wray, Sept. 19, 2022, available at

Based on the public record, it appears the FBI and Department of Justice (“DOJ”) provided limited responses at best to Ranking Member Jordan’s letters. On November 2, 2022, Jordan wrote in a letter to Director Wray: “Committee Republicans have sent you letters requesting documents and information on several matters To date, the FBI has not sufficiently responded to any of our specific requests for documents or information.”²

As Ranking Member, Jordan obviously could not issue a subpoena to compel a response from the FBI. Yet one additional reason the FBI and DOJ presumably failed to respond to Ranking Member Jordan’s requests is that DOJ has long maintained the Privacy Act prohibits it from providing information to individual congressional offices or minority staff on congressional committees.³ While we disagree that anything at all in the Privacy Act prohibits an agency from unilaterally providing information to both majority and minority staff on a committee, we agree that it certainly requires that if information is provided to the minority staff it must also be provided to the majority.

On June 6, 2024, oversight nonprofit Judicial Watch announced DOJ had produced 54 pages of records in a Freedom of Information Act (“FOIA”) lawsuit that showed the FBI Office of Congressional Affairs provided a staffer in an individual congressional office with information on the FBI whistleblowers who testified alongside me at a May 18, 2023, hearing of the House Select Subcommittee on the Weaponization of the Federal Government.⁴

The records show that on May 9, 2023, a supervisory special agent in the FBI’s Office of Congressional Affairs emailed a senior staffer to Representative Daniel Goldman, a member of the Judiciary Committee: “I was disappointed I didn’t get the opportunity to meet you during our trip to Quantico I would like to know what issues Rep. Goldman and your office are interested in to see if there is any way I can assist in those areas. Additionally, based on my

<https://x.com/JudiciaryGOP/status/1572020677087236096>; letter from Jim Jordan to Jennifer Leigh Moore, Sept. 29, 2022, available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-01-27-jdj-to-moore-re-follow-up.pdf>

² Letter from Jim Jordan to Christopher A. Wray, Nov. 2, 2022, available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-01-17-jdj-to-wray-fbi-outstanding-requests.pdf>.

³ U.S. Department of Justice, Office of Legal Counsel, *Application of Privacy Act Congressional-Disclosure Exception to Disclosures to Ranking Minority Members*, Dec. 5, 2001, available at <https://www.justice.gov/file/146001-0/dl?inline>.

Notwithstanding the Office of Legal Counsel’s flawed interpretation, the Privacy Act’s congressional exception (5 U.S.C. § 552a(b)) clearly only bases its restrictions on who the information is *provided to* rather than who it is *requested by*:

Conditions of Disclosure.—No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

* * *

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee[.]

⁴ Press Release, Judicial Watch, Records Show FBI Provided Democrats with Information on Whistleblowers Who Testified at May 2023 Weaponization Hearing (June 6, 2024), <https://www.judicialwatch.org/information-on-whistleblowers>; see also *Hearing on the Weaponization of the Federal Government: Hearing Before the H. Sel. Comm. on the Weaponization of the Fed. Gov’t*, 118th Cong., <https://judiciary.house.gov/committee-activity/hearings/hearing-weaponization-federal-government-2>.

background, I think I may be able to provide insight or answer some questions about issues that do not require senior FBI leadership briefings or hearings.”

One week later, on May 16, 2023, a staff member for Representative Goldman emailed the FBI’s Office of Congressional Affairs with the subject line, “Weaponization Hearing on Thursday”: “I have a few questions about some of the witnesses.” Records show the staff member coordinated to speak with the FBI OCA official on May 17. Additionally, on May 23, the staff member emailed the OCA official: “We spoke last week before the Weaponization hearing on Thursday. Thanks again for sending over those documents. They were very helpful to the Congressman.”

DOJ failed to produce the documents the FBI OCA official “sen[t] over” to Representative Goldman’s staffer. However, if the documents included Privacy Act-protected information about any of the FBI whistleblowers and were not also produced to the majority staff, the FBI’s disclosure to Representative Goldman’s office would clearly constitute a violation of the Privacy Act.

RECORDS REQUEST

On May 18, 2023, Empower Oversight submitted its own FOIA request to DOJ for records related to Ranking Member Nadler’s chief oversight counsel, including any communications she may have had about our clients while at DOJ—or with DOJ while at the House Judiciary Committee. To date, the FBI has neither produced responsive records nor certified that none exist.

The public has a strong interest in learning about any attempts to retaliate against FBI whistleblowers by smearing them or releasing their Privacy Act-protected information. Thus, Empower Oversight requests the following records pursuant to FOIA, 5 U.S.C. § 552, listed in order of priority:

- 1) The records the FBI provided to Representative Goldman counsel [REDACTED] on May 17 or 18.
- 2) All records of communications between any DOJ official or employee, including any employees with the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of Legislative Affairs, or Office of Public Affairs, and any of the following congressional staff members between January 1, 2023, and June 7, 2023:

- a. [REDACTED];
- b. [REDACTED];
- c. [REDACTED];
- d. [REDACTED];
- e. [REDACTED];
- f. [REDACTED];
- g. [REDACTED];
- h. [REDACTED];
- i. [REDACTED];
- j. [REDACTED];
- k. [REDACTED];
- l. [REDACTED];
- m. [REDACTED];
- n. [REDACTED];
- o. [REDACTED];

p. [REDACTED];
q. [REDACTED];
r. [REDACTED];
s. [REDACTED];
t. [REDACTED];
u. [REDACTED];
v. [REDACTED];
w. [REDACTED];
x. [REDACTED];
y. [REDACTED];
z. [REDACTED];
aa. [REDACTED];
bb. [REDACTED];
cc. [REDACTED];
dd. [REDACTED];
ee. [REDACTED];
ff. [REDACTED];
gg. [REDACTED];
hh. [REDACTED];
ii. [REDACTED]; and
jj. [REDACTED].

3) All records of communications between any DOJ official or employee, including any employees with the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of Legislative Affairs, or Office of Public Affairs, and any of the following congressional staff members between January 1, 2023, and June 7, 2023:

a. [REDACTED];
b. [REDACTED];
c. [REDACTED];
d. [REDACTED];
e. [REDACTED];
f. [REDACTED];
g. [REDACTED];
h. [REDACTED];
i. [REDACTED];
j. [REDACTED];
k. [REDACTED];
l. [REDACTED];
m. [REDACTED];
n. [REDACTED];
o. [REDACTED];
p. [REDACTED];
q. [REDACTED];
r. [REDACTED];
s. [REDACTED];
t. [REDACTED];
u. [REDACTED];
v. [REDACTED];
w. [REDACTED];
x. [REDACTED];
y. [REDACTED];
z. [REDACTED].

- aa. [REDACTED];
- bb. [REDACTED];
- cc. [REDACTED];
- dd. [REDACTED];
- ee. [REDACTED];
- ff. [REDACTED];
- gg. [REDACTED];
- hh. [REDACTED];
- ii. [REDACTED]; and
- jj. [REDACTED].

- 4) All records of communications by or with any FBI personnel between April 26, 2022, and June 7, 2023, with any of the following key words or phrases:
 - a. "Gloss";
 - b. "O'Boyle";
 - c. "Marcus" within two words of "Allen";
 - d. "Friend" within two words of "Steve";
 - e. "politicization";
 - f. "weaponization";
 - g. "security clearance" within 25 words of "FBI";
 - h. "Jennifer" within three words of "Moore"; and
 - i. "Jordan" within two words of "Jim."

- 5) All records of communications by or with any DOJ official or employee, including any employees with the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of Legislative Affairs, or Office of Public Affairs, between April 26, 2022, and June 7, 2023, with any of the following key words or phrases:
 - a. "Gloss";
 - b. "O'Boyle";
 - c. "Marcus" within two words of "Allen";
 - d. "Friend" within two words of "Steve";
 - e. "politicization";
 - f. "weaponization";
 - g. "security clearance" within 25 words of "FBI";
 - h. "Jennifer" within three words of "Moore"; and
 - i. "Jordan" within two words of "Jim."

- 6) All records of communications between any FBI personnel, including any employees with the Office of Congressional Affairs, and any member of the House Select Subcommittee on the Weaponization of the Federal Government, any staff member for the Subcommittee, or any staff member for any Subcommittee member between January 1, 2023, and June 7, 2023.

- 7) All records of communications between any DOJ official or employee, including any employees with the Office of the Attorney General, Office of the Deputy Attorney General, Office of the Associate Attorney General, Office of Legislative Affairs, or Office of Public Affairs, and any member of the House Select Subcommittee on the Weaponization of the Federal Government, any staff member for the Subcommittee, or any staff member for any Subcommittee member between January 1, 2023, and June 7, 2023.

These items should be processed in the order that they are listed.

The members of the House Select Subcommittee on the Weaponization of the Federal Government can be found at <https://judiciary.house.gov/subcommittees/committee-judiciary/select-subcommittee-weaponization-federal-government>.

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 Rachael Soloway 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