

# EXHIBIT B



August 27, 2018

**VIA Electronic Delivery**

Kathy Ray  
FOIA Officer  
Department of Transportation  
W94-122  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
ost.foia@dot.gov

**Re: Freedom of Information Act Records Request**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and the Department of Transportation (“DOT”) FOIA Regulations at 49 C.F.R. Part 7, Democracy Forward Foundation makes the following request for records.

**Background**

In June 2018, the Federal Transit Administration’s (FTA) issued a “Dear Colleague” letter, addressing the agency’s distribution of Capital Investment Grant (CIG) funds, the primary grant program of the FTA.<sup>1</sup> In the letter, the agency highlighted the discretionary nature of CIG project funding, and encouraged transit projects to seek private funding, indicating a reluctance to allocate CIG funds. Notably, this letter was not the first effort by the agency to limit the distribution of CIG funding.

In its FY2019 budget request to Congress, FTA requested an appropriation of approximately \$1.0 billion for CIG grants. This level of funding would have limited disbursements to 10 CIG projects with existing funding agreements.<sup>2</sup> Congress responded to the request with a \$2.6 billion

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<sup>1</sup>

<https://www.transit.dot.gov/regulations-and-guidance/policy-letters/dear-colleague-letter-capital-investment-grants-program>

<sup>2</sup> <https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/304476/508-dot-bh2019.pdf> at 40. A July 2018 letter from Ranking Member of the House Committee on Transportation and Infrastructure Peter DeFazio (D-OR) and Ranking Member of the House Subcommittee on Highways and Transit Eleanor Holmes Norton (D-DC) cites a \$1.2 Bn request.

appropriation for FY2019, to remain available until September 2021. Of that appropriation, \$2.25 billion must be obligated by December 31, 2019.

Despite this significant appropriation from Congress, FTA has been slow to disburse funds. There are currently 17 projects<sup>3</sup> that, despite having met FTA criteria, have not been given funding agreements. The only project to have thus far received 2018 funding is the Indianapolis, IN Red Line BRT, which had a previous obligation of \$50 million from FY2017.<sup>4</sup> It remains unclear why Indianapolis has been the sole recipient of this appropriation.

### **Records Requested**

In an effort to understand, and explain to the public, the Administration's failure to fund critical infrastructure projects, Democracy Forward Foundation requests that the Department of Transportation produce the following within twenty (20) business days:

Any and all records, including attachments, whose sender(s) or recipient(s) include (1) staff within the Department of Transportation Office of the Secretary (OST) Office of Governmental Affairs, Office of the Under Secretary for Policy, or office of Public Affairs, and (2) congressional staff who use "@shuster.house.gov," "@thune.senate.gov," "@mail.house.gov," or "@commerce.senate.gov" in which any of the following terms appear: "Rail," "Indianapolis," "red line," "BRT," "Pence," "VP," "Agen," "Short," "Hodgson," "Meeks," "Makin," "Castillo," "Hiler," "Czarniecki," "Ayers," "Indiana," "Albuquerque," "Central Avenue," "Dallas," "DART," "Red & Blue Line," "El Paso," "Jacksonville," "Los Angeles," "LA," "LTR," "Minneapolis," "Canarsie," "Orange County," "Reno," "Sacramento," "Seattle," "South Shore," "St. Petersburg," or "Tempe."

The time period for this request is January 20, 2017, to the date the search is conducted.

### **Scope of Search**

Please search for records regardless of format or medium, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries,

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<https://democrats-transportation.house.gov/news/press-releases/defazio-norton-slam-trump-administration-efforts-to-slow-down-transit-projects>

<sup>3</sup> Albuquerque, NM Central Avenue BRT; Dallas, TX DART Red & Blue Line Platform Extensions; El Paso, TX BRT Extension; Jacksonville, FL Southwest BRT; Los Angeles, CA Purple Line Extension (LRT), Section 3; Minneapolis, MN Blue Line (LRT) Extension; Minneapolis, MN Green Line (LRT) Extension; Minneapolis, MN Orange Line BRT; New York City, NY Canarsie (L) Line Improvements; Orange County, CA Streetcar; Reno, NV Virginia Street BRT; Sacramento, CA Riverfront Streetcar; Seattle, WA Lynnwood LRT extension; Seattle, WA Madison Street BRT; South Shore (IN/IL) Commuter Rail Double Tracking; St. Petersburg, FL Central Avenue BRT; and Tempe, AZ Streetcar.

<sup>4</sup>

<https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grant-programs/capital-investments/116506/indygo-red-line-rapid-transit-profile.pdf>

facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. *See id.* 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i).

### **Request for Fee Waiver**

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), and 49 C.F.R §§ 7.24(b), 7.43(c), Democracy Forward Foundation requests a waiver of all fees associated with processing records for this request. The subject of this request concerns the operations of the federal government, and disclosure of the requested records is “likely to contribute to an understanding of Federal Government operations or activities” pursuant to 49 C.F.R. § 7.43(c)(2). The requested records will illuminate the priorities and conduct of officials at the FTA that have not already been made public.

Moreover, the request is for non-commercial purposes. Democracy Forward Foundation is a nonprofit organization organized under Internal Revenue Code § 501(c)(3). A core mission of Democracy Forward Foundation is to educate the public about improper government activity. Democracy Forward Foundation intends to use the materials gathered to educate the public through its website, press releases, and social media outlets.

### **Conclusion**

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles in meeting the request within 20 working days, please contact Jeff Dubner at [jdubner@democracyforward.org](mailto:jdubner@democracyforward.org).

We appreciate your assistance and look forward to your prompt response.

Sincerely,

/s/ Jeff Dubner

Democracy Forward Foundation