



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

December 17, 2021

Freedom of Information Act Request

Michael Bell
United States Department of Transportation
1200 New Jersey Ave., SE
W94-122
Washington, DC 20590

**Re: Records Relating to Delegations of Authority by the Secretary of
Transportation**

Dear Mr. Bell;

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (FOIA), from the Protect the Public's Trust (PPT), which operates as a non-profit organization dedicated to promoting ethics in government and restoring the public's trust in government officials.

Records Requested

We are requesting copies of the following records:

1. All records from July 1, 2021 through the date the search begins relating to the delegation of authority from the Secretary of Transportation to other Department of Transportation officials;
2. All records from July 1, 2021 through the date the search begins relating to routing documents away from the Secretary of Transportation and/or making a final decision without the Secretary's input; and
3. All records from July 1, 2021 through the date the search begins that contain any of the following search terms:
 - "Paternity";
 - "On Leave";
 - "Delegate";
 - "Does not need to see";
 - "Does not need to review";
 - "Do not need to wait for" or "do not wait for";
 - "Authorizes you";
 - "Authorizes the Deputy Secretary" or "authorizes Deputy Secretary";



PROTECT the PUBLIC'S TRUST

- “Authorizes the Chief of Staff” or “Authorizes Chief of Staff”; and
- “Authorizes the Assistant Secretary” or “authorizes assistant secretary”.

For purposes of this request, we are seeking records held by:

- The Immediate Office of the Secretary (including, but not limited to, the Secretary, the Chief of Staff, the Deputy Chief of Staff, and any Special Assistants for Scheduling and/or Advance);
- The Immediate Office of the Deputy Secretary (including, but not limited to, the Deputy Secretary, any Special Assistants, and any Executive Assistants);
- The Executive Secretariat;
- The Immediate Office of the General Counsel (including, but not limited to, the General Counsel, the Deputy General Counsel, any Associate General Counsels, any Senior Counsels, and any Special Counsels);
- The Assistant General Counsel for General Law; and
- The Deputy Assistant General Counsel for General Law.

For this request, the term “all records” refers to, but is not limited to, any and all documents, correspondence, emails, text messages, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, telephone logs, digital logs such as those produced by Microsoft Teams, and/or all other responsive records, in draft or final form.

This request is not meant to exclude any other request that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under the FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and



PROTECT the PUBLIC'S TRUST

2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

PPT is willing to receive records on a rolling basis.

Format of Requested Records

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily accessible” means text-searchable and OCR-formatted. See 5 U.S.C. § 552(a)(3)(B). We ask that you please provide all records in an electronic format. Additionally, please provide the records either in (1) load-ready format with a .CSV file index or Excel spreadsheet, or; (2) for files that are in .PDF format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

Fee Waiver and Expedited Processing Request

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 49 C.F.R. § 7.43(c).

In addition, under Department of Transportation regulations, a party is entitled to expedited processing when the requestor demonstrates a compelling need that involves



PROTECT the PUBLIC'S TRUST

“[c]ircumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or the “request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.” 49 C.F.R. § 7.31(c)(1).

This request should be expedited, and PPT should be granted a fee waiver. This request concerns information that is likely to contribute significantly to the public understanding of the operations of the Federal government, is made by a person primarily engaged in disseminating information, has a time urgency to inform the public of actual or alleged activity, and is not for the commercial benefit of the requestor.

This request is likely to contribute significantly to the public’s understanding of the operations or activities of a federal agency. Specifically, this request concerns the operations and activities of the Department of Transportation (DOT), a federal agency, in relation to formal and informal delegations of authority by the Secretary of Transportation. Understanding these delegations is important for the American people to understand who is actually making decisions at the Department of Transportation. These issues are particularly salient in light of reports that the Secretary was on paternity leave for several months. While the purpose of his leave may be admirable, the American people have a right to understand if the Presidentially appointed, Senate confirmed head of a cabinet level agency was operating at a reduced capacity during this time and, if so, who was practically exercising the official authority of the Secretary.

The requested documents will go a long way to establishing if there were any formal delegations of authority and, if so, who was exercising the authority of the Secretary. Ideally, the American people would have been told this information before any such delegation. Since that does not appear to have happened, time is of the essence in promoting a public understanding of how the Department has been operating for the past few months.

PPT is an organization primarily engaged in disseminating information. Specifically, PPT operates as a non-profit organization that informs, educates, and counsels the public about the importance of government officials acting consistently with their ethics obligations. PPT intends to publish information from requested records on its website, distribute the records and expert analysis to its followers through social media channels including Twitter, Facebook, and other similar platforms. PPT also has a robust network of reporters, bloggers, and media publications interested in its content and that have durable relationships with the organization. PPT intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Through these means, PPT will ensure: (1) that the information requested contributes significantly to the public’s understanding of the government’s operations or activities;



PROTECT the PUBLIC'S TRUST

(2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that PPT possesses the expertise to explain the requested information to the public; (4) that PPT possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes PPT as a reliable source in the field of government ethics and conduct.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to PPT's role of educating the general public. PPT operates as a nonprofit organization with supporters and members of the public who seek a transparent, ethical and impartial government that makes decisions in the best interests of all Americans, not former employers and special interests. PPT has no commercial interest and will realize no commercial benefit from the release of the requested records.

Accordingly, PPT qualifies for a full fee waiver and expedited processing.

Conclusion

We hope that the Department will immediately grant this request for a fee waiver and expedited processing and begin to search and disclose the requested records as soon as possible.

If you have any questions, please contact me at foia@protectpublictrust.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

Morgan Yardis
Research and Publication Associate
foia@protectpublictrust.org