

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SOUTHEASTERN LEGAL)	
FOUNDATION, INC.,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	FILE NO. _____
)	
NATIONAL ARCHIVES AND)	
RECORDS ADMINISTRATION,)	
)	
)	
Defendant.)	

COMPLAINT

Plaintiff Southeastern Legal Foundation, Inc. (SLF), for its Complaint against Defendant National Archives and Records Administration (NARA), states as follows:

INTRODUCTION

1. The Freedom of Information Act (FOIA), 5 U.S.C. § 552, enacted in 1966, provides the public with a right of access to federal agency records.
2. The people must know what the government is doing. “Open government has been recognized as the best insurance that government is being

conducted in the public interest.”¹ The Supreme Court has recognized that FOIA is “needed to check against corruption and to hold governors accountable to the governed.”²

3. This is an action brought under FOIA to compel Defendant to produce records responsive to an outstanding FOIA request submitted to Defendant on June 9, 2022.

4. In its FOIA request, SLF sought copies of all emails President Joe Biden preserved through NARA from his time as vice president for the following email addresses: robinware456@gmail.com, JRBWare@gmail.com, and Robert.L.Peters@pci.gov.

5. Stories in JustTheNews.com and the New York Post, a letter from Sens. Ron Johnson and Chuck Grassley, and another letter from Rep. James Comer, Chairman of the House Committee on Oversight and Accountability, identify these three email addresses as having been used by Joe Biden when he was vice president to transmit official government information to his son, Hunter Biden, and to receive official government information from his vice-presidential staff.

¹ *Am. Fed’n of Gov’t Emp.’s v. Rosen*, 418 F. Supp. 205, 207 (N.D. Ill. 1976).

² *News-Press v. U.S. Dep’t of Homeland Sec.*, 489 F.3d 1173, 1190 (11th Cir. 2007) (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)).

6. More than 14 months have elapsed since Defendant received SLF's FOIA request. Defendant has verified that approximately 5,138 responsive records exist, yet Defendant has failed to produce even a single document in response.

7. Accordingly, SLF files this lawsuit to compel Defendant to comply with FOIA.

THE PARTIES

8. Plaintiff Southeastern Legal Foundation is a national nonprofit, public interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF's programs include analysis, publication, and education on public transparency laws.

9. Defendant National Archives and Records Administration is a federal agency headquartered in Washington, D.C. By its own admission, Defendant has possession, custody, and control of the records to which SLF seeks access.

JURISDICTION AND VENUE

10. SLF brings this lawsuit pursuant to FOIA. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28

U.S.C. § 1331, because the resolution of disputes under FOIA presents a federal question.

11. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B), because this action is brought in the Northern District of Georgia where SLF has its principal place of business, and pursuant to 28 U.S.C. § 1391(e), because a substantial part of the events or omissions giving rise to the claim occurred in the Northern District of Georgia.

FACTUAL BACKGROUND

12. In an email dated June 9, 2022, SLF submitted a FOIA to Defendant (FOIA Request).

13. A true and correct copy of the June 9, 2022, FOIA Request is attached to this Complaint as Exhibit 1.

14. In the FOIA Request, SLF sought the following records:

- (a) Copies of all emails President Joe Biden preserved through the National Archives and Records Administration from his time as vice-president for the following email addresses:

robinware456@gmail.com

JRBWare@gmail.com

Robert.L.Peters@pci.gov

- (b) Copies of all emails to and from the above three emails addresses that are preserved or possessed by NARA; and
- (c) Any correspondence between Joe Biden and/or his legal or government representatives concerning the use of these emails and preservation of records from them from January 1, 2009, through the present.

(Exhibit 1 at 1.)

15. SLF sought a waiver of search, review, and reproduction fees pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), because the information sought is in the public interest, is likely to contribute to public understanding of the operations and activities of government, and because SLF has no commercial interest in the information. (Id. at 1-3.)

16. SLF also requested expedited processing of the FOIA Request under FOIA's compelling need provisions because the requested documents "provide compelling and urgent materials that will inform the public concerning actual or alleged federal government activity and possible wrongdoing." (Id. at 3.)

17. Finally, SLF requested that production of responsive documents be made electronically. (Id.)

18. On June 22, 2022, Defendant responded to the FOIA Request by email, stating that it had assigned the FOIA Request tracking number NGC22-596.

19. A true and correct copy of the June 22, 2022, NARA response is attached to this Complaint as Exhibit 2.

20. In addition, Defendant wrote:

After conducting a search of our email system using the emails you provided, we were unable to locate any records responsive to your request. We also searched for any records relating to the preservation of records from the email addresses and were unable to locate any records. Since we do not have records responsive to your request, your request for a fee waiver is moot.

(Exhibit 2 at 1.)

21. Defendant's response also informed SLF that the FOIA Request "was also referred to the Archival Operations Division (LA) at our Washington DC facility for any records they may have within the records of the Vice President relating to your request." (Id.)

22. On June 24, 2022, Defendant's Archival Operations Division (AOD) responded to the FOIA Request in two emails.

23. A true and correct copy of the first AOD email from June 24, 2022, is attached to this Complaint as Exhibit 3.

24. The first AOD email provided a tracking number, 2022-0113-F, and denied SLF's request for expedited processing. (Exhibit 3 at 1.)

25. A true and correct copy of the second AOD email from June 24, 2022, is attached to this Complaint as Exhibit 4.

26. In the second AOD email on June 24, 2022, Defendant stated:

We have performed a search of our collection for Vice Presidential records related to your request and have identified approximately 5,138 email messages, 25 electronic files and 200 pages of potentially responsive records that must be processed in order to respond to your request. Please keep in mind that these totals are an estimate and that all material processed may not be applicable to your specific topic.

The staff of the Archival Operations Division is currently processing and reviewing FOIA requests that precede your request. To treat everyone equitably, we have placed your request in our Complex queue by the date it was received in our office.

FOIA requests are processed and reviewed for access under provisions of the PRA and FOIA and are subject to the provisions of NARA regulations at 36 C.F.R. § 1270.46, which require that we notify the representatives of the former President and the incumbent President and the former Vice President prior to the release of any Vice Presidential records.³ Also, it should be noted that documents processed in response to your request may be closed in whole or part in compliance with applicable PRA restrictions and FOIA exemptions.

When processing is complete and the notification period has passed, we will inform you of the availability of the requested records. At that point, you may request copies of these records at a reproduction fee of \$0.80 per page, or you can choose to view these documents in the

³ The referenced NARA regulations effectively add at least 60 days before responsive records are produced, even if the President does not assert a constitutionally based claim of privilege against disclosure. 36 C.F.R. 1270.48(a)-(b). If the President asserts a privilege claim, the Archivist does not disclose the records unless a court of competent jurisdiction directs the Archivist to release the record through a final court order that is not subject to appeal. *Id.* 1270.48(f)(2).

research room in the National Archives Building where a self-service copier is available for the price of \$0.25 a page.

(Exhibit 4 at 1-2.)

27. On November 25, 2022, SLF emailed Defendant requesting the status of the FOIA Request because SLF had heard nothing further from Defendant for more than five (5) months.

28. A true and correct copy of the November 25, 2022, status request is attached to this Complaint as Exhibit 5.

29. On December 5, 2022, Defendant responded through AOD in an email.

30. A true and correct copy of the December 5, 2022, AOD response is attached to this Complaint as Exhibit 6.

31. In the response of December 5, 2022, Defendant stated as follows:

As our June 24, 2022 letter stated, your request is in our Complex queue. We are currently processing and reviewing FOIA requests that precede your request. There are 28 FOIA requests in this queue that we received prior to your request. We will let you know as soon as processing is complete and the notification period has passed.

(Id.)

32. On June 16, 2023, SLF emailed Defendant again requesting the status of the FOIA Request because SLF had heard nothing further from Defendant for more than six additional months and because the FOIA Request was now more than a year old.

33. A true and correct copy of the June 16, 2023, status request is attached to this Complaint as Exhibit 7.

34. SLF's June 16, 2023, status request noted that, "On December 5, 2022, you last updated us telling us that 28 requests took precedence over ours. We have received no further updates and no responsive documents." (Exhibit 7.)

35. The same day, Defendant responded by email.

36. A true and correct copy of the June 16, 2023, response is attached to this Complaint as Exhibit 8.

37. In the response of June 16, 2023, Defendant stated as follows:

Thank you for following up with our office. We are still processing and reviewing FOIA requests that precede your request. The 28 complex FOIA requests in our queue that we received prior to your request include a significant volume of unprocessed records. We are happy to work with you to refine the scope of your request which could move you to a faster queue.

(Exhibit 8.)

38. As of the filing date of this Complaint, Defendant has not produced any documents.

39. As of the filing date of this Complaint, Defendant has failed to notify SLF of the scope of any responsive records Defendant intends to produce or withhold.

40. As of the filing date of this Complaint, Defendant has never provided an estimate of when its processing of the documents responsive to the FOIA Request will be completed.

41. As of the filing date of this Complaint, Defendant has never sought a ten (10) day extension in which to make the documents promptly available.

42. As of the filing date of this Complaint, Defendant has never said that any of the responsive documents are lawfully exempt from production.

43. As of the filing date of this Complaint, more than fourteen (14) months have now elapsed since Defendant received the FOIA Request on June 9, 2022.

44. Under 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to its FOIA Request.

45. Defendant's admission that it has made no progress on any of the 28 requests in the queue ahead of SLF's Request demonstrates that it is not meeting its obligations under FOIA and that this Court's intervention is necessary to preserve the disclosure purposes of the Act.

46. More than 430 days have passed since Defendant acknowledged receipt of the FOIA request on June 22, 2022. Defendant has failed to meet the statutory requirement to make the records promptly available. Defendant is therefore in

violation of FOIA. *See also* 5 U.S.C. § 552(a)(6)(B)(I) (allowing Defendant to request a ten (10) day extension).

47. Accordingly, SLF files this lawsuit to compel Defendant to comply with FOIA.

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

48. SLF realleges and incorporate all preceding allegations as if fully stated herein.

49. FOIA requires agencies subject to FOIA to make access to all “records promptly available to any person,” subject to certain exceptions. 5 U.S.C. § 552(a)(3)(A).

50. Defendant is an agency subject to FOIA under 5 U.S.C. § 552.

51. SLF’s FOIA Request properly seeks records within the possession, custody, and/or control of Defendant under FOIA, and the FOIA request complied with all applicable regulations regarding the submission of FOIA requests. Defendant’s June 22 and June 24, 2022, emails to SLF are admissions of SLF’s compliance.

52. Defendant is in violation of FOIA by failing and/or refusing to produce all non-exempt records responsive to the request.

53. SLF is being irreparably harmed by Defendant's violation of the FOIA and will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA.

54. Pursuant to 5 U.S.C. § 552(a)(6)(C)(i), SLF is deemed to have exhausted its administrative remedies with respect to the FOIA Request because Defendant was required to make responsive records promptly available and has failed to do so.

PRAYER FOR RELIEF

WHEREFORE, SLF respectfully requests the Court to grant the following relief:

55. Enter an immediate order directing Defendant to preserve all records potentially responsive to the FOIA Request, and prohibiting Defendant, its employees, agents, or representatives from transporting, concealing, removing, destroying, or in any way tampering with records potentially responsive to said Request;

56. Enter an order declaring that Defendant has violated FOIA and that SLF is entitled to a true, accurate, and complete response to its FOIA Request;

57. Enter an order directing Defendant to conduct searches for all records responsive to the FOIA Request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the FOIA Request;

58. Enter an order directing Defendant to produce, by a certain date, all non-exempt records responsive to the requests and a *Vaughn* index of any responsive records withheld under claim of exemption;

59. Enter an order enjoining Defendant from continuing to withhold all non-exempt records responsive to the FOIA Request;

60. Award reasonable attorney fees, costs, and expenses pursuant to 5 U.S.C. 552(a)(4)(E); and,

61. Grant all other relief as this Court deems just and proper.

Respectfully submitted this 28th day of August, 2023.

Respectfully submitted,

By: /s/ Kimberly S. Hermann
Kimberly S. Hermann
Georgia Bar No. 646473
Braden H. Boucek
Georgia Bar No. 396831
Tennessee Bar No. 021399
David J. Myers
Georgia Bar No. 533072
Idaho Bar No. 6528
Southeastern Legal Foundation
560 W. Crossville Road, Suite 104
Roswell, Georgia 30075
(770) 977-2131
(770) 977-2134 (Fax)

Attorneys for Plaintiff

EXHIBIT 1. JUNE 9, 2022, FOIA REQUEST

From: Kimberly Hermann
Sent: Thursday, June 9, 2022 10:18 AM
To: Presidential Materials Division <Presidential.Materials@nara.gov>; foia@nara.gov
Cc: Cece O'Leary <coleary@southeasternlegal.org>
Subject: FOIA Request

Dear FOIA Officer:

This email constitutes a request under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Request

This email constitutes a request under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. Pursuant to the FOIA, I am seeking copies of all emails President Joe Biden preserved through the National Archives and Records Administration from his time as vice president for the following email addresses: robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov. Stories in JustTheNews.com and the New York Post as well as a letter from Sens. Ron Johnson and Chuck Grassley identify these three email addresses as having been used by Joe Biden when he was vice president to transmit to his son and receive from his vice presidential staff official government information. Some examples are attached.

As you know, government officials have an obligation to preserve all government records whether transmitted on official government email servers or private email accounts. This FOIA request copies of all emails to and from the above three emails addresses that are preserved or possessed by NARA as well as any correspondence between Joe Biden and/or his legal or government representatives concerning the use of these emails and preservation of records from them from Jan. 1, 2009 through present.

Fee Waiver Request

The Southeastern Legal Foundation is a 501 c 3 public interest law firm representing John Solomon, a full-time professional journalist employed by Just the News.com. As such we collectively request a public interest fee waiver. We are willing to pay up to \$100 to process my request. Please inform me if the fees will exceed that amount before proceeding.

Further, SLF makes this request for records pursuant to Freedom of Information Act, 5 U.S.C. § 552, *et seq.* Accordingly, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), SLF requests that the agency furnish the records without charge. While a court is ultimately not required to defer to an agency's interpretation of the FOIA, in anticipation of a request for additional information, we have organized our fee waiver justification to coincide with the six factors listed in the 1987 fee waiver policy guide memorandum by then-Assistant Attorney General Stephen J. Markman to determine whether disclosure is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Disclosure is in the public interest.

The first factor is satisfied because the subject of the request concerns identifiable operations or activities of then-vice president Joe Biden and his use of private emails to transmit to his son, Hunter Biden, official government information. We are requesting one email exchange. The communication between State Department official George Kent and U.S. Ambassador Marie Yovanovitch most certainly involves a discreet and identifiable activity of the State Department.

I am seeking copies of all emails President Joe Biden preserved through the National Archives and Records Administration from his time as vice president for the following email addresses: robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov. Stories in JustTheNews.com and the New York Post as well as a letter from Sens. Ron Johnson and Chuck Grassley identify these three email addresses as having been used by Joe Biden when he was vice president to transmit to his son and receive from his vice presidential staff official government information. Some examples are attached.

As you know, government officials have an obligation to preserve all government records whether transmitted on official government email servers or private email accounts. This FOIA request copies of all emails to and from the above three emails addresses that are preserved or possessed by NARA as well as any correspondence between Joe Biden and/or his legal or government representatives concerning the use of these emails and preservation of records from them from Jan. 1, 2009 through present.

The second factor is satisfied because the requested records have significant informative value into the operations and activities of then-vice president Joe Biden and information he provided his son regarding official government business. . Two years after leaving office, Joe Biden couldn't resist the temptation to brag to an audience of foreign policy specialists about the time as vice president that he strong-armed Ukraine into firing its top prosecutor. His threat was so severe that Ukraine would have lost \$1 billion in U.S. loan guarantees sending Ukraine toward insolvency. So the question is – why? Why did Joe Biden demand the immediate firing of Prosecutor General Viktor Shokin? And what did the State Department know about Hunter Biden's dealings in Ukraine and Ukraine's investigations into those business dealings? The American public deserves answers.

The third factor is satisfied because the requested records will contribute to "public understanding" because SLF will disseminate the requested information to the largest audience possible by disseminating it through the following various mediums: 1) its publicly available website (www.slfliberty.org) which combined receive nearly one million hits per year; 2) its regular mailings (averaging one mailing per week for a total of approximately three million per year) to interested parties providing educational information on the operations and activities of the FBI; 3) its bi-annual or quarterly newsletters to interested parties, totaling approximately ten to twenty thousand per year, also providing educational information on the operations and activities of the FBI; 4) regular spots on a wide-variety of radio programs; 5) spots on television programs; 6) frequent op-eds that run in national newspapers; 7)

legislative testimony; 8) participation in legal and policy panels; and 9) SLF's various social media accounts. SLF's methods of dissemination, combined with its nearly 50-year reputation as one of the nation's leading constitutional public interest law firms and policy centers, supports granting SLF's fee waiver request.

The fourth factor is satisfied because the requested records with "significantly" contribute to the public understanding. As previously mentioned, the American public has a right to know and understand what information then-vice president Joe Biden provided to his son regarding government business.

No commercial interest.

Disclosure of the requested records is not in the commercial interest of SLF because the Foundation has absolutely no commercial or financial interest in the requested information, and would receive no pecuniary benefit from the information sought. SLF is a nonprofit public interest law firm and policy center specializing in the practice of constitutional law. Rather, the requested records are of great public interest.

Request for Expedited Processing

We also request that this FOIA be expedited under the law's compelling need provisions. As a journalist Mr. Solomon has been primarily engaged in disseminating information about the Russia collusion, Hunter Biden and Ukraine investigations conducted by the FBI, CIA and Congress and these documents provide compelling and urgent materials that will inform the public concerning actual or alleged federal government activity and possible wrongdoing. Additionally, Southeastern Legal Foundation has been seeking related records for years from the State Department. Given the State Department's continued delay and the public importance of this information, State Department should expedite this request.

Format of Production

Pursuant to 5 U.S.C. § 552(a)(3)(B), SLF requests that the production of any and all responsive records be made electronically. Please email any and all responsive records to khermann@southeasternlegal.org. SLF is willing to receive responsive records on a rolling basis, if needed, to expedite production and response. If this is not possible, please let us know with an explanation of the reason for any delay. If any or all of the production is refused based on some privilege or other legal ground, please set forth the legal basis for the denial so that SLF may properly address the denial.

If this request is denied in whole or part, please justify all such denials by reference to specific exemptions, and provide an explanation of why ODNI "reasonably foresees that disclosure would harm

an interest" protected by that exemption or why "disclosure is prohibited by law[.]" 5 U.S.C. § 552(a)(8). Please also ensure that all segregable portions of otherwise exempt material are released.

If you have any questions regarding this request, please feel free to contact me at 770-977-2131.

I look forward to your determination within 10 calendar days of this request, as required by law.

Thank you in advance for your assistance in this matter.

Kimberly Hermann

Kimberly S. Hermann

General Counsel

Southeastern Legal Foundation

Rebuilding the American Republic®

560 West Crossville Rd., Ste 104

Roswell, Georgia 30075

Direct: (678) 269-4966

Website: SLFLiberty.org

Twitter: @kimmiehermann @SLF_Liberty

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at (770) 977-2131 destroy the original transmission and its attachments without reading or saving in any manner. New IRS rules restrict written federal tax advice from lawyers and accountants. We include this statement in all outbound emails because even inadvertent violations may be penalized. Nothing in this message is intended to be used, or may be used, to avoid any penalty under federal tax laws. This message was not written to support the promotion or marketing of any transaction. Please contact a tax attorney to obtain formal written advices on tax issues.

EXHIBIT 2. JUNE 22, 2022, NARA RESPONSE



Sent via email to <khermann@southeasternlegal.org>

June 22, 2022

Kimberly Hermann
khermann@southeasternlegal.org

RE: Freedom of Information Act Request NGC22-596

Dear Ms. Hermann:

This is in response to your Freedom of Information Act (FOIA) request to the National Archives and Records Administration (NARA), dated June 9, 2022. We assigned your request NGC22-596. In your request you state,

“I am seeking copies of all emails President Joe Biden preserved through the National Archives and Records Administration from his time as vice president for the following email addresses: robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov. Stories in JustTheNews.com and the New York Post as well as a letter from Sens. Ron Johnson and Chuck Grassley identify these three email addresses as having been used by Joe Biden when he was vice president to transmit to his son and receive from his vice presidential staff official government information. Some examples are attached.

As you know, government officials have an obligation to preserve all government records whether transmitted on official government email servers or private email accounts. This FOIA request copies of all emails to and from the above three emails addresses that are preserved or possessed by NARA as well as any correspondence between Joe Biden and/or his legal or government representatives concerning the use of these emails and preservation of records from them from Jan. 1, 2009 through present.” You also requested a fee waiver.

This is in response to your request for operational records relating to copies of all emails to and from the three email addresses and correspondence relating to the preservation of records from the email addresses dating between January 1, 2009 to present. After conducting a search of our email system using the emails you provided, we were unable to locate any records responsive to your request. We also searched for any records relating to the preservation of records from the email addresses and were unable to locate any records. Since we do not have records responsive to your request, your request for a fee waiver is moot.

Your request was also referred to the *Archival Operations Division (LA)* at our Washington DC facility for any records they may have within the records of the Vice President relating to your request. This office will assign your request a tracking number and respond directly to you. If you need to follow up

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

www.archives.gov

with that office directly, please contact them at the address below, or electronically via email (email is preferred).

Archival Operations Division (LA)
National Archives and Records Administration
700 Pennsylvania Ave., NW, Room G-7
Washington, DC 20408
Email: presidential.materials@nara.gov

This completes the processing of your FOIA request to us.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal within ninety (90) calendar days from the date of this letter via regular U.S. mail or email. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. If you submit your appeal in writing, please address it to the Deputy Archivist of the United States (ND), National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." If you submit your appeal by e-mail please send it to FOIA@nara.gov, also addressed to the Deputy Archivist of the United States. Please be sure to explain why you believe this response does not meet the requirements of the FOIA. All correspondence should reference your case tracking number **NGC22-596**.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison Gary M. Stern for assistance at:

National Archives and Records Administration
8601 Adelphi Road, Room 3110
College Park, MD 20740-6001
301-837-1750
garym.stern@nara.gov

You may also contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is noted below:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, MD 20740-6001
ogis@nara.gov
ogis.archives.gov
202-741-5770 or toll free 1-877-684-6448

Sincerely,

Jodi Foor
Deputy FOIA Officer
National Archives and Records Administration
foia@nara.gov

/s/ 6.22.22

Official: NGC

Reading: NGC

Information Copy: NGC

NGC:JFoor/jf 6.22.22

S: FOIA/FOIA CASE FILES/FY 2022 – FOIA request File code 1103-6

EXHIBIT 3. JUNE 24, 2022, FIRST AOD EMAIL



VIA EMAIL

June 24, 2022

Kimberly S. Hermann
Southeastern Legal Foundation
560 West Crossville Rd., Ste 104
Roswell, Georgia 30075

Dear Ms. Hermann:

This is in response to your June 9, 2022 request for access under the Freedom of Information Act (FOIA) (5 U.S.C. § 552), to records related to all emails from the accounts of robinware456@gmail.com, IRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration for which you have requested expedited processing. The Archival Operations Division received your request on June 9, 2022, and we have assigned this request tracking number 2022-0113-F.

With respect to your expedition request, the National Archives and Records Administration (NARA) has promulgated regulations providing for expedited processing of requests if the requester demonstrates a compelling need (as defined in statute) or in any case the agency deems appropriate under its regulations. NARA's regulations are published at 36 C.F.R. § 1250.28. The requester must demonstrate that the records sought are necessary for one of the following reasons:

1. A reasonable expectation of an imminent threat to an individual's life or physical safety;
2. A reasonable expectation of an imminent loss of a substantial due process right;
3. An urgent need to inform the public about an actual or alleged Federal Government activity (this criterion applies only to those requests made by a person primarily engaged in disseminating information to the public); or
4. A matter of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity.

We do not consider your request to meet the requirements for expedited processing provided for in NARA's regulations at 36 C.F.R. § 1250.28(3) or 36 C.F.R. § 1250.28(4). You have provided no evidence that there is an urgent need to inform the public about all emails from the accounts of robinware456@gmail.com, IRBWare@gmail.com and Robert.L.Peters@pci.gov or that the records requested are necessary to understand an actual or alleged Federal government activity. Additionally, you have not made a case that there exists a widespread and exceptional media interest in the topic of your request that would show that there exists a question that affects public confidence in the Government's integrity.

If you have any questions regarding the status of your FOIA request, please contact me directly at 202-357-5403. If you have any questions or concerns about NARA's handling of this expedited request, please feel free to contact NARA's FOIA Officer Joe Scanlon at (301) 837-0583.

If you consider my response to be a denial of this request, you may appeal by writing to the Deputy Archivist of the United States, c/o the Archival Operations Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001 or email presidential.materials@nara.gov. Both the letter and the envelope or email subject line should be clearly marked "PRA/FOIA Appeal." To be considered timely, your appeal must be postmarked or electronically submitted within 90 calendar days from the date of this letter.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison Stephannie Oriabure for assistance at: Archival Operations Division, National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Room G-7, Washington, DC 20408-0001; email at libraries.liaison.nara@nara.gov; telephone at 202-357-5200; or facsimile at 202-357-5941.

You may also contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, for assistance. OGIS offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road - OGIS, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



STEPHANNIE ORIABURE
Director
Archival Operations Division

cc: Joe Scanlon
FOIA Officer, National Archives and Records Administration

EXHIBIT 4. JUNE 24, 2022, SECOND AOD EMAIL



VIA EMAIL

June 24, 2022

Kimberly S. Hermann
Southeastern Legal Foundation
560 West Crossville Rd., Ste 104
Roswell, Georgia 30075

Dear Ms. Hermann:

This letter is in response to your Freedom of Information Act (FOIA) request dated June 9, 2022 for access to Biden Vice Presidential records pertaining to all emails from the accounts of robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration. Your request was received by the Archival Operations Division on June 9, 2022. FOIA requests for Biden Vice Presidential records are processed and reviewed for access under provisions of the 1978 Presidential Records Act, as amended (PRA) (44 U.S.C. §§ 2201-2209), which incorporates the Freedom of Information Act (5 U.S.C. § 552) in substantial part.

We have performed a search of our collection for Vice Presidential records related to your request and have identified approximately 5,138 email messages, 25 electronic files and 200 pages of potentially responsive records that must be processed in order to respond to your request. Please keep in mind that these totals are an estimate and that all material processed may not be applicable to your specific topic.

The staff of the Archival Operations Division is currently processing and reviewing FOIA requests that precede your request. To treat everyone equitably, we have placed your request in our Complex queue by the date it was received in our office.

FOIA requests are processed and reviewed for access under provisions of the PRA and FOIA and are subject to the provisions of NARA regulations at 36 C.F.R. § 1270.46, which require that we notify the representatives of the former President and the incumbent President and the former Vice President prior to the release of any Vice Presidential records. Also, it should be noted that documents processed in response to your request may be closed in whole or part in compliance with applicable PRA restrictions and FOIA exemptions.

When processing is complete and the notification period has passed, we will inform you of the availability of the requested records. At that point, you may request copies of these records at a reproduction fee of \$0.80 per page, or you can choose to view these documents in the research

room in the National Archives Building where a self-service copier is available for the price of \$0.25 a page.

If you have any questions regarding your FOIA request, please contact our staff at 202-357-5200 or presidential.materials@nara.gov. Your case log number is 2022-0113-F. Please have this number accessible for reference during any future contact concerning this FOIA request.

Sincerely,

A handwritten signature in blue ink, appearing to read "S Oriabure". The signature is fluid and cursive.

STEPHANNIE ORIABURE
Director
Archival Operations Division

EXHIBIT 5. NOVEMBER 25, 2022, SLF STATUS REQUEST

From: [Braden Boucek](#)
To: presidential.materials@nara.gov
Cc: [Kimberly Hermann](#)
Subject: Request for status - 2022-0113-F.
Date: Friday, November 25, 2022 1:52:00 PM
Attachments: [20220624 NARA AOD Ltr. to SLF re. Initial Response.pdf](#)

Ms. Oirabure,

On June 9, 2022, Kimberly S. Hermann sent in a FOIA request for access to Biden Vice Presidential records pertaining to all emails from the accounts of robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration.

Our records show that your last correspondence was from June 24, 2022 (see attachment). In it, you indicated that you would be reviewing and then providing us with access. Please apprise us of the status.

Thank you,

Braden H. Boucek

EXHIBIT 6. DECEMBER 5, 2022, AOD RESPONSE

From: [Presidential Materials Division](#)
To: [Presidential Materials Division](#)
Cc: [Braden Boucek](#); [Kimberly Hermann](#)
Subject: Re: Request for status - 2022-0113-F.
Date: Monday, December 5, 2022 9:28:05 AM

Dear Mr. Boucek:

Thank you for following up about your FOIA request. Our office currently processes FOIA requests for the Gore, Cheney, and Biden Vice Presidential record collections.

As our June 24, 2022 letter stated, your request is in our Complex queue. We are currently processing and reviewing FOIA requests that precede your request. There are 28 FOIA requests in this queue that we received prior to your request. We will let you know as soon as processing is complete and the notification period has passed.

If you have any questions, please let me know.

Sincerely,

Anna Yallouris
Archivist
Archival Operations Division

On Friday, November 25, 2022 at 1:53:03 PM UTC-5 Braden Boucek wrote:

Ms. Oirabure,

On June 9, 2022, Kimberly S. Hermann sent in a FOIA request for access to Biden Vice Presidential records pertaining to all emails from the accounts of robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration.

Our records show that your last correspondence was from June 24, 2022 (see attachment). In it, you indicated that you would be reviewing and then providing us with access. Please apprise us of the status.

Thank you,

Braden H. Boucek

EXHIBIT 7. JUNE 16, 2023, SLF STATUS REQUEST

From: [Braden Boucek](#)
To: Presidential.Materials@nara.gov
Cc: [Kimberly Hermann](#)
Subject: Re: Request for status - 2022-0113-F.
Date: Friday, June 16, 2023 8:15:00 AM
Attachments: [20221205 NARA AOD Ltr. to SLF re. Initial Request.pdf](#)

To Whom It May Concern:

We are alerting you that we have still not gotten a response to this request. As demonstrated by the attached email exchange, Ms. Hermann initially requested documents relating to all emails from the accounts of robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration on **June 9, 2022**—over a year ago.

On December 5, 2022, you last updated us telling us that 28 requests took precedence over ours. We have received no further updates and no responsive documents.

Please update us as to the status so that we may evaluate our options.

Sincerely,

Braden.

EXHIBIT 8. JUNE 16, 2023, AOD RESPONSE

From: [Presidential Materials Division](#)
To: [Presidential Materials Division](#)
Cc: [Braden Boucek](#); [Kimberly Hermann](#)
Subject: Re: Request for status - 2022-0113-F.
Date: Friday, June 16, 2023 3:15:07 PM

Good afternoon, Braden.

Thank you for following up with our office. We are still processing and reviewing FOIA requests that precede your request. The 28 complex FOIA requests in our queue that we received prior to your request include a significant volume of unprocessed records. We are happy to work with you to refine the scope of your request which could move you to a faster queue.

Please let us know if you have any additional questions.

Sincerely,

Stephannie Oriabure
Director
Archival Operations Division
National Archives and Records Administration

On Friday, June 16, 2023 at 9:16:09 AM UTC-4 Braden Boucek wrote:

To Whom It May Concern:

We are alerting you that we have still not gotten a response to this request. As demonstrated by the attached email exchange, Ms. Hermann initially requested documents relating to all emails from the accounts of robinware456@gmail.com, JRBWare@gmail.com and Robert.L.Peters@pci.gov preserved through the National Archives and Records Administration on **June 9, 2022**—over a year ago.

On December 5, 2022, you last updated us telling us that 28 requests took precedence over ours. We have received no further updates and no responsive documents.

Please update us as to the status so that we may evaluate our options.

Sincerely,

Braden.