



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

December 1, 2021

Freedom of Information Act Request

Michael Bell
United States Department of Transportation
1200 New Jersey Ave., SE
W94-122
Washington, DC 20590

Re: Records Relating to Public Communications Endorsing the Build Back Better Act

Dear Mr. Bell;

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), which operates as a non-profit organization dedicated to promoting ethics in government and restoring the public's trust in government officials.

Records Requested

We are requesting copies of the following records:

1. All records relating to this tweet:
<https://twitter.com/USDOT/status/1464255125170442245>, which appears to have been posted at or around 10:30 AM on November 26, 2021, including, but not limited to, any and all communications discussing the creation of this tweet and images therein, the substantiation for the claims made in the tweet, the decision to post this tweet, and/or the reactions to this tweet.
2. All records that contain the phrase "Build Back Better," "Build Back Better Act," "BBB," "BBBA," and/or "create millions of jobs."

For this request, the term "all records" refers to, but is not limited to, any and all documents, correspondence, emails, text messages, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, digital logs such as those produced by Microsoft Teams, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.



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This request is not meant to exclude any other request that, although not specifically requested, are 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.

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



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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 and Expedited Processing Request

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); *see also* 49 C.F.R. § 7.43(c).

In addition, under Department of Transportation regulations, a party is entitled to expedited processing when the requestor demonstrates a compelling need that involves “[c]ircumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual” or the “request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.” 49 C.F.R. § 7.31(c)(1).

This request should be expedited, and PPT should be granted a fee waiver. This request concerns information that is likely to contribute significantly to the public understanding of the operations of the Federal government, is made by a person primarily engaged in disseminating information, has a time urgency to inform the public of actual or alleged activity, and is not for the commercial benefit of the requestor.

This request is likely to contribute significantly to the public’s understanding of the operations or activities of a federal agency. Specifically, this request concerns the operations and activities of the Department of Transportation (DOT), a federal agency, in relation to the Build Back Better Act and a tweet posted on the Department’s official Twitter account. The Build Back Better Act is legislation currently pending before Congress, and is the subject of intense debate, both in Congress and among the broader public.

Outside observers have raised concerns that this tweet may violate federal prohibitions on using appropriated funds to lobby Congress. See Chris Enloe, *Transportation Department Faces Accusations of Illegal Lobbying Over Meme Promoting Biden Legislation*, Blaze Media (Nov. 28, 2021); *see also* 18 U.S.C. § 1913 (Lobbying with Appropriated Moneys). These concerns raise broader questions about the actual or alleged operations



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and activities of the Department, specifically, the process surrounding the creation of this particular tweet, as well as the propriety of the Department's activities in support of the Build Back Better Act more generally. In light of these concerns, this FOIA is likely to contribute significantly to the public's understanding of how the Department uses public funds and influences the public debate over pending legislation.

There is a time urgency to inform the public of actual or alleged activity relating to the Build Back Better Act. The Senate Majority Leader has publicly stated that he intends to schedule a vote on the Build Back Better Act before Christmas, approximately three weeks from today. See Jacob Pramuk, *Senate Aims to Pass Biden's Social Spending Plan Before Christmas, Schumer Says*, CNBC (Nov. 16, 2021). The public deserves to know how federal agencies like the Department are using taxpayer dollars to influence this debate before Congress votes, which requires disclosing the requesting documents as soon as possible.

PPT is an organization primarily engaged in disseminating information. Specifically, PPT operates as a non-profit organization that informs, educates, and counsels the public about the importance of government officials acting consistently with their ethics obligations. 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.

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

Accordingly, PPT qualifies for a full fee waiver and expedited processing.



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Conclusion

We hope that the Department will immediately grant this request for a fee waiver and expedited processing and begin to search and disclose the requested records as soon as possible.

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