



November 22, 2023

Via Web Portal Only

Office of Information Programs and Services (IPS)
A/GIS/IPS/RL
U.S. Department of State, State Annex 2 (SA-2)
515 22nd Street, NW
Washington, DC 20522-8100
Telephone: (202) 261-8484
Facsimile: (202) 261-8579

RE: FOIA Request Regarding Internal State Dept. Memo Concerning Israel-Hamas War.

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 members.

To summarize, this Request seeks records pertaining to the internal State Dept. memo criticizing the Biden Administration’s policy on the Israel-Hamas war.

Background

Pursuant to State Department FOIA regulation 22 C.F.R. § 171.4(b), this Background addresses “the subject, timeframe, names of any individuals involved, a contract number (if applicable), and reasons why the requester believes the Department may have records on the subject of the request.” 22 C.F.R. § 171.4(b).

¹The 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.

On Nov. 3 2023, a memo or dissent cable (hereafter memo) was transmitted to the State Department's policy office heavily criticizing Biden's unwavering support of Israel, including accusing him of "spreading misinformation", and claiming that Israel was committing "war crimes" in Gaza.² This internal memo was organized by a junior diplomat, believed to be Sylvia Yacoub, who has implied on social media that Biden's actions have made him "complicit in genocide", and signed by 100 State Department and USAID employees.³

Although the memo begins by recognizing and making note of the "recent atrocities committed by Hamas on October 7th", the vast majority of the memo is focused on Israeli Prime Minister Benjamin Netanyahu's counterattack on Hamas in Gaza and Biden's subsequent behavior concerning the counterattack while urging the Biden Administration, and by default the U.S., to reassess its policy toward Israel and demand a ceasefire in Gaza.⁴

First, regarding Biden's alleged "misinformation", the memo does not cite any specific examples, but it refers to Biden's October 10th speech, in which he supported Israel, as the source of the misinformation.⁵

Second, Israel's alleged "war crimes" are apparently constituted by cutting off electricity to the Gaza strip, limiting aid to the region, and executing retaliatory attacks that have displaced "hundreds of thousands of Palestinians."⁶ Although Biden has expressed humanitarian concerns, for the most part he has supported Israel, and the memo states that Biden should do more to question Israel's actions.⁷ The document emphasizes how in spite of these alleged war crimes, the U.S. has "doubled down" on its support to Israel without any "actionable redlines".⁸

Additionally, the memo criticized the Biden Administration for disregarding Palestinian lives and failing to advance a viable path to a two-state solution in the conflict between Israel and Palestinians.⁹ It further critiqued Biden for doubting the number of deaths in Gaza provided by the health ministry in Gaza via a statement made by him on October 27th.

This Request seeks information on the memo.

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,

² Hans Nichols, *Scoop: Internal State Dept. Memo Blasts Biden, U.S. Policy on Israel-Hamas War*, AXIOS (Nov. 13, 2023), <https://www.axios.com/2023/11/13/biden-gaza-hamas-policy-state-department-memo>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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.”).

All requests seek records which include, but are not limited to, any record located on backup tapes, archives, any other recovery, backup, storage or retrieval system, DOS electronic mail or message accounts, non-DOS electronic mail or message accounts, personal electronic mail or message accounts, DOS servers, non-DOS servers, and personal servers, as well as any electronic mail or message carbon copied to agency account recipients, any electronic mail or message carbon copied to non-agency account recipients, any electronic mail or message forwarded to agency account recipients, any electronic mail or message forwarded to non-agency account recipients, and attachments to any electronic mail or message.

For purposes of this Request, the term “briefing” includes, but is not limited to, any in-person meeting, teleconference, electronic communication, or other means of gathering or communicating by which information was conveyed to one or more person(s).

For purposes of this Request, the term “DOS official” includes, but is not limited to, any person who is (1) employed by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (2) contracted for services by or on behalf of the DOS, any Mission of the United States, or any Delegation of the United States, in any capacity; (3) appointed by the President of the United States to serve in any capacity at or within the DOS, any Mission of the United States, or any Delegation of the United States; or (4) any such person’s staff, agent or employee; all without regard to the component, bureau, or office in which that person serves.

For purposes of this Request, all sources, documents, letters, reports, briefings, articles and press releases cited in this Request are incorporated by reference as if fully set forth herein.

For purposes of this Request, any individual or entity’s name includes any alias or pseudonym.

For purposes of this Request, and unless otherwise indicated, the timeframe of records requested herein is November 1, 2023, to the date this request is processed.

Pursuant to FOIA, 5 U.S.C. § 552 *et seq.*, ACLJ hereby requests that DOS produce the following:

- 1. The memo referenced above.**

2. Any records containing the phrases: “we have failed to reassess our posture towards Israel” or “We doubled down on our unwavering military assistance to. . .”
3. Any records in the custody of Sylvia Yacoub since October 8, 2023.
4. Any records in the custody of Assistant Secretary of State for Near Eastern Affairs Barbara A. Leaf or her personal assistant about the dissent cable or memorandum.
5. Any records in the custody of the Bureau of Near Eastern Affairs or the Bureau of Counterterrorism about the dissent cable or memorandum.

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



I affirm that the foregoing request and attached documentation are true and correct to the best of my knowledge and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director

A handwritten signature in black ink, appearing to read "Ben P. Sisney".

Benjamin P. Sisney
Senior Litigation Counsel

A handwritten signature in blue ink, appearing to read "John A. Monaghan".

John A Monaghan
Senior Litigation Counsel

