



Morgan Yardis <[REDACTED]>

FOIA REQUEST- Communications between the Office of Science and Technology Policy Staff and Select External Organizations and Individuals

6 messages

Morgan <foia@protectpublictrust.org>
To: ostpfoia@ostp.eop.gov

Thu, Apr 7, 2022 at 12:36 PM

Dear FOIA Officer,

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), a nonpartisan organization dedicated to promoting ethics in government and restoring the public’s trust in government officials.

Records Requested

PPT requests the 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 scienceoffice,” about the relationship of certain outside organizations and OSTP.](#)

For this request, the term “all records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, text messages letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, consultations, assessments, evaluations, schedules, telephone logs, digital logs such as those produced by Microsoft Teams (including Teams file folders or collaborative work documents housed in Teams), papers published and/or unpublished, reports, studies, photographs and other images, data, maps, 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, is 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
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.

To facilitate this request, we request that the FOIA office use the Agency's enterprise records management system to search and process this request.

Finally, FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records." 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times." 5 U.S.C. § 552(a)(2)(D)(ii)(I). Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

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 Request

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A) (iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide organizations such as PPT access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to

prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.” *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, “[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information” 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. PPT Qualifies for a Fee Waiver.

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).

Thus, OSTP must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. As shown below, PPT meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of OSTP. This request asks for: 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 selected external organizations as well as communications with a reporter who published a recent article about operations at OSTP.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow PPT to convey to the public information about potentially unethical communications between OSTP employees and external organizations. After disclosing records relating to the communications of the Department’s employees and any employee of the select organizations, PPT will inform the public about any such communications to ensure decisions are being made consistent with the law. Once the information is made available, PPT will analyze it and present it to its followers and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of OSTP operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons’ Understanding of the Communications Between Officials Within the Office of Science and Technology Policy and Select Organizations

The requested records will contribute to public understanding of potentially unethical communications between OSTP employees and select organizations. As explained above, the records will contribute to

public understanding of this topic.

Former CEO of google, Eric Schmidt, was reportedly paying the salaries of two employees within the Office of Science and Technology Policy. Even as the office's general counsel raised ethics flags, the multi-billionaire utilized funding from his own charity, the Schmidt Foundation, to indirectly compensate OSTP employees. An article produced by Politico reports "The science office's efforts to arrange for Schmidt Futures to pay the salaries of Lander's staff sparked "significant" ethical concerns, given Schmidt's financial interests in areas overlapping with OSTP's responsibilities." The organizations listed within this request are of high interest due to ties to Schmidt and/or officials at the Office of Science and Technology Policy. Matters such as these create serious questions about undue influence or special treatment being given to these organizations, their members, or their clients. Ensuring compliance with the rules of ethics and avoiding conflicts of interest or the appearance of bias in official decision making is paramount to ensuring the public's trust in government. PPT will use the information it obtains from the disclosed records to educate the public at large about any communications between those making OSTP's most important decisions and any special interest groups that have previously employed those decisionmakers. See *W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Through PPT's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), cert. denied, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern communications between OSTP employees and external organizations. We are also unaware of any previous release to the public of these or similar records. See *Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public."). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), "[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations...."

Disclosure of these records is not only "likely to contribute," but is certain to contribute, to public understanding of OSTP's operations. The public is always well served when it knows the nature of conversation between government officials and nongovernmental organizations. In light of recent events, there can be no dispute that disclosure of the requested records to the public will educate the general population on what conversations occur between OSTP officials and external organizations.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

PPT is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of the communications between OSTP employees and the selected organizations. Indeed, public understanding will be significantly increased as a result of disclosure.

The records are also certain to shed light on OSTP's compliance with its own mission and responsibility. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, PPT meets this factor as well.

II. PPT has the Ability to Disseminate the Requested Information Broadly.

PPT is a nonpartisan organization that informs, educates, and counsels the public about the importance of government officials acting consistently with their ethics obligations. A key component of being able to fulfill this mission and educate the public about these duties is access to information that articulates what communications have taken place between political appointees and the special interest organizations that previously employed them. 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; (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.

Public oversight and enhanced understanding of OSTP duties are absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). PPT need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for PPT to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to PPT.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to PPT's role of educating the general public. PPT is a nonpartisan 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.

IV. Conclusion

For all of the foregoing reasons, PPT qualifies for a full fee waiver. We hope that OSTP will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

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

MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Mon, Apr 11, 2022 at 12:03 PM

To: Morgan <foia@protectpublictrust.org>, MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Dear Morgan,

Thank you for the submission below. However, item 1 needs to be narrowed because it is overly broad.

OSTP regulation specifically states that:

“[a] request must describe the records sought in sufficient detail to enable OSTP personnel to locate the records with a reasonable amount of effort. To the extent possible, a requester should include specific information that may assist OSTP personnel in identifying the requested records, such as the date, title or name, author, recipient, and subject matter of the record. In general, a requester should include as much detail as possible about the specific records or the types of records sought. Before submitting a request, a requester may contact the OSTP FOIA Public Liaison to discuss the records sought and to receive assistance in describing the records. If, after receiving a request, OSTP determines that it does not reasonably describe the records sought or that the request will be unduly burdensome to process, OSTP shall inform the requester of the additional information that is needed or how the request may be modified. A Requester attempting to reformulate or modify such a request may discuss their requests with OSTP’s FOIA Public Liaison.” **32 CFR 2402.4(b)**

A general search for communications from or to the organizations below without specifying the sender's or recipient's name or subject matter would be unduly burdensome to process.

Please provide the following information, so the request could be processed:

- 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).

We look forward to hearing from you.

Regards,

OSTP FOIA

[Quoted text hidden]

Morgan <foia@protectpublictrust.org>
 To: MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Tue, May 3, 2022 at 2:39 PM

Good afternoon,

Please see the information below.

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
@primecapital.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.

Please let me know if you have any other questions.

Thank you,
Morgan Yardis
Protect the Public's Trust

[Quoted text hidden]

MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>
To: Morgan <foia@protectpublictrust.org>, MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Thu, May 5, 2022 at 7:02 AM

Dear Morgan,

Please provide the pertinent date range for this request.

[Quoted text hidden]

Morgan <foia@protectpublictrust.org>
To: MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Thu, May 5, 2022 at 12:22 PM

Good afternoon,

As our requests states, the time frame for the search is: "January 20, 2021 through the date this request is processed"

Thank you,
Morgan Yardis
Protect the Public's Trust

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MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>


Mon, Jun 6, 2022 at 2:21 PM

To: Morgan <foia@protectpublictrust.org>, MBX OSTP FOIA <OSTPFOIA@ostp.eop.gov>

Dear Morgan,

The acknowledgment letter for this request is attached.

[Quoted text hidden]

 **2022.06.03 22-061_Ack Letter_EX.pdf**
285K