

**DEPARTMENT OF HOMELAND SECURITY
UNITED STATES SECRET SERVICE
File No.: 20241102**

AMERICAN CENTER FOR LAW AND JUSTICE

Requestor,

File No.: 20241102

FREEDOM OF INFORMATION ACT APPEAL
Secret Service Appeals
Attn: FOIA Appeals
245 Murray Lane Building T-5
Washington, D.C. 20223

THE AMERICAN CENTER FOR LAW AND JUSTICE

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STATEMENT OF PROCEEDINGS

On July 18, 2024, ACLJ submitted a FOIA request via the website. *See* FOIA Request attached as Exhibit A.

On July 31, 2024, the United State Secret Service (Secret Service) acknowledged receipt of ACLJ's FOIA Request. *See* Secret Service Acknowledgement attached as Exhibit B. It states, in part: "Furthermore, as it pertains to Parts 1 and 3-15, at this time pursuant to Title 5 U.S.C. § 552(B)(7)(A), any potentially responsive records, if they exist, are exempt as disclosure could reasonably be expected to interfere with enforcement proceedings."

This Administrative Appeal follows.

ARGUMENT

I. The Secret Service has failed to demonstrate that ACLJ's FOIA Requests can reasonably be expected to cause articulable harm to an enforcement proceeding.

The ACLJ made a total of 15 requests (the Second Request was referred to the Dept. of Homeland Security for review and processing and is not further discussed herein).

While some of the requests may possibly pertain to an enforcement proceeding, none of them can be reasonably expected to cause articulable harm to any such proceeding. *See Manna v. DOJ*, 51 F.3d 1158, 1164 (3d Cir. 1995) (“To fit within Exemption 7(A), the government must show that (1) a law enforcement proceeding is pending or prospective and (2) release of the information could reasonably be expected to cause some articulable harm.”).

Furthermore, to withhold information under exception 7(A) “wholesale” is improper and unauthorized, even if there are ongoing proceedings. *UtahAmerica Energy v. U.S. Dep’t of Lab.*, 700 F. Supp. 2d 99, 109 (D.D.C. 2010), *rev’d in part, vacated in part sub nom. UtahAmerica Energy, Inc. v. Dep’t of Lab.*, 685 F.3d 1118 (D.C. Cir. 2012) (reiterating that “automatic, or wholesale withholdings” are not authorized simply because a law enforcement proceeding is ongoing).

An agency must actually show how disclosure of records would interfere with enforcement proceedings. *See generally, Citizens for Responsibility & Ethics in Wash. v. DOJ*, 746 F.3d 1082, 1098 (D.C. Cir. 2014) (remanding for further fact finding because “it is not sufficient for the agency to simply assert that disclosure will interfere with enforcement proceedings; ‘it must rather demonstrate how disclosure’ will do so”). In this case, the Secret Service merely stated that “as it pertains to Parts 1 and 3-15, at this time pursuant to Title 5 U.S.C. § 552(B)(7)(A), any potentially responsive records, if they exist, are exempt as disclosure could reasonably be expected to interfere with enforcement proceedings,” and did not elaborate

on why this exemption was properly invoked. The Secret Service therefore failed to demonstrate how disclosure will reasonably be expected to cause harm to an enforcement proceeding.

Below, the Requests are reproduced in bold and the inapplicability of the wholesale assertion demonstrated.

A. ACLJ's First Request

Records of communications between Secretary Alejandro Mayorkas and former Director Kimberly Cheatle or their administrative assistants about requests for increased protection or resources and containing the word: "Trump" or any alias, codename, or pseudonym used to refer to former President Donald Trump.

Communications between Secretary Alejandro Mayorkas and former Director Kimberly Cheatle or their administrative assistants about requests for increased protection or resources regarding "Trump" existed prior to and not because of the recent assassination attempt in Butler, Pennsylvania (hereafter, the attempt). The Secret Service has failed to demonstrate how disclosure of the previously existing records would impede the current investigation into the attempt.

B. ACLJ's Third Request

Records of policies and procedures for determining the security perimeter of a presidential candidate's rally or other appearance regardless of whether the candidate is a former United States President, including records regarding the security perimeter at the rally in Butler, Pennsylvania.

This request inquires into Secret Service policy implemented prior to the attempt. As such, it was made unrelated to any enforcement proceeding. While the policies regarding how

security perimeters are determined would be disclosed, the Secret Service has failed to demonstrate how this would cause articulable harm to any proceeding.

C. ACLJ's Fourth Request

Records of standards for pre-advance and advance security assessments and surveys, including any Special Agent (SA) training manuals.

This request inquires into Secret Service policy assessments and surveys and training manuals implemented prior to the attempt and records in existence previous to the attempt and so drafted independent of any enforcement proceeding. The Secret Service has failed to demonstrate how disclosure of such records would cause articulable harm to any investigation.

D. ACLJ's Fifth Request

Records of any Technical Law Enforcement (TLE) and Uniformed Division (US) training manuals.

This request inquires into previously implemented standards of training. It seeks records in existence prior to the attempt and drafted independent of any enforcement proceeding. The Secret Service has failed to demonstrate how disclosure of such records would cause articulable harm to any investigation.

E. ACLJ's Sixth Request

Records of Diversity, Equity and Inclusion policies, including but not limited to all records of Director Cheatle's orders, communications or directions regarding same.

This request only inquires into Secret Service personnel policy and communications about it. Internal policies are necessarily circulated across the entire Secret Service. They apply to the administration of the Secret Service, and thus never need to be concealed for the purpose of preventing harm to an enforcement proceeding, nor would communications regarding these

circulated policies. The Secret Service has failed to demonstrate how this would reasonably cause articulable harm to an enforcement proceeding.

F. ACLJ's Seventh Request

Records of communications between the Secret Service, the Butler City Police Department and/or the Butler County Sheriff's Department.

“[Exemption 7(A) does] not endlessly protect material simply because it was in an investigatory file.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 230 (1978). The death of the identified attempted assassin of former President Donald Trump, Thomas Matthew Crooks, means the investigations surrounding this request could never sprout into an enforcement proceeding. Further, not all communications would be about or relevant to the attempt. Due to the ACLJ's filing after Crooks's death, this request can cause no articulable harm to an enforcement proceeding.

G. ACLJ's Eighth Request

Records regarding requests about providing Secret Service protection to Robert F. Kennedy Jr. since September 1, 2023.

Robert F. Kennedy, Jr. is not involved in any prospective, pending, or ongoing legal proceeding as there has been no attack on Mr. Kennedy. The Secret Service has merely been asked to protect Mr. Kennedy. Furthermore, the Secret Service has failed to demonstrate how requests concerning the granting of this protection this cause articulable harm to any enforcement proceeding. The ACLJ reminds the Secret Service that wholesale withholdings claiming exemption 7(A) are improper.

H. ACLJ's Ninth Request

Records of the policies and procedures for determining the level of protection a former president is to receive.

Even though the level of protection a former president is given would be made known, this request could not cause articulable harm to any enforcement proceeding. It only inquires into Secret Service policy and is unrelated to enforcement. The Secret Service has failed to demonstrate how this would cause articulable harm to any such proceeding.

I. ACLJ's Tenth Request

Records of communications between the Secret Service, the Butler City Police Department and/or the Butler County Sheriff's Department and the rally attendees on the date of July 13, 2024.

This request could not cause articulable harm to any enforcement proceeding, and the Secret Service has failed to demonstrate how this request would cause articulable harm to any such proceeding. The argument of Request 7 is incorporated here.

J. ACLJ's Eleventh Request

Records of the communications between Congress and Director Kimberly Cheatle or her executive assistants.

Records of communication between agencies and Congress are routine and not all communications are related to enforcement proceedings. Therefore, the requested records do not relate only to pending or reasonably anticipated enforcement proceeding. Even if there were a proceeding related to the communications, their release would cause no reasonably expected articulable harm to the proceeding.

K. ACLJ's Twelfth Request

Records of the communications between Director Kimberly Cheatle or her executive assistants and the Secret Service or Secret Service public affairs office since July 12, 2024.

Records of communication between the public affairs office of an agency and members of the agency are by definition made for the purpose of public communication. The Secret Service's Public Affairs office does not provide protection and so records of its communications are unrelated to an enforcement proceeding.

Therefore, this request does not relate to any pending or reasonably anticipated enforcement proceeding.

L. ACLJ's Thirteenth Request

Records of Secret Service or DHS communications regarding the rally of July 13, 2024.

Records of DHS and Secret Service communications regarding the rally on July 13, 2024 would not harm the government's case or impede their ability to investigate. Additionally, the DHS has failed to demonstrate how this would cause articulable harm to any proceeding.

M. ACLJ's Fourteenth Request

Records of the rules of engagement or weapons free authorizations in effect at the rally in Butler, Pennsylvania on July 13, 2024.

This request inquires into previously implemented rules of engagement or weapons fire authorizations. It seeks records in existence prior to the attempt and drafted independent of any enforcement proceeding. The Secret Service has failed to demonstrate how disclosure of such records would cause articulable harm to any investigation.

N. ACLJ's Fifteenth Request

All records regarding procedures, practices, and safety concerns regarding counter sniper

teams on sloped roofs.

This request inquires into previously decided procedures, practices and safety about sloped roofs or the terrain of a rally generally. It seeks records in existence prior to the attempt and drafted independent of any enforcement proceeding. The Secret Service has failed to demonstrate how disclosure of such records would cause articulable harm to any investigation.

CONCLUSION

Additional reasons support the ACLJ's appeal: Reasonably segregable records are to be produced. 5 U.S.C. § 552(b) ("Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection."). It is not believable that there are no reasonably segregable records responsive to the ACLJ's requests, and the Secret Service's wholesale denial does not even come close to satisfying the applicable jurisprudential requirements.

For the foregoing reasons, ACLJ respectfully requests that the Secret Service produce the responsive records.

DATED this 5th day of August 2024.

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