

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PROTECT THE PUBLIC’S TRUST )  
712 H Street, N.E. )  
Suite 1682 )  
Washington, D.C. 20002, )

Plaintiff, )

v. )

Civil Case No. 1:22-cv-03629

OFFICE OF SCIENCE AND TECHNOLOGY )  
POLICY )  
Eisenhower Executive Office Building )  
1650 Pennsylvania Avenue, NW )  
Washington, D.C. 20504 )

Defendant. )

\_\_\_\_\_ )

**COMPLAINT**

1. Plaintiff Protect the Public’s Trust brings this action against the Office of Science and Technology Policy under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgement Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.
3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

**PARTIES**

4. Plaintiff Protect the Public’s Trust (“PPT”) is an unincorporated association of retired and former public servants and concerned citizens that is dedicated to restoring public trust in

government by promoting the fair and equal application of the rules and standards of ethical conduct to all public servants. *See* D.C. Code § 29–1102(5). Consistent with Justice Brandeis’s aphorism that “[s]unlight is said to be the best of disinfectants; electric light the most efficient policeman,” PPT seeks to promote transparency and broadly disseminate information so that the American people can evaluate the integrity and ethical conduct of those who act in their name. Louis Brandeis, *OTHER PEOPLE’S MONEY AND HOW BANKERS USE IT* (1914), <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

5. Defendant Office of Science and Technology Policy (“OSTP” or “the Office”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

#### **STATEMENT OF FACTS**

6. On April 7, 2022, Plaintiff submitted a FOIA request to Defendant via email (Exhibit A) seeking:

[T]he following records relating to all employees of the Office of Science and Technology Policy (OSTP):

1. All records and communications, documents, and other records from January 20, 2021 through the date this request is processed, between any employee in the Office of Science and Technology Policy and any employee or representative of the following selected external organizations:
  - Google
  - Alphabet
  - West Exec Advisors
  - Schmidt Futures
  - DE Shaw
  - Rebellion Defense
  - Abacus.AI
  - Sandbox AQ
  - Civis Analytics
  - Broad Institute of MIT and Harvard

- Federation of American Scientists
- Sun Microsystems
- Rebellion Defense
- Massachusetts Institute of Technology
- Harvard University
- Innocence Project
- Count Me In
- Biden Cancer Initiative
- Codiak Biosciences
- Neon Therapeutics
- Third Rock Ventures
- F-Prime Capital
- Lander Family Charitable Foundation

2. All communications, from January 20, 2021 and March 28, 2022, between any employee at OSTP and Politico reporter Alex Thompson regarding contacts between any of the organizations listed above and/or Eric Schmidt. On March 28, 2022, Politico published a story written by Thompson, “A Google billionaire's fingerprints are all over Biden's science office,” about the relationship of certain outside organizations and OSTP.[]

(citation omitted).

7. As Attorney General Garland, has made clear, FOIA is “a vital tool for ensuring transparency, accessibility, and accountability in government” whose “‘basic purpose . . . is to ensure an informed citizenry,’ which is ‘vital to the functioning of a democratic society [and] needed to check against corruption and to hold the governors accountable to the governed.’” Merrick Garland, *Memorandum for Heads of Executive Departments and Agencies: Freedom of Information Act Guidelines* 1 (Mar. 15, 2022), <https://www.justice.gov/ag/page/file/1483516/download> (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)) (“Garland Memo”).
8. The release of these documents is in the public interest because they will help contribute to the public understanding of whether and how officials at OSTP are complying with their ethical obligations. This information is particularly relevant in light of published reports detailing ties between OSTP officials and former Google CEO Eric Schmidt. *See*

Alex Thompson, *A Google Billionaire's Fingerprints are All Over Biden's Science Office*, Politico (Mar. 28, 2022), <https://www.politico.com/news/2022/03/28/google-billionaire-joe-biden-science-office-00020712>. To wit, Politico reported that “[m]ore than a dozen officials in the 140-person White House office have been associates of Schmidt’s,” that a charity associated with Mr. Schmidt “indirectly paid the salaries of two science-office employees,” that Mr. Schmidt “has long sought to influence federal science policy, dating back to his close ties to the Obama administration,” that ties between a charity associated with Mr. Schmidt and OSTP employees “sparked ‘significant’ ethical concerns, given Schmidt’s financial interests in areas overlapping with OSTP’s responsibilities, according to the science office’s then-general counsel, Rachel Wallace, in internal emails obtained by POLITICO,” and that “internal emails show that Wallace and other members of the science office’s legal team regularly flagged potential conflicts of interests related to Schmidt and Schmidt Futures.” *Id.* The requested documents will help shed light on how these potential conflicts of interest were handled as well as any continuing relationships between government employees and named outside groups.

9. On April 11, 2022, OSTP responded by requesting that PPT narrow request number 1 by providing the following information:
  - a. domain names for the organizations listed below (e.g. @google.com).
  - b. the names of employees who might have sent or received communications that are of interest to you. And,
  - c. the subject matter of the communication(s).
10. On May 3, 2022, Plaintiff responded with the following information:
  - a. **Domains for organizations:**

@google.com  
@abc.xyz  
@westexec.com  
@schmidtfutures.com  
@deshaw.com  
@rebelliondefense.com  
@abacus.ai  
@sandboxaq.com  
@civisanalytics.com  
@broadinstitute.org  
@fas.org  
@oracle.com  
@mit.edu  
@fas.harvard.edu  
@innocenceproject.org  
@joincountmein.org  
@codiakbio.com  
@biontech.de  
@thirdrockventures.com  
@fprimecapital.com

**b. OSTP employees who sent/received communications:**

1. Eric Lander
2. Marc Aidinoff
3. Tom Kalil
4. Rachel Wallace
5. Min Hee Kim
6. Michael Schmoyer
7. Jessica Young
8. Chris McGuire
9. Nik Marda
10. Lindsay Gorman
11. Justin Lynch
12. All other political appointees
13. All SGEs
14. All non-career SES

c. The purpose of this FOIA is to gather information necessary to ensure officials at OSTP are acting consistently with their ethics obligations. Published reports indicate that may not be the case and that there may be links between entities outside the government that could create potential conflicts of interest or may involve activities that could violate ethics rules. In some instances, the organizations we are requesting communications with are covered entities for certain employees, in which case any communications between the employee and the organization could be evidence of improper

behavior. Limiting the request to communications that involve only certain topics could possibly shield these records from the public.

Additionally, for this search we are not interested in receiving items such as news articles shared without comment. We are interested in receiving communications with individuals employed by the organizations listed but not in communications associated with user accounts, such as deal announcements, sales offers, orders, account notifications or auto-generated emails from accounts such as notification@google.com; noreply@google.com; @accounts.google.com.

11. On May 5, 2022, OSTP requested that Plaintiff “[p]lease provide the pertinent date range for this request.”
12. That same day, Plaintiff replied in part: “[a]s our request states, the time frame for the search is: ‘January 20, 2021 through the date this request is processed.’”
13. On June 6, 2022, OSTP sent an acknowledgement letter. This acknowledgement letter referred to Plaintiff’s request as OSTP-FOIA # 22-061, asserted that Plaintiff’s request was “submitted to the Office of Science and Technology Policy (hereinafter ‘OSTP’) on April 7, 2022, but not perfected till [sic] May 5, 2022,” and indicated that Plaintiff’s request would be processed on “as a track three request.”
14. On June 17, 2022, Plaintiff reached out to OSTP to inquire about the status of its request and/or an estimated timeline for producing responsive records.
15. On June 21, 2022, OSTP responded in part by noting “OSTP uses a multitrack processing system when reviewing FOIA requests. Requests within each track are processed on a ‘first-in, first-out’ basis (32 C.F.R. § 2402.6(e)(1)). OSTP is currently processing the requests that were received prior to the instant one. Thus, *the anticipated completion time frame is within 4 weeks*, but that is subject to change as the processing progresses” (emphasis added).

16. On November 14, 2022, Plaintiff again followed up requesting a status update regarding its FOIA request. No response was received.
17. Plaintiff has actively and diligently communicated with the Office and responded to questions seeking to narrow or clarify Plaintiff's request. The only reasonable inference from Defendant's June 6, 2022 acknowledgement letter, which asserted that Plaintiff's request was "perfected" on May 5, 2022, and June 21, 2022 email is that OSTP is satisfied with Plaintiff's clarifications and accepts that it has a valid FOIA request.
18. As the Garland Memo makes clear, "Timely disclosure of records is also essential to the core purpose of FOIA." Garland Memo at 3.
19. Notwithstanding the estimate in Defendant's June 21, 2022, email, defendant did not process Plaintiff's request within four weeks.
20. To the contrary, it has been more than 230 days since Plaintiff first submitted its FOIA request, more than 210 days since the Office recognized it had a valid, "perfected" FOIA request, and more than 160 days since the Office estimated it would be able to process Plaintiff's request "within 4 weeks." This is well beyond the statutory period for federal agencies to make a determination with respect to a FOIA request. 5 U.S.C. § 552(a)(6)(A)-(B).
21. To date, OSTP has not made a determination of whether it will comply with Plaintiff's FOIA request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). OSTP has not produced responsive documents to the Plaintiff or communicated to the Plaintiff the scope of the documents it intends to produce and withhold, along with the reasons for such withholding.

22. Given these facts, it appears that absent litigation the Office has not and does not intend to meet its statutory obligations to provide the requested records.
23. Through the Office's failure to make a determination within the time period required by law, PPT has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

24. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
25. PPT properly requested records within the possession, custody, and control of OSTP.
26. OSTP is an agency subject to FOIA, and therefore has an obligation to release any non-exempt records and provide a lawful reason for withholding any materials in response to a proper FOIA request.
27. OSTP is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
28. OSTP is wrongfully withholding non-exempt agency records requested by PPT by failing to segregate exempt information in otherwise non-exempt records responsive to the PPT FOIA request.
29. OSTP's failure to provide all non-exempt responsive records violates FOIA.
30. Plaintiff PPT is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA request and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.



**REQUESTED RELIEF**

Protect the Public's Trust respectfully requests this Court:

- (1) Assume jurisdiction in this matter, and maintain jurisdiction until OSTP complies with the requirements of FOIA and any and all orders of this Court.
- (2) Order Defendant to produce, within ten days of the Court's order, or by other such date as the Court deems appropriate, any and all non-exempt records responsive to PPT's FOIA request and indexes justifying the withholding of all or part of any responsive records withheld under claim of exemption.
- (3) Enjoin the Defendant from continuing to withhold any and all non-exempt responsive records.
- (4) Award the costs of this proceeding, including reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E).
- (5) Grant PPT other such relief as the Court deems just and proper.

Dated: December 2, 2022

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST  
By Counsel:

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