



August 15, 2022

Via Email: foia@ftc.gov

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
Washington, DC 20580

Re: Freedom of Information Act Request; Fee Waiver Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“Chamber”) hereby requests the following information:

1. Records sufficient to identify all individuals who have served as unpaid experts or consultants for the FTC at any time since January 20, 2021, and the title or position of each such individual. To the extent that individuals have held multiple titles or positions since January 21, 2021, identify each title or position. For purposes of this request, “expert” and “consultant” include, but are not limited to, individuals whose services are contracted for or otherwise provided under the authorities of 5 U.S.C. § 3109 or 5 C.F.R. § 304.103.
2. For each of the individuals identified in response to request 1:
 - a. A resume, curriculum vitae, or similar documentation of experience and qualifications within the agency’s records pertaining to that individual.
 - b. All records relating to any request for approval for outside employment for that individual, including but not limited to prior approval under 5 C.F.R. § 5701.101.
 - c. Any conflicts or ethics waivers or authorizations for the individual, including authorizations pursuant to 5 C.F.R. § 2635.502.
 - d. All records reflecting any conflict-of-interest or recusal determination made or issued with respect to the individual.
 - e. All records reflecting whether and under what circumstances the individual is or was authorized to access confidential information while providing services to the FTC, including any agreements or policies that bound the individual with respect to the access of confidential information.

- f. All records reflecting what confidential information the individual has accessed.
- g. All records identifying the matters on which the individual provided any services to the FTC or to any officers or employees of the FTC.
- h. All communications between the individual and any current or former Commissioner or any member of the staff of any Commissioner, regardless of whether the Commissioner or the staff member was a Commissioner or staff member at the time of the communication.
- i. All records containing a determination or decision regarding whether the hiring, contracting, or other acceptance of services from the individual is authorized by law, including whether the hiring of the person complied with 5 U.S.C. § 3109, 5 C.F.R. §§ 304.101–108, or the Anti-Deficiency Act (31 U.S.C. §§ 1341–1352).

The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices. The timeframe for the Chamber’s request is January 20, 2021 to the present.

The Chamber further requests that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

To facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, the Chamber requests that those records be produced first, and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest, as it is likely to contribute significantly to public understanding of the operations or activities of the government. The public has a significant interest in understanding the extent to which the FTC has used unpaid consultants and experts in conducting agency business, what the qualifications of those individuals are, and what rules have been applied or waived as to those unpaid consultants and experts. This is especially true in light of the recent Office of Inspector General Report No. A-22-06, which audited the FTC’s use of unpaid consultants and experts and found that “the FTC’s unpaid consultant and expert program lacks a comprehensive system of controls and ... the FTC identifies, recruits, and selects unpaid consultants and experts without uniformity and transparency across all agency stakeholders.” *Id.* at *2.

The request seeks information that “concerns the operations or activities of the Federal government” and is “likely to contribute to an understanding of these operations or activities,” 16 C.F.R. §§ 4.8(e)(2)(i)(A)–(B), because the request seeks detailed information relating to the FTC’s program of unpaid consultants and experts, a program that has gained significant public attention and that the Office of Inspector General identified as being run in a manner that makes the agency “vulnerable to a variety of risks” due to an absence of “uniformity and transparency.” The request will increase public understanding of the FTC’s operations and activities, and not just the understanding of the Chamber or a narrow segment of interested persons, 16 C.F.R. §§ 4.8(e)(2)(i)(C), because the Chamber disseminates the results of its FOIA requests to the public, and the public interest in this subject-matter has already been demonstrated by the Office of Inspector General audit and by the resulting news coverage. See, e.g., Leah Nysten, *FTC Under Khan Faulted by Watchdog on Hiring Unpaid Experts*, <https://www.bloomberg.com/news/articles/2022-08-03/ftc-under-khan-faulted-by-watchdog-on-hiring-unpaid-experts> (Aug. 3, 2022). The contribution to public understanding is likely to be significant, 16 C.F.R. §§ 4.8(e)(2)(i)(D), because the request seeks detailed information about the individuals hired as unpaid consultants and experts, the rules that govern them during their employment, and the matters on which they have worked. This will help the public understand who these consultants and experts are and what they do, which the FTC has not made publicly available.

This request further qualifies for a fee waiver because the request is not in the commercial interest of the Chamber. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber’s commercial interest because it seeks to use this information to educate itself and the public about the FTC’s ongoing activities. See 16 C.F.R. § 4.8(e)(2). The FTC’s activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC’s recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. See 5 U.S.C. § 552(a)(6)(A)-(B); see also 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber’s request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Heather". The signature is fluid and cursive, with the first name "Sean" and last name "Heather" clearly distinguishable.

Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
U.S. Chamber of Commerce
(202) 463-5368
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August 15, 2022

Via Email: foia@ftc.gov

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Office of General Counsel
Federal Trade Commission
Washington, DC 20580

Re: Freedom of Information Act Request; Fee Waiver Requested

To Whom it May Concern:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 16 C.F.R. § 4.11, the U.S. Chamber of Commerce (“Chamber”) hereby requests the following information:

1. A full copy of the FTC Administrative Manual currently in effect, including all forms and appendices and other records customarily included as part of that manual. For purposes of this request, the term “Administrative Manual” includes, but is not limited to, the document referenced as the “FTC Administrative Manual” in Office of Inspector General Report No. A-22-06, https://www.ftc.gov/system/files/ftc_gov/pdf/2022-08-01_OIGauditreport_unpaidconsultants_FINAL.pdf (Aug. 1, 2022). If the FTC maintains multiple documents titled “Administrative Manual,” this request seeks a full copy of each such manual currently in effect, including all forms and appendices and other records customarily included as part of each manual.

The term “records” as used in this request includes emails, handwritten or typed notes, phone calls, meeting minutes, meeting agendas, calendar entries, electronic chats, instant messages, encrypted or self-destructing messages, messages sent via Facebook messenger, text messages, voice messages, and other hard copy documents stored on official or personal devices.

I further request that the FOIA officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted.

Please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, the Chamber requests that those records be produced first, and the remaining records be produced on a rolling basis as circumstances permit.

The Chamber requests a fee waiver because disclosure of this information is in the public interest, as it is likely to contribute significantly to public understanding of the operations or activities of the government. The public has a significant interest in understanding the rules governing the FTC's administrative procedures, including the rules governing the use of unpaid consultants and experts and whether the FTC adhered to those rules. This is especially true in light of the recent Office of Inspector General Report No. A-22-06, which audited the FTC's use of unpaid consultants and experts and found that "the FTC's unpaid consultant and expert program lacks a comprehensive system of controls and ... the FTC identifies, recruits, and selects unpaid consultants and experts without uniformity and transparency across all agency stakeholders." *Id.* at *2.

The request seeks information that "concerns the operations or activities of the Federal government" and is "likely to contribute to an understanding of these operations or activities," 16 C.F.R. §§ 4.8(e)(2)(i)(A)–(B), because the request seeks detailed information relating to the FTC's administrative procedures, including the rules governing the FTC's program of unpaid consultants and experts, a program that has gained significant public attention and that the Office of Inspector General identified as being run in a manner that makes the agency "vulnerable to a variety of risks" due to an absence of "uniformity and transparency." The request will increase public understanding of the FTC's operations and activities, and not just the understanding of the Chamber or a narrow segment of interested persons, 16 C.F.R. §§ 4.8(e)(2)(i)(C), because the Chamber disseminates the results of its FOIA requests to the public, and the public interest in this subject-matter has already been demonstrated by the Office of Inspector General audit and by the resulting news coverage. See, e.g., Leah Nylén, *FTC Under Khan Faulted by Watchdog on Hiring Unpaid Experts*, <https://www.bloomberg.com/news/articles/2022-08-03/ftc-under-khan-faulted-by-watchdog-on-hiring-unpaid-experts> (Aug. 3, 2022). The contribution to public understanding is likely to be significant, 16 C.F.R. §§ 4.8(e)(2)(i)(D), because the request seeks detailed information about the rules that govern unpaid consultants and experts during their employment. This will help the public understand who these consultants and experts are and what they do, which the FTC has not made publicly available.

This request further qualifies for a fee waiver because the request is not in the commercial interest of the Chamber. The Chamber is a non-profit organization organized under Section 501(c)(6) of the Internal Revenue Code. Disclosure of this information is not primarily in the Chamber's commercial interest because it seeks to use this information to educate itself and the public about the FTC's ongoing

activities. See 16 C.F.R. § 4.8(e)(2). The FTC's activities affect a broad swath of the United States economy and business entities across the country—many of whom are members of the Chamber. The disclosure of these documents will allow the Chamber, its members, and the public to better understand the FTC's recent and future activities and the potential impact of these actions. If this request for a fee waiver is denied, the Chamber is willing to pay fees up to \$2,500.

Federal law requires that the FTC produce these records within twenty (20) business days or, in unusual circumstances, within thirty (30) business days. See 5 U.S.C. § 552(a)(6)(A)-(B); see also 16 C.F.R. § 4.11(a)(1)(ii). If the Chamber's request is denied in whole or in part, please justify all denials by reference to specific exemptions under the FOIA.

If you have any questions about this request, please contact me by email. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Sean Heather". The signature is written in a cursive, flowing style.

Sean Heather
Senior Vice President
International Regulatory Affairs & Antitrust
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(202) 463-5368
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