VIA EMAIL AND ONLINE PORTAL

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Office of the Inspector General
Department of Transportation
1200 New Jersey Ave., SE
J-3
Washington, DC 20590
via Online Portal

Re: Freedom of Information Act Request

Dear FOIA Officers:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the implementing regulations of the Department of Transportation (DOT), 49 C.F.R. Part 7, American Oversight makes the following request for records.

President Trump announced on May 15, 2020, that Howard “Skip” Elliott, current head of the Pipeline and Hazardous Materials Safety Administration (PHMSA), would replace Mitchell Behm as Acting Inspector General for DOT. Mr. Elliott remains in his role at PHMSA while taking on the new position, leading some lawmakers to question whether he will be able to act

with the independence required of an inspector general.\(^2\) Lawmakers have also raised concerns about Mr. Elliott’s qualifications for the position.\(^3\)

American Oversight seeks records with the potential to shed light on the administration’s action.

**Requested Records**

American Oversight requests that your agency produce the following records within twenty business days:

1. Any conflicts or ethics waivers or authorizations for Howard “Skip” Elliott, including authorizations pursuant to 5 C.F.R. § 2635.502.

2. Records reflecting any recusal determination made or issued for Mr. Elliott.

3. Any ethics agreement or ethics or recusal screening agreement or protocol for Mr. Elliott.

Please provide all responsive records from May 15, 2020, through the date a search is conducted.

**Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is "in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government."\(^4\) The public has a significant interest in the independence, qualifications, and activities of an inspector general whose office provides independence oversight of the Department of Transportation. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the federal government, including whether and to what extent Mr. Elliott’s role at DOT is affected by potential conflicts of interest, his qualifications, or external influence. American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records.

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\(^3\) *Id.*

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website. Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers; posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal; posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis; posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia; and posting records and analysis regarding the Department of Justice’s decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.

5 See id.
9 See generally Audit the Wall, AMERICAN OVERSIGHT,
https://www.americanoversight.org/investigation/audit-the-wall; see, e.g., Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall, AMERICAN OVERSIGHT,
Accordingly, American Oversight qualifies for a fee waiver.

**Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.

- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind.

- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.

- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA.\(^\text{13}\) It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.\(^\text{14}\)

- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to government-wide requirements to manage agency information electronically,\(^\text{15}\) and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools may capture that email under Capstone. At the same time, custodian searches are still

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necessary; agencies may not have direct access to files stored in .PST files, outside of
network drives, in paper format, or in personal email accounts.

▪ In the event some portions of the requested records are properly exempt from
disclosure, please disclose any reasonably segregable non-exempt portions of the
requested records. If a request is denied in whole, please state specifically why it is not
reasonable to segregate portions of the record for release.

▪ Please take appropriate steps to ensure that records responsive to this request are not
deleted by the agency before the completion of processing for this request. If records
potentially responsive to this request are likely to be located on systems where they
are subject to potential deletion, including on a scheduled basis, please take steps to
prevent that deletion, including, as appropriate, by instituting a litigation hold on those
records.

Conclusions

If you have any questions regarding how to construe this request for records or believe that
further discussions regarding search and processing would facilitate a more efficient
production of records of interest to American Oversight, please do not hesitate to contact
American Oversight to discuss this request. American Oversight welcomes an opportunity to
discuss its request with you before you undertake your search or incur search or duplication
costs. By working together at the outset, American Oversight and your agency can decrease the
likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email.
Alternatively, please provide responsive material in native format or in PDF format on a USB
drive. Please send any responsive material being sent by mail to American Oversight, 1030
15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive
records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight
looks forward to working with your agency on this request. If you do not understand any part
of this request, please contact Mehreen Rasheed at foia@americanoversight.org or (202) 848-
1320. Also, if American Oversight's request for a fee waiver is not granted in full, please
contact us immediately upon making such a determination.

Sincerely,

[Signature]

Austin R. Evers
Executive Director
American Oversight