

Dear FOIA Officer:

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, I am requesting access to the following records and communications from the U.S. Environmental Protection Agency:

1. All internal communications, including emails, text messages, recordings and comments that contain the search terms "EPTD" OR "East Palestine Train Derailment" AND "Facebook" OR "Facebook posts" OR "flagged Facebook posts" OR "Jami Rae Wallace" AND "Facebook" OR "Unity Council" AND "FACEBOOK" OR "Scott Smith" AND "Facebook" OR "East Palestine Off the Rails" AND "Facebook."
2. Any posts to Facebook by EPA officials on the Facebook page "East Palestine Off the Rails" or on East Palestine residents' personal Facebook pages or their Facebook messenger sites. Key search terms include "Facebook" AND "Jami Rae Wallace" OR "Courtney Miller," OR "Krissy Hylton," OR "Rick Tsai," OR "Shelby Walker," OR "Jake Cozza," OR "Hillary Flint," OR "Christa Graves," OR "Ashley McCollum," OR "Chrislin Davis," OR "Zsuzsa Gyenes" OR "Jess Conrad" OR independent scientist "Scott Smith."
3. Any communications to and from the EPA and Facebook employees regarding East Palestine Train Derailment related posts on Facebook.
4. Any records, contracts OR financial agreements between Facebook and EPA.

I am specifically requesting records and communications related to East Palestine Train Derailment (EPTD) from February 3, 2023 to December 31, 2023.

I am making this request on behalf of The Government Accountability Project, a non-partisan independent watchdog that works to expose and combat abuse of power in government.

If any part of this request is denied, please describe in detail the reasons why certain records or portions of records are not being released. Please release all other segregable parts that are not subject to an exemption. As provided by FOIA, I expect a response within 20 working days, unless otherwise permitted by statute.

### **Request for Fee Waiver**

GAP requests that all fees incurred in connection with the attached request be waived, primarily as members of the news media and secondary because "disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester." 5 U.S.C. §552 (a)(4)(A)(iii).

#### **1. Members of the News Media**

Under the language of the EPA Regulations, "The Agency will charge no search or review fees for requests by educational institutions or noncommercial scientific institutions, or representatives of the news media." Moreover, "a representative of the news media" in this clause means "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work,

and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public.”

[GAP uses editorial skills to author public disclosures](#), which very often include FOIA-requested documentation references, and via our [Blog](#), weekly news bulletins, monthly roundtable presentations, and quarterly newsletters, and published to our [16,000+ followers on Twitter](#), and are picked up by top news outlets on a regular basis, including [NBC News](#). As such, we request a determination on whether we are included in the news media fee category. Additionally, if for some reason you determined that we are not news media under the meanings and definitions of this regulation, we also request you provide explanation as to how you made that determination. Finally, we also request to reserve our right to appeal such determination after it has been made.

GAP employees are members of the public media. Its employees’ work has been published in outlets including [The Washington Post](#), [Just Security](#), and [The Daily Beast](#). This request is made as part of the news gathering process. If there is any newsworthy material discovered from this FOIA request, there is a reasonable expectation of its publication.

Moreover, it is unnecessary for GAP to demonstrate the relevance of this particular subject in advance. Additionally, despite our past record, case law states that “proof of the ability to disseminate the released information to a broad cross-section of the public is not required.” *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). Further, courts have held that “qualified because it also had “firm” plans to “publish a number of . . . ‘document sets’” concerning United States foreign and national security policy.” Under this criterion, as well, we qualify as members of the news media. Additionally, courts have held that the news media status “focuses on the nature of the requester, not its request. The provision requires that the request be ‘made by’ a representative of the news media. Id. § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.” As such, the details of the request itself are moot for the purposes of determining the appropriate fee category.

## **2. Public Interest**

To be overly inclusive, GAP also includes a request for a waiver on the basis of the 6 public interest factors. Please accept the detailed explanation below of GAP’s intended use of such information and status as a 501(c)(3) nonprofit as sufficient justification in order to waive fees connected with GAP’s request.

### *The Requesters’ Public Interest Status and History*

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational, and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of

public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP's role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. *Taylor v. RTC*, 56 F.3d 1437 (D.C. 1995); *United States v. Garde*, 573 F. Supp. 604 (D.D.C. 1987); ~ Generally *Virginia Pharmacy Bd. v. Virginia Consumer Council*, 425 U.S. 748, 756-57 (1976).

GAP has a 46-year history of working in the public interest. GAP does not take individual cases based on the client's ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest. Rather, GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing. It is through this work and with the help of whistleblowers that GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.

#### *Dissemination of the Requested Information*

In our efforts to promote government accountability, GAP works closely with Members of Congress, the media, and the public to alert them to irregularities. The information requested will be used in connection with a campaign aimed at key decision-makers at the federal level, the general public, and self-selected subscribers. More specifically, GAP will publicize the responsive records so that all federal employees who seek assistance at the Office of Special Counsel ("OSC") can be fully-informed about the office's methods for investigating their complaints.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from knowing the manner in which OSC investigates complaints, and the efforts that OSC has taken to ensure the highest quality training and instruction for its staff. As a consequence, public understanding, and trust of government operations will certainly be enhanced.

#### *Non-Commercial Use of the Requested Information*

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

If you have any questions regarding this request, please contact me by email at [lesleyp@whistleblower.org](mailto:lesleyp@whistleblower.org). I am willing to discuss ways to make this request more manageable to your office if necessary.

Thank you for your assistance with this matter.

Sincerely,

Lesley Pacey

Environmental Investigator

The Government Accountability Project