



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

April 29, 2020

Jim Bovard
jim@jimbovard.com

Re: DOJ-2019-004647
DRH:ERH

Dear Jim Bovard:

This responds to your Freedom of Information Act (FOIA) request dated May 8, 2019, and received in this Office on May 9, 2019, in which you requested emails between Brian Fallon, former Director of the Office of Public Affairs, and David Mastio of USA Today since February 3, 2015¹.

Please be advised that a search has been conducted in the Office of Public Affairs, and four pages were located that are responsive to your request. I have determined that this material is appropriate for release with excisions made pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your request at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

¹ You directed your request to the FOIA/PA Mail Referral Unit (MRU), Justice Management Division, who forwarded it to this Office for handling. The MRU tracking number associated with this request is EMRUFOIA050819-2.

If you are not satisfied with this Office's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas R. Hibbard", with a small "DR" monogram at the end.

Douglas R. Hibbard
Chief, Initial Request Staff

Enclosure

Mastio, David

From: Mastio, David
Sent: Tuesday, February 3, 2015 10:26 PM
To: Fallon, Brian (OPA)
Cc: Gallagher, Brian
Subject: Re: James Bovard

We should talk before you do. Hopefully i can provide some help in getting the best result.

Sent from my iPhone

> On Feb 3, 2015, at 10:12 PM, Fallon, Brian (OPA) <Brian.Fallon@usdoj.gov> wrote:

>

> OK. I will approach him about preparing a submission.

>

> Thank you,

> Brian

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>

> -----Original Message-----

> From: Mastio, David [dmastio@usatoday.com]

> Received: Tuesday, 03 Feb 2015, 9:59PM

> To: Fallon, Brian (OPA) [bfallon@jmd.usdoj.gov]; Gallagher, Brian [bgallagh@usatoday.com]

> Subject: RE: James Bovard

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> Brian,

>

> As an opinion section, much of what we publish is written by writers with agendas. I am not aware of any opinion publication where this is not the case. Regardless, I don't see how one person with an agenda criticizing another person with an agenda for having an agenda gets any of us anywhere.

>

> The guarantor of balance in the opinion section is that we are open to a wide variety of views. From my perspective as the guy who handles the Op-Eds, I can tell you that the best way to see views the Obama administration finds more congenial is for the top members of the administration to write for us. I make a habit of bending over backwards to give them the best play I can justify, even when the views offered are less than fresh, dog-bites-man material.

>

> For instance, last Friday, we ran a piece by the First Lady on the administration's dedication to education for our nation's young people:

> <http://www.usatoday.com/story/opinion/2015/01/30/college-funding-michelle-obama-work-counseling-high-school-column/22533683/>

>

> It was shared on Facebook 36,000 times. Our online front page folks liked it so much, they put it on the home page twice. I made it our lede piece on Friday. Working with Michelle's team, we timed publication to maximize the benefit it would provide in spreading the word about a White House event that day.

>

> How did this happen? The First Lady's folks contacted us. I explained to them what worked best for us and what kind of things we could do together. You can see the result.

>

> Just as our door is open to writers who want to say nasty things about the attorney general, our door is wide open to the attorney general when he wants to write about the top issues of the day. My contact information is below. I can guarantee you that I return phone calls and emails from the attorney general's representatives a hell of a lot faster than aging libertarians.

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> As for writers outside the administration who take positions more favorable to your views, feel free to give out my contact information to anyone you think would benefit from it.

>

> I'd appreciate it if you let Attorney General Holder know that our interest in his writing will remain strong after he leaves office, both in the remaining years of the Obama administration and in the future.

>

> Sincerely,

>

> David Mastio

> Forum Editor

> USA TODAY

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> dmastio@usatoday.com | P. 703.854.6526 | C. (b) (6) 7950 Jones Branch Drive, McLean, VA 22108

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> -----Original Message-----

> From: Fallon, Brian (OPA) [mailto:Brian.Fallon@usdoj.gov]

> Sent: Tuesday, February 03, 2015 8:18 PM

> To: Mastio, David; Gallagher, Brian

> Subject: RE: James Bovard

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> Thank you for the quick reply. I am not accusing USA Today of having an agenda. I am, however, accusing Mr. Bovard of having one. A survey of his past works indicates he has never had a kind thing to say about Holder. In the last four months alone, he has authored pieces in various places criticizing him on civil liberties, relations with law enforcement, civil asset forfeiture and media subpoenas. In the past, Bovard even has articulated a conspiracy theory involving Mr. Holder and the incident at Waco in the 1990s. Mr. Bovard is of course entitled to his views on all these issues and more. but at best. his consistently nasty words towards Mr. Holder's would seem to make the

and more, but at best, his consistently nasty words towards Mr. Holder would seem to make the umpteenth iteration of his criticisms something less than a fresh take and rather dog-bites-man. At worst, it is evidence that he harbors a bias against Mr. Holder that makes his opinion on any given issue related to the Attorney General something less than an earnest appraisal on the merits.

>

> Either way, I don't understand why USA Today would provide a platform on repeated occasions for his Holder bashing. And while I am not familiar with the past interview requests you mention and surmise they occurred prior to my arrival here, I would hope you are not saying that the sole guarantor of balance on your pages is the AG's ability to personally travel to your offices to sit for an editorial board session. While I agree that would be good to do, scheduling permitting in his remaining time at the helm here, I would hope you would entertain a submission in any case from someone with an alternative take on Holder's record of any number of issues. That is the approach you take with your staff editorials and it is refreshing.

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> Best,

> Brian

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> -----Original Message-----

> From: Gallagher, Brian [bgallagh@usatoday.com]

> Received: Tuesday, 03 Feb 2015, 7:33PM

> To: Fallon, Brian (OPA) [bfallon@jmd.usdoj.gov]; Mastio, David [dmastio@usatoday.com]

> Subject: RE: James Bovard

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> Brian,

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> There is no agenda. Bovard is someone who writes for us occasionally, and not just on this subject. It seems to me a legitimate point of view, and not our own.

> As for balance, your office is not helping the cause. I've twice personally invited the AG in to meet with the editorial board, and in each case he eagerly agreed (at White House Correspondents dinners), only to have the meeting scotched either by the White House or internally at Justice. In any case, I'm no less interested than I ever was, and the invitation stands. So come on in, and your side will get plenty of attention. The meetings are on the record except for mutually agreed digressions, and we shoot a short video afterward, which we post and share with the rest of Gannett.

> I hope you can make it.

>

> Regards,

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> Brian Gallagher

> Editorial page editor

> USA TODAY

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> From: Fallon, Brian (OPA) [mailto:Brian.Fallon@usdoj.gov]

> Sent: Tuesday, February 03, 2015 7:08 PM

> To: Mastio, David; Gallagher, Brian

> Subject: FW: James Bovard

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> Hello,

> Sandra, with whom I work from time to time, informed me this was better directed to the both of you. Thank you for any guidance you may be able to provide.

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> Best,

> Brian

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> From: Fallon, Brian (OPA) [mailto:Brian.Fallon@usdoj.gov]

> Sent: Tuesday, February 03, 2015 9:45 AM

> To: Torry, Sandra

> Subject: James Bovard

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> Good morning, Sandra - I am not sure if this is better directed at a colleague; if so, please let me know to whom I might address this. But is there a reason why USA Today gives James Bovard a recurring platform to slam Attorney General Holder? Inviting or accepting one column from him on the subject would be one thing, but there is now a pattern of USA Today publishing op-eds with Bovard providing only slightly different takes on why Holder is a lousy AG.

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> As I understand it, Mr. Bovard is not a columnist for the paper, and his take on Mr. Holder is well established by virtue of the screeds he publishes on other platforms as well such as the Washington Times, so why is it considered novel or appropriate for him to be given a platform to whack the AG every couple months on your paper's website?

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> <http://www.usatoday.com/story/opinion/2015/02/03/eric-holder-legacy-constitution-justice-department-wiretaps-snowden-nsa-attorney-general-column/22539541/>

>

> <http://www.usatoday.com/story/opinion/2014/08/20/ferguson-holder-investigation-police-shooting-column/14332185/>

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> At the very least, I would hope the paper would accept a competing view op-ed from someone whose opinion differs from Mr. Bovard's. If that is possible to arrange, please let me know.

>

> Thank you,

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> Brian Fallon

> Director of Public Affairs

> U.S. Department of Justice

> (b) (6) office

> (b) (6) cell

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