

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION,
1333 H Street NW, 11th Floor
Washington, DC 20005,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
STATE,
2201 C Street NW
Washington, DC 20520,

Defendant.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF

1. Plaintiff Democracy Forward Foundation (“Democracy Forward”) brings this action against Defendant United States Department of State (“State” or “State Department”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

2. In response to widespread reports and testimony that businessman and commentator John Solomon was a key player in a plan to disseminate false information regarding the family of one of President Trump’s political rivals—a plan that is central to the ongoing impeachment inquiry—Democracy Forward submitted a FOIA request on October 16, 2019, requesting records reflecting communications between Solomon and an enumerated list of State Department officials understood to have been involved in the matter, including Secretary of State Michael Pompeo, U.S. Ambassador to the European Union Gordon Sondland, and several others (“FOIA Request,” Exhibit A), during a limited time period in 2019.

3. The FOIA Request was specific and narrow, requesting only nonexempt records, save perhaps minor redactions of personal privacy information (such as cell phone numbers).

4. The FOIA Request—which is on the same subject as the ongoing impeachment inquiry and the State Department Inspector General’s urgent briefing to Congress—concerns a matter of unprecedented public interest and is urgently needed to inform the public about alleged government activity, and further raises concerns regarding State’s compliance with laws banning covert government propaganda. Accordingly, the request demonstrated a compelling need and was entitled to expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I). *See also* 22 C.F.R. § 171.11(f).

5. Although the statutory time period has expired, State has not informed Democracy Forward whether it will comply with the FOIA Request, nor has it produced any responsive records.

6. Because State’s failure to comply with the FOIA Request violates the FOIA and State’s implementing regulations, Democracy Forward respectfully requests that this Court order State to promptly produce the requested records.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

8. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

9. Plaintiff Democracy Forward Foundation is a nonprofit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Democracy Forward

works to promote transparency and accountability in government by educating the public on government actions and policies, including by publicizing records obtained through FOIA requests.

10. Defendant United States Department of State is a federal agency within the meaning of FOIA, *see* 5 U.S.C. § 552(f)(1), and is headquartered in Washington, D.C. State has possession, custody, and control of records Democracy Forward has requested.

FACTUAL ALLEGATIONS

11. Beginning in March 2019, Solomon, acting in close concert with President Trump's personal attorney Rudolph Giuliani, launched what a State Department official in congressional testimony called an "intense campaign" of disinformation to fuel a false corruption narrative implicating the family of one of President Trump's political opponents.¹

12. Solomon published a series of columns in The Hill, a Washington, D.C.-based newspaper focused on political news, claiming among other things that Ukrainian officials were investigating alleged corruption by Burisma Holdings, a Ukrainian energy company, and further alleging that such an investigation had previously been blocked by the Obama Administration.²

¹ *See* Transcript of Interview of George Kent, Deputy Assistant Secretary of State, to Various House Committees (Oct. 15, 2019), at 56 ("Kent Interview"), available at <https://static.politico.com/84/98/8c03273646e18f95f0732eeb900a/george-kent-transcript.pdf>.

² *See, e.g.,* John Solomon, *As Russia Collusion Fades, Ukrainian Plot To Help Clinton Emerges*, The Hill (Mar. 20, 2019), <https://thehill.com/opinion/campaign/435029-as-russia-collusion-fades-ukrainian-plot-to-help-clinton-emerges>; John Solomon, *Joe Biden's 2020 Ukrainian Nightmare: A Closed Probe is Revived*, The Hill (Apr. 1, 2019), <https://thehill.com/opinion/white-house/436816-joe-bidens-2020-ukrainian-nightmare-a-closed-probe-is-revived>; John Solomon, *Ukrainian to US Prosecutors: Why Don't You Want Our Evidence on Democrats?*, The Hill (Apr. 7, 2019), <https://thehill.com/opinion/white-house/437719-ukrainian-to-us-prosecutors-why-dont-you-want-our-evidence-on-democrats>; John Solomon, *Ukrainian Who Meddled Against Trump in 2016 is Now under Russia-Corruption Cloud*, The Hill (May 16, 2019), <https://thehill.com/opinion/white-house/444167-ukrainian-who-meddled-against-trump-in-2016-is-now-under-russia>; John Solomon, *Solomon: These Once-Secret Memos Cast Doubt on Joe Biden's Ukraine Story*, The Hill (Sept. 26, 2019),

Those (largely unsubstantiated) claims, which Solomon's Ukrainian source later repudiated,³ had immediate and obvious salience in the U.S. domestic political sphere; as Solomon's columns noted, Hunter Biden, the son of former Vice President (and current Democratic presidential candidate) Joseph R. Biden Jr., sat on the Board of Directors of Burisma Holdings.

13. Solomon's false claims were immediately seized upon by President Trump's allies, and by the President himself. Solomon appeared at least five times on Sean Hannity's television program on Fox News Channel to amplify his allegations.⁴ Giuliani appeared on Fox News to repeat Solomon's false claims and call for a Department of Justice investigation into Burisma.⁵ Then, on May 19, 2019, President Trump himself appeared on Fox News to attack Vice President Biden based on Solomon's false claims.⁶

14. President Trump's demand that Ukrainian President Volodymyr Zelensky announce an investigation into Burisma—which is central to the ongoing impeachment inquiry—appears to have been based primarily on the false claims in Solomon's reports, as amplified by the President's allies, his personal attorney, and the President himself. Indeed,

<https://thehill.com/opinion/campaign/463307-solomon-these-once-secret-memos-cast-doubt-on-joe-bidens-ukraine-story>.

³ See Tracy Wilkinson, Sergei L. Loiko, *Former Ukraine Prosecutor Says He Saw No Evidence of Wrongdoing by Biden*, L.A. Times (Sept. 29, 2019), <https://www.latimes.com/politics/story/2019-09-29/former-ukraine-prosecutor-says-no-wrongdoing-biden>.

⁴ See *Hannity* (Fox News Channel television broadcast Mar. 20, Apr. 3, Apr. 25, May 1 & May 2, 2019).

⁵ See *MediaBuzz* (Fox News Channel television broadcast Apr. 7, 2019), available at <https://www.foxnews.com/transcript/giuliani-slams-mueller-leak>.

⁶ See Salvador Rizzo, *Fact-Checking President Trump's Wild Jabs at Joe Biden*, Wash. Post (May 23, 2019), <https://www.washingtonpost.com/politics/2019/05/23/fact-checking-president-trumps-wild-jabs-joe-biden/>.

Solomon's columns are identified as the genesis of the Burisma corruption claims in the whistleblower complaint that led to the initiation of the ongoing impeachment inquiry, and in testimony of government officials.⁷

15. It has since been established that Giuliani was Solomon's primary source for his debunked Ukraine columns, and that Solomon coordinated with Giuliani associates (including Lev Parnas, who has since been indicted) on the content and timing of Solomon's Ukraine-related columns.⁸

16. It has also been established that Giuliani was in close contact with various State Department officials as he played an unusual and alarming role in pressuring Ukraine into announcing a politically motivated investigation.⁹

17. Deputy Assistant Secretary of State George Kent stated in a sworn congressional interview that Solomon's columns were the opening salvo in an "intense campaign," and that the information conveyed in Solomon's original column was, "if not entirely made up in full cloth, it was primarily non-truths and non-sequiturs."¹⁰

⁷ See Letter from Anonymous Intelligence Community Official to Sen. Richard Burr & Rep. Adam Schiff (Aug. 12, 2019) at 4-5 ("Whistleblower Complaint"), available at https://intelligence.house.gov/uploadedfiles/20190812_-_whistleblower_complaint_unclass.pdf; see also Kent Interview at 56-57.

⁸ See Michael S. Schmidt et al., *Giuliani Is Said to Be Under Investigation for Ukraine Work*, N.Y. Times (Oct. 11, 2019), <https://www.nytimes.com/2019/10/11/us/politics/rudy-giuliani-investigation.html>; Erin Banco & Maxwell Tani, *Biden Dirt File Has Private Email Between John Solomon and Rudy Allies*, Daily Beast (Oct. 3, 2019), <https://www.thedailybeast.com/biden-ukraine-dirt-file-has-private-email-between-john-solomon-and-rudy-allies>.

⁹ See Greg Walters & Cameron Joseph, *'Talk to Rudy': How Trump Let Giuliani Hijack the State Department into Chasing Conspiracy Theories*, Vice News (Nov. 5, 2019), https://www.vice.com/en_us/article/zmj7za/talk-to-rudy-how-trump-let-giuliani-hijack-the-state-department-into-chasing-conspiracy-theories.

¹⁰ Kent Interview at 58-59.

18. Lieutenant Colonel Alexander S. Vindman, until recently of the National Security Council, stated in a sworn congressional interview that Solomon's reporting contained "ludicrous claim[s]," and that "all the key elements [of his reporting] were false," and that these claims were made "to advance the interest of the President."¹¹

19. On November 15, 2019, former United States Ambassador to Ukraine Marie Yovanovitch testified in a public impeachment hearing that Solomon collaborated with Giuliani to launch a smear campaign that targeted her and President Trump's political rivals, which ultimately led to her ouster as Ambassador.¹²

20. These events raise grave concerns that government resources were used for a disinformation campaign with the goal of spreading false information damaging to a political rival of the President. Among the potential legal violations present on these facts is the federal law prohibiting the use of government funds to spread covert propaganda.¹³ The communications between State Department officials and Solomon are critical to determining whether a violation of the ban on covert propaganda occurred.

¹¹ See Transcript of Interview of Lt. Col. Alexander S. Vindman to Various House Committees (Oct. 29, 2019), at 322-23, available at <https://context-cdn.washingtonpost.com/notes/prod/default/documents/77fd9a-c484-4b5a-82e1-4ba098855e3d/note/b57ab8e9-736b-411b-96bc-37096f4bf874.pdf>.

¹² See Rob Tornoe, *Marie Yovanovitch Denies Right-Wing Smear Campaign Pushed by Fox News Host Sean Hannity and Others*, Phila. Inquirer (Nov. 15, 2019), <https://www.inquirer.com/politics/nation/impeachment-hearing-marie-yovanovitch-fox-news-sean-hannity-john-solomon-rudy-giuliani-20191115.html>.

¹³ See Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, § 718, 131 Stat 135, 381 (2017) (banning use of funds "for publicity or propaganda purposes within the United States"); see also U.S. Gov't Accountability Office, B-326944, *Environmental Protection Agency—Application of Publicity or Propaganda and Anti-Lobbying Provisions* (Dec. 14, 2015), <https://www.gao.gov/assets/680/674163.pdf>.

21. Based on these events and concerns, on October 16, 2019, Democracy Forward submitted the FOIA Request to State, seeking communications between several high-ranking State Department officials and Solomon.

The FOIA Request

22. Plaintiff submitted a request via U.S. Mail to State on October 16, 2019, which was delivered on October 18, 2019, seeking the following records:

All records and correspondence, including emails, text messages, messages sent via secure messaging apps such as WhatsApp and Signal, phone logs, visitor logs, or other records containing, discussing or revealing communications or meetings between John Solomon and any of the following individuals, whether or not transmitted using a government server or device:

- a. Secretary of State Mike Pompeo
- b. William “Bill” Taylor, U.S. chargé d’affaires in Ukraine
- c. Kurt Volker, former special U.S. envoy to Ukraine
- d. Gordon¹⁴ Sondland, U.S. Ambassador to the European Union
- e. Marie Yovanovitch, former U.S. Ambassador to Ukraine
- f. George Kent, Deputy Assistant Secretary, U.S. Bureau of European & Eurasian Affairs
- g. Philip Reeker, Acting Assistant Secretary, U.S. Bureau of European & Eurasian Affairs
- h. David Hale, Under Secretary of State for Political Affairs
- i. T. Ulrich Brechbuhl, Counselor of the Department of State
- j. Lisa Kenna, Executive Secretary to Secretary Pompeo
- k. Heather Nauert, State Department Spokesperson
- l. Kuros Ghaffari, Office of Press Relations
- m. Lloyd Matthew, Senior Adviser, Public Affairs
- n. Robert Palladino, Deputy Spokesperson
- o. Ambrose Sayles, Office of Press Relations
- p. Michelle Giuda, Assistant Secretary for Public Diplomacy and Public Affairs

23. The FOIA Request specified a date range of January 1, 2019, to the date on which the search is performed. *See* Exhibit A.

¹⁴ Due to a typographical error, the FOIA Request inadvertently indicated that Mr. Sondland’s first name is “George.” His last name and title are provided correctly.

Entitlement to Expedited Processing

24. Democracy Forward sought expedited processing of the FOIA Request pursuant to 5 U.S.C. § 552(a)(6)(E)(i)(I), as implemented by 22 C.F.R. § 171.11(f).

25. Expedited processing shall be provided “in cases in which the person requesting the records demonstrates a compelling need” 5 U.S.C. § 552(a)(6)(E)(i)(I). “Compelling need” includes requests “made by a person primarily engaged in disseminating information” with an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 22 C.F.R. § 171.11(f)(2) (same).

26. As explained in the FOIA Request, Democracy Forward is “primarily engaged in disseminating information,” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity” on the subject matter of the FOIA Request.

27. The FOIA Request explains that Democracy Forward is a nonprofit organization that seeks to enhance public awareness of the operations of government through a variety of means, including by obtaining government records through FOIA and publicizing those records through major national media outlets. The FOIA Request contained more than a dozen recent examples of national media stories that were based on records obtained by Democracy Forward through FOIA. The FOIA Request noted that Democracy Forward routinely sends press releases and other materials to its email lists, which include more than 6,000 members of the press and 7,000 individuals, and that Democracy Forward further publicizes government records through its website and on popular social media channels.

28. The urgency to inform the public as to these matters could not be more pressing. The FOIA Request explains why Solomon’s communications with State Department officials are of critical importance to the public’s understanding of the activities of the Government. The

State Department’s Inspector General has recognized the urgency of the concerns raised by the disinformation campaign in which Solomon played a central role,¹⁵ and the President’s actions regarding Ukraine—for which Solomon’s “reporting” appears to have formed a key foundation—are central to the ongoing impeachment inquiry in Congress. And as discussed earlier, there are grave concerns that any coordination between Solomon and State Department officials could constitute covert propaganda that violates federal law.

State’s Failure to Comply

29. According to U.S. Postal Service tracking, the State Department’s Office of Information Programs and Services received the FOIA Request on October 18, 2019.

30. State was required to make a determination on Democracy Forward’s request for expedited processing no later than October 28, 2019. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

31. State notified Democracy Forward via email on November 18, 2019, that it had granted Democracy Forward’s requests for expedited processing and a fee waiver. *See* Exhibit B.

32. State was required to notify Democracy Forward whether it would comply with the FOIA Request no later than November 18, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(i).

33. Despite this mandatory deadline, State has not informed Democracy Forward whether it will comply with the FOIA Request, nor has it produced responsive records.

¹⁵ The State Department’s Inspector General gave an urgent briefing to members of Congress based in part on communications between Solomon and Giuliani associates, materials that Giuliani subsequently handed to Secretary of State Pompeo. *See* Jeremy Herb et al., *State Department Inspector General Gives Congress Documents That Giuliani Provided*, CNN (Oct. 2, 2019), <https://www.cnn.com/2019/10/02/politics/state-department-inspector-general-briefing-congress/index.html>.

Exhaustion of Administrative Remedies

34. Through State's failure to comply with the statutory requirement to make a determination on the FOIA Request within 20 working days, Democracy Forward is "deemed to have exhausted [its] administrative remedies." *See* 5 U.S.C. § 552(a)(6)(C)(i).

COUNT I

Violation of FOIA, 5 U.S.C. § 552

State's Failure to Respond to Request Within 20 Working Days

35. Democracy Forward repeats and incorporates by reference the foregoing paragraphs as if fully set forth herein.

36. By failing to inform Democracy Forward whether it will comply with its FOIA Request within the statutorily mandated time period, *see* 5 U.S.C. § 552(a)(6)(A)(i), State has violated its duties under FOIA, including but not limited to its duties to conduct a reasonable search for responsive records and to release all nonexempt records, including reasonably segregable nonexempt portions of records. *See id.* § 552.

37. Democracy Forward is being irreparably harmed by State's violation of the FOIA, and will continue to be irreparably harmed unless State is compelled to comply with the FOIA.

REQUESTED RELIEF

WHEREFORE, Democracy Forward respectfully requests this Court:

- (1) order State to conduct a search for any and all responsive records to the FOIA Request and demonstrate that it employed search methods reasonably likely to lead to discovery of records responsive to the FOIA Request;

- (2) order State to produce, by a date certain, any and all nonexempt records responsive to the FOIA Request and a *Vaughn* index of any responsive records withheld under a claim of exemption;
- (3) enjoin State from continuing to withhold any and all nonexempt records responsive to the FOIA Request;
- (4) award Democracy Forward attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) grant Democracy Forward such other relief as the Court deems just and proper.

Dated: November 20, 2019

Respectfully submitted,

/s/ Nitin Shah

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