



January 18, 2024

VIA WEBSITE ONLY

Dept. of Treasury
Financial Crimes Enforcement Network
FOIA Request, Financial Crimes Enforcement Network
P.O. Box 39
Vienna, Virginia 22183

RE: FOIA Request about the flagging of financial transactions by FinCEN for using terms like “MAGA,” “Trump,” and “Bible.”

Dear FOIA Officer:

This letter is a request (“Request”) in accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the corresponding department/agency implementing regulations.

The Request is made by the American Center for Law and Justice (“ACLJ”)¹ on behalf of its supporters.

To summarize, this Request seeks records pertaining to the flagging of financial transactions by FinCEN for using terms like “MAGA,” “Trump,” and “Bible.”

BACKGROUND

Pursuant to DOT FOIA regulation 31 C.F.R. §11.2, this Background addresses the date, title or name, author, recipient, subject matter of the records requested, to the extent known.

According to a January 17, 2024 letter to Mr. Noah Bishoff from the House of Representatives Judiciary Committee:

¹ The ACLJ is a not-for-profit 501(c)(3) organization dedicated to the defense of constitutional liberties secured by law. The ACLJ regularly monitors governmental activity and works to inform the public of such affairs. The ACLJ and its global affiliated organizations are committed to ensuring governmental accountability and the ongoing viability of freedom and liberty in the United States and around the world.

The Committee and Select Subcommittee have obtained documents indicating that following January 6, 2021, FinCEN distributed materials to financial institutions that, among other things, outline the “typologies” of various persons of interest and provide financial institutions with suggested search terms and Merchant Category Codes (MCCs) for identifying transactions on behalf of federal law enforcement. These materials included a document recommending the use of generic terms like “TRUMP” and “MAGA” to “search Zelle payment messages” as well as a “prior FinCEN analysis” of “Lone Actor/Homegrown Violent Extremism Indicators.” According to this analysis, FinCEN warned financial institutions of “extremism” indicators that include “transportation charges, such as bus tickets, rental cars, or plane tickets, for travel to areas with no apparent purpose,” or “the purchase of books (including religious texts) and subscriptions to other media containing extremist views.” In other words, FinCEN urged large financial institutions to comb through the private transactions of their customers for suspicious charges on the basis of protected political and religious expression.²

(Citations omitted). Further, the letter says:

In addition, the Committee and Select Subcommittee have obtained documents showing that FinCEN distributed slides, prepared by a financial institution, explaining how other financial institutions can use MCC codes to detect customers whose transactions may reflect “potential active shooters, [and] who may include dangerous International Terrorists / Domestic Terrorists / Homegrown Violent Extremists (‘Lone Wolves’).”⁴ For example, the slides instruct financial institutions to query for transactions using certain MCC codes such as “3484: Small Arms,” “5091: Sporting and Recreational Goods and Supplies,” and the keywords “Cabela’s,” and “Dick’s Sporting Goods,” among several others.⁵ Despite these transactions having no apparent criminal nexus—and, in fact, relate to Americans exercising their Second Amendment rights—FinCEN seems to have adopted a characterization of these Americans as potential threat actors. This kind of pervasive financial surveillance, carried out in coordination with and at the request of federal law enforcement, into Americans’ private transactions is alarming and raises serious doubts about FinCEN’s respect for fundamental civil liberties.³

The letter sought testimony in order “inform the Committee and Select Subcommittee about federal law enforcement’s mass accumulation and use of Americans’ private information without legal process; FinCEN’s protocols, if any, to safeguard Americans’ privacy and constitutional rights in the receipt and use of such information; and FinCEN’s general engagement with the private sector on law-enforcement matters.”⁴

This FOIA seeks further information on FinCEN’s actions mentioned above.

² Letter from Rep. Jim Jordan, Chairman, H. R. Judiciary Committee to Dir. Christopher Wray, FBI (January 17, 2024).

³ Id.

⁴ Id.

RECORDS REQUESTED

For purposes of this Request, the term “record” means “any information” that qualifies under 5 U.S.C. § 552(f), and includes, but is not limited to, the original or any full, complete and unedited copy of any log, chart, list, memorandum, note, correspondence, writing of any kind, policy, procedure, guideline, agenda, handout, report, transcript, set of minutes or notes, video, photo, audio recordings, or other material. The term “record” also includes, but is not limited to, all relevant information created, stored, received or delivered in any electronic or digital format, e.g., electronic mail, instant messaging or Facebook Messenger, iMessage, text messages or any other means of communication, and any information generated, sent, received, reviewed, stored or located on a government *or private* account or server, consistent with the holdings of *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145 (D.C. Cir. 2016) (rejecting agency argument that emails on private email account were not under agency control, and holding, “If a department head can deprive the citizens of their right to know what his department is up to by the simple expedient of maintaining his departmental emails on an account in another domain, that purpose is hardly served.”).

For purposes of this Request, the term “domestic terrorism” or “domestic terrorist” or any of their acronyms used herein has the definition as given in 18 U.S.C. § 2331(5) or any definition or application utilized by the FBI or FinCEN.

For purposes of this Request, all terms otherwise used herein have the definitions given by FOIA, 5 U.S.C. § 552 *et seq.*

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is January 6, 2020, to the date this request is processed.

The ACLJ hereby requests that FinCEN produce the following records.

1. All records related to the “Lone Actor/Homegrown Violent Extremism Indicators” shared with financial institutions.
2. All emails concerning how FinCEN obtained “private customer information to assist federal law enforcement.
3. All records related to FinCEN's protocols to safeguard Americans' privacy and constitutional rights when performing mass surveillance via private financial records.
4. All search warrants filed by FinCEN based on the MCC codes in the slides referenced above.
5. All emails and phone logs concerning FinCEN interaction with all financial institutions, including but not limited to Bank of America, on law-enforcement matters specifically related to the search queries of Americans financial records from January 5-7, 2020. This should also include specific correspondence where the FBI and/or FinCEN requested banks to share private customer data with law enforcement.

6. All records concerning FinCEN use of the financial transactions and MCC Codes related to the “purchase of books (including religious texts).”
7. All emails containing the search terms: “TRUMP,” “conservative,” “MAGA,” “Bible,” and “prior FinCEN analysis” from the office or division that managed the “Lone Actor/Homegrown Violent Extremism Indicators.”
8. All records between Mr. Noah Bishoff or his administrative assistants, with Facebook (including Meta) or Twitter (now X) employees about domestic terrorism.

REQUEST FOR WAIVER OF FEES

The ACLJ requests a waiver of all fees for this request. Disclosure of the requested information to us is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in our commercial interest. The documents requested are to provide transparency on the perceived politicization of the FBI. Thank you for your consideration of this request.

CONCLUSION

If this Request is denied in whole or in part, the ACLJ requests that, within the time requirements imposed by FOIA, you support all denials by reference to specific FOIA exemptions and provide any judicially required explanatory information, including but not limited to, a *Vaughn* Index.

Thank you for your prompt consideration of this Request. Please furnish all applicable records and direct any responses to:

Jordan Sekulow, Executive Director
Benjamin P. Sisney, Senior Litigation Counsel
John A. Monaghan, Senior Litigation Counsel
American Center for Law and Justice



Respectfully submitted,

A handwritten signature in blue ink, reading "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in blue ink, reading "John A. Monaghan".

John A Monaghan
Senior Litigation Counsel