



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

July 22, 2022

Via E-mail

[Requestor]

[your company]

[address]

Re: Request for an Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [Requestor]:

This is in reference to your email message of May 10, 2022 (“May 10 email”), in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding your possible obligation to register pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”) for activities you have engaged in pursuant to a contract you obtained with [foreign company]. Based on our review of your request, as well as additional information by us on July 7, 2022, we have determined that you would not be obligated to register under FARA for the proposed activities undertaken on behalf of [foreign company] as described in your submission.

In the May 10 email, you informed us that [foreign company] is a [foreign country] company, registered in the United States, which specializes in “countering disinformation/misinformation from hostile nation states and other entities.” You further informed us that, through its registered U.S. entity, [foreign company] seeks to provide its services to the U.S. Departments of [redacted] as well as other national security-related government organizations. You informed that you entered into a contract with [foreign company] on March 28, 2022, through which, among other things, you were to identify potential U.S. government clients, and to provide threat assessments to them concerning the disinformation campaigns conducted by hostile states directed at the U.S. and its foreign allies. The agreement provided that you were to “[a]rrange and participate in meetings with key members of Congress and staff ([your company] would register as a lobbyist for [foreign company] if the number of congressional interactions requires it).”¹ The agreement further provided that you would introduce [foreign company] and its services to potential private sector partners and would provide overall strategic guidance. In that regard, the agreement provided remuneration in the amount of a “[percentage] commission on all contracts sourced by [your company].”

Pursuant to this contract, you disclosed that you arranged and attended a meeting on [date], between officials of [foreign company] and Representative [redacted], the ranking minority

¹ We understand the contract provision to specifically provide that under these circumstances your company would register as a lobbyist for [foreign company] under the Lobbying Disclosure Act (2 U.S.C. §1601 *et seq.*).

member of the [subcommittee] of the of the U.S. House of Representatives Appropriations Committee, in which the growing threat of [foreign government] disinformation to U.S. and allied governments was discussed and [foreign company]'s services were offered to help counter such threats. You also sent an email message to an official with the U.S. [military] Command seeking to set up a similar meeting but that no meeting ever occurred. You represent that you have not engaged in any other efforts of outreach to anyone else in the executive, or legislative branches of government, and that the activities you engaged in for [foreign company] have included introducing it and its services to potential private sector partners, setting up the one meeting with a Member of Congress, and providing strategic guidance in approaching potential partners. While you had intended to contact other individuals in the U.S. Department [redacted] and other national security related government organizations, you informed us that your business relationship with [foreign company] has now terminated and thus no further activity will occur.²

You inquired whether these activities would trigger a registration requirement.

Generally speaking, save certain exemptions, a party is an “agent of a foreign principal” that must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal and who directly or through any other person,” and within the United States:

- (i) engages in political activities for or in the interests of such foreign principal;
- (ii) acts as public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal;
- (iii) solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or
- (iv) represents the interests of such foreign principal before any agency or official of the Government of the United States.

See 22 U.S.C. § 611(c)(1).

[Foreign company] is a “foreign principal” as defined by the Act, 22 U.S.C. § 611(b)(3), as it is a corporation or organization organized under the laws of a foreign country. In undertaking the above-described contractual activities for [foreign company], you were acting “at the order,

² We acknowledge that your request for an advisory opinion, and your provision of the contract and additional information, preceded the termination of your business relationship with [foreign company]. Although normally our regulations constrain us from providing you an advisory opinion on only past activities, *see* 28 C.F.R. §5.2(b), due to administrative error, we did not receive the contract and information until July 7, 2022. Given that your contractual relationship was active at the time of the request, and that further activities were contemplated, we can provide you with an advisory opinion on your activities as they were not entirely past conduct at that time.

request, or under the direction or control, of a foreign principal,” 22 U.S.C. § 611(c)(1).

We have determined that you were acting as an agent of the foreign principal, [foreign company], in representing its interests before an official with the U.S. government. *See* 22 U.S.C. § 611(c)(1)(iv). In the May 10 email, you acknowledged setting up and attending a meeting on [Date redacted], between officials with [foreign company] and Rep. [redacted]. The act of setting up and attending this meeting clearly constitutes representing [foreign company]’s interests before a U.S. government official.

Although you have not claimed that you qualify for an exemption from registration under the Act, we consider whether you qualify for the exemption available under Section 613 (d)(2) for activity “not serving predominantly a foreign interest.” Your activity was focused on selling the commercial services offered by [foreign company], through its U.S. registered corporation. [Foreign company] is a privately-owned company not affiliated with, nor controlled by the [foreign government]. Based on the facts you provided, the lobbying activities involved were “directly in furtherance of the bona fide commercial, industrial, or financial operations” of [foreign company]. *See* 22 C.F.R. § 3.504(c). Further, the activities were “not directed by a foreign government or foreign political party and the political activities [did] not directly promote the public or political interests of a foreign government or of a foreign political party.” *Id.* Accordingly, we conclude that this activity was not predominantly serving a foreign interest and thus registration is not required. If there are any future developments that may affect the above analysis, please reach out to the FARA Unit for further discussion.

If you have any questions regarding this matter, please contact [redacted] by telephone at (202) 233-0776.

Sincerely,

/s/Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief, FARA Unit