

**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-01563

U.S. DEPARTMENT OF TRANSPORTATION)
1200 New Jersey Avenue, S.E.)
Washington, D.C. 20590,)

Defendant.)

_____)

COMPLAINT

1. Plaintiff Protect the Public’s Trust brings this action against the United States Department of Transportation 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 “Sunlight 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 United States Department of Transportation (“DOT” or “the Department”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Department has possession, custody, and control of records responsive to Plaintiff’s FOIA request.

STATEMENT OF FACTS

6. On or about December 20, 2021, PPT submitted a FOIA request (attached as Exhibit A) to the Department seeking the following records from several named offices:
 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”;
 - “Authorizes the Chief of Staff” or “Authorizes Chief of Staff”; and

- “Authorizes the Assistant Secretary” or “authorizes assistant secretary”
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 the public understand who is actually making decisions at the Department of Transportation. It has been widely reported that Secretary Buttigieg went on paternity leave beginning in or around mid-August 2021. *See, e.g.*, Ian Duncan, Mariana Alfaro, and Eugene Scott, *Republicans Fault Buttigieg for Time Off with Newborns. Democrats Say He’s Showing the Need for Paid Paternal Leave*, Wash. Post (Oct. 15, 2021), <https://www.washingtonpost.com/transportation/2021/10/15/pete-buttigieg-time-off-parental-leave/>. Plaintiff deeply respects Secretary Buttigieg’s commitment to his family and understands his desire to spend time with his new children. However, he is still the Presidentially appointed, Senate confirmed head of a cabinet-level agency that has wide ranging responsibilities and an annual budget of over \$80 billion. Accordingly, the American people deserve to know if someone else was acting as the primary decision maker for any period of time or if the Department was operating at a reduced capacity while the Secretary was on leave.

9. Based in part on the strong public interest in resolving these questions and PPT's demonstrated history of disseminating information to the public, PPT also requested expedited processing of its request.
10. On December 20, 2021, the Department acknowledged receipt of the FOIA, referred to it as request number "OST-2022-0103," and advised "all FOIA requests will be handled on a first-in/first-out basis."
11. On February 8, 2022, the Department denied Plaintiff's request for expedited processing. The Department also stated "we are also still conducting the search," and estimated "we will respond within the next 5 to 7 weeks."
12. Notwithstanding the Department's estimate that it would respond within five to seven weeks, Plaintiff has received no further updates from the Department.
13. As the Garland Memo makes clear, "Timely disclosure of records is also essential to the core purpose of FOIA." Garland Memo at 3.
14. As of today, Plaintiff's request has been pending for more than 160 days – 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).
15. At this time, the Department has not made a determination of whether it will comply with Plaintiff's request. *See Citizens for Responsibility and Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013). While the Department has indicated that it has begun its search, the Department has not produced responsive documents to the Plaintiff, has not communicated to the Plaintiff the scope of the documents it intends to produce and withhold, along with the reasons for such withholding, and has not informed Plaintiff of its ability to appeal any adverse portion of its determination beyond its denial of

expedited processing, which was provided after the statutory time period for general requests had already run.

16. Given these facts, it appears that absent litigation the Department has not and does not intend to meet its statutory obligations to provide the requested records.
17. Through the Department'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**

18. PPT repeats and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
19. PPT properly requested records within the possession, custody, and control of the Department.
20. The Department 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.
21. The Department is wrongfully withholding non-exempt agency records requested by PPT by failing to produce non-exempt records responsive to its request.
22. The Department 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.
23. The Department's failure to provide all non-exempt responsive records violates FOIA.

24. 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 the Defendant 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 PPT 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: June 2, 2022

Respectfully submitted,

PROTECT THE PUBLIC'S TRUST
By Counsel:

/s/Gary M. Lawkowski

Gary M. Lawkowski

D.D.C. Bar ID: VA125

DHILLON LAW GROUP, INC.

2121 Eisenhower Avenue, Suite 402

Alexandria, Virginia 22314

Telephone: 703-965-0330

Facsimile: 415-520-6593

GLawkowski@Dhillonlaw.com

Counsel for the Plaintiff