

EXHIBIT C



September 18, 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 Ms. Ray:

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

On March 1, 2018, Secretary Elaine Chao testified before the Senate Committee on Environment and Public Works (EPW) on the state of our country’s infrastructure, and the need for modernization. Through her discussion of the federal share of key infrastructure loans -- prompted by questions from Senators Gillibrand and Booker -- Secretary Chao underscored the Administration’s hesitation to invest in transit projects.

Repeated themes appeared in April 2018 hearings before the Senate¹ and House Appropriations Committees,² where Secretary Chao was questioned on the disbursement of Critical Infrastructure Grant (CIG) awards, and the Department’s refusal to consider Transportation Infrastructure Finance and Innovation Act (TIFIA) loans and Railroad Rehabilitation and Improvement Financing (RRIF) as state contributions.

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<https://www.appropriations.senate.gov/hearings/review-of-the-fy2019-budget-request-for-the-us-dept-of-transportation> (at 0:38:39 with Senator Reed; 01:02:10 with Senator Murphy)

² <https://www.youtube.com/watch?v=w19DJ8cv8Cc> (at 43:07 with Representative Price; 1:07:42 with Representative Quigley)

Records Requested

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

- (1) Communications, including attachments, between the Department of Transportation and members of Congress or their staff, including committee staff, regarding the treatment of federal loans for purposes of calculating the federal share of CIG projects or potential CIG projects, including, but not limited to, communications discussing the federal share for specific CIG projects or potential CIG projects.
- (2) Communications, including attachments, between the Department of Transportation and representatives of CIG project sponsors and potential CIG project sponsors, regarding the treatment of federal loans for purposes of calculating the federal share of CIG projects or potential CIG projects, including, but not limited to, communications discussing the federal share for specific CIG projects or potential CIG projects.
- (3) All records reflecting the Department of Transportation's treatment of federal loans for purposes of calculating the federal share of CIG projects or potential CIG projects, including, but not limited to, records discussing the federal share for specific CIG projects or potential CIG projects.
- (4) Final talking points and other briefing documents prepared for Secretary Chao's above-referenced hearing testimony on March 1, 2018, and April 12, 2018, pertaining to the method of calculating the applicable federal share for CIG projects or potential CIG projects.
- (5) Communications, including attachments, discussing changes to language describing TIFIA loans on the FHWA website, including changes from the phrasing "TIFIA, the proceeds of a secured TIFIA loan, will be used for any non-federal share of project costs required under Title 23 or Chapter 53, Title 49"³ to "The proceeds of a secured TIFIA loan may be used for any non-Federal share of project costs required under Title 23 or Chapter 53 of Title 49, if the loan is repayable from non-Federal funds."⁴

The time period for this request is January 20, 2017, to the date the search is conducted. For purposes of this request, "federal loans" includes, but is not limited to, loans provided pursuant to the Transportation Infrastructure Finance and Innovation Act ("TIFIA") program or the Railroad Rehabilitation and Improvement Financing ("RRIF") program.

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https://www.epw.senate.gov/public/_cache/files/4/f/4fa932cf-9a97-42bc-959e-1e1e5536e197/C03D6C188C459DAE0ADA8B8CA9695A06.spw-030118.pdf

⁴ https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/

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, 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 meets the five factors the Department of Transportation requires to satisfy a public interest determination. As the request seeks insight into Department determinations and processes, the records requested concern “the operations or activities of the Federal Government.” 49 C.F.R § 7.43(c)(1).

Further, the 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) as the requested records will illuminate the priorities and conduct of officials at the FTA that have not already been made public. In July 2018, a report surfaced detailing Administration efforts to slow the disbursement of federal transit grants⁵--funds explicitly appropriated by Congress through

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<https://usa.streetsblog.org/2018/07/18/slowly-but-surely-trumps-dot-starves-transit-expansion-projects-of-federal-funds/>

September 2021.⁶ In delaying the release of these funds, and refusing to move projects through the Department's approval pipeline, the Department is dramatically increasing the burden on states and localities, burdens that include increased project costs.⁷ Members of Congress have expressed their concern over actions by the Department regarding CIG funding,⁸ including the June 2018 "Dear Colleague" letter sent by the Federal Transit Administration (FTA) to transit agencies, which seeks to highlight the discretionary nature of CIG funding, and stresses local financial commitment, and encourages projects seek to private contributions.⁹ By failing to facilitate the development of transit projects, the Department is not only hurting Americans who rely on public transportation to go about their everyday lives, but is acting counter to the will of Congress.

By illuminating the conduct of Department of Transportation officials, including actions and decision-making on large scale, projects of major public interest that will not otherwise be made available to the public, the "contribution to public understanding of Federal Government operations or activities will be significant." 49 C.F.R. § 7.43(c)(4). Moreover, Democracy Forward Foundation has a proven track record when it comes to disseminating information concerning the activities and operations of the government. Democracy Forward Foundation's robust public affairs team regularly secures substantial news coverage on the basis of the organization's work, including its FOIA work. See <https://democracyforward.org/news/>. Democracy Forward Foundation is therefore well positioned to disseminate the records sought to a broad audience of interested persons. See 49 C.F.R. § 7.43(c)(3).

The request is for non-commercial purposes. 49 C.F.R. § 7.43(c)(5) 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 Nitin Shah at foia@democracyforward.org.

⁶ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Div. L., Title I, Sec. 150.

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<https://usa.streetsblog.org/2018/07/18/slowly-but-surely-trumps-dot-starves-transit-expansion-projects-of-federal-funds/>

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

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https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/regulations-and-guidance/policy-letters/117056/fta-dear-colleague-letter-capital-investment-grants-june2018_0.pdf

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

Sincerely,

/s/ Nitin Shah
Democracy Forward Foundation