



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

March 26, 2019

By FedEx

[addressee deleted]

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

Dear [name deleted]:

We write in response to your letter dated January 20, 2019, in which you request an advisory opinion, pursuant to 28 C.F.R. § 5.2, regarding whether you have an 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”). You specifically inquire whether you may qualify for the exemption pursuant to 22 U.S.C. § 613(c) which exempts from registration certain staff members employed by diplomatic or consular officers who are recognized by the Department of State, as long as the employee does not serve as a public-relations counsel, publicity agent, or information-service employee. Based upon the representations made in your letter and the accompanying proposed consulting agreement with the [foreign government embassy], we have determined that you would not have an obligation to register under FARA, under certain conditions.

According to the proposed consulting agreement attached to your letter, your duties as consultant to the [foreign government embassy official], will be “to communicate with [local government entities in the US] in the United States to participate in building strong and efficient relationships between the [foreign government] and the United States,” as well as to “facilitate and arrange visits to the [local government entities in the US] and other [agencies in the United States], schedule meetings, conferences, manage files and electronic communications and create documents and presentations.” In your letter, you provide further detail concerning your duties to include exchanging [industry] best practices through participation in conferences; facilitating contact with foreign [industry representatives] in Washington, DC, and U.S. federal [industry] agencies such as the [text deleted]; and establishing an international [industry] benchmark against which [industry entities] could gauge their performance and adjust strategies.

Generally speaking, a party must register under FARA as an “agent of a foreign principal” if, “at the order, request, or under the direction or control of a foreign principal,” the party:

(i) engages within the United States in political activities for or in the interests of such foreign principal;

(ii) acts within the United States as public relations counsel, publicity agent, information-service employee, or political consultant for or in the interests of such foreign principal; ...

(iv) represents the interests of such foreign principal before any agency or official of the Government of the United States[.]

22 U.S.C. § 611(c)(1).

The [foreign government embassy] is a “foreign principal” under the Act, which is defined as “a government of a foreign country.” 22 U.S.C. § 611(b)(1), and by accepting the contract to work for the [foreign government embassy], you would be subject to its direction and control, and therefore would be its agent. However, based on our review of your submission, we have determined that your conduct would satisfy the exemption pursuant to Section 613(c) if three conditions are met. First, you did not provide information about whether [foreign embassy official] is a duly accredited diplomatic or consular officer of the [foreign government] who is so recognized by the U.S. Department of State. In order for the exemption to apply, you must determine whether he is so accredited and so recognized. Second, you must ensure that your “name and status and the character of your duties are of public record in the Department of State,” and that you are “engaged exclusively in the performance of activities that are recognized by the Department of State as being within the scope of the functions of such member or employee.” Third, you must not act as a public relations counsel,¹ publicity agent² or information-service employee.³ Engaging in any such activities would cause you to be ineligible for the exemption under Section 613(c).

Please note that the questions of obligation and exemption are based solely upon the specific facts set out in your January 20, 2019, letter and proposed contractual agreement, and must be revisited in the event that any of the facts change. In addition, should you fail to satisfy

¹ The Act defines “public relations counsel” as “any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.” 22 U.S.C. § 611(g).

² A “publicity agent” is defined by the Act as “any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.” 22 U.S.C. § 611(h).

³ An “information-service employee” is defined by the Act as “any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or a partnership, association, corporation, organization or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country.” 22 U.S.C. § 611(i).

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the three conditions listed above, the exemption under Section 613(c) would not be available. For example, should you engage in activities that promote the public or political interests of the [foreign government] or a foreign political party, a registration under FARA may be required. If any of the facts do change or the enumerated conditions are not met, you should contact the FARA Unit immediately in order that we may reexamine whether you have an obligation to register. If you have any questions concerning this matter, please contact [name deleted] by telephone at (202) 233-0776.

Sincerely,

Brandon L. Van Grack
Chief, FARA Unit