



from continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff Restore Public Trust is a public interest organization that promotes accountability and transparency in government to root out corruption and malfeasance. It is designed to serve as a critical resource for policymakers and elected officials investigating public corruption, members of the public looking for more information about what their government is or is not doing, and journalists examining the alleged malfeasance of government officials. It uses the information it gathers, and its analysis of that information, to educate the public through reports, press releases and other media. Restore Public Trust also makes the material it gathers available on its public website.

6. Defendant the U.S. Department of Transportation (DOT) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOT has possession, custody, and control of the records that Restore Public Trust seeks.

### **STATEMENT OF FACTS**

7. In late 2018 and early 2019, Restore Public Trust submitted two FOIA requests to DOT seeking records related to Secretary Elaine Chao.

#### *Foremost Group FOIA Request*

8. On December 4, 2018, Restore Public Trust submitted a FOIA request to DOT seeking all correspondence involving certain DOT custodians containing one of a list of search terms relating to the Foremost Group. The request also sought all correspondence between those same DOT custodians that included certain named individuals. A copy of the Foremost Group FOIA Request is attached hereto as Exhibit A and incorporated herein.

9. On December 17, 2018, DOT sent Restore Public Trust an acknowledgement letter assigning the request tracking number 2019-79.

10. Restore Public Trust has not received any further correspondence from DOT regarding the Foremost Group FOIA Request.

*Travel Expenses FOIA Request*

11. On March 28, 2019, Restore Public Trust submitted a FOIA request with DOT seeking records demonstrating the total costs reimbursed or paid by DOT for travel expenses associated with Secretary Elaine Chao. A copy of the Travel Expenses FOIA Request is attached hereto as Exhibit B and incorporated herein.

12. On April 11, 2019, Restore Public Trust received an acknowledgement letter from DOT assigning the request tracking number 2019-224.

13. Restore Public Trust has not received any further correspondence from DOT regarding the Travel Expenses FOIA Request.

*Exhaustion of Administrative Remedies*

14. As of the date of this complaint, DOT has failed to (a) notify Restore Public Trust of any determination regarding its FOIA requests, including the scope of any responsive records DOT intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

15. Through DOT's failure to respond to Restore Public Trust's FOIA requests within the time period required by law, Restore Public Trust has constructively exhausted its administrative remedies and seeks immediate judicial review.

**COUNT I**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Search for Responsive Records**

16. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

17. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

18. DOT is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

19. DOT has failed to promptly review agency records for the purpose of locating those records which are responsive to Restore Public Trust's FOIA requests.

20. DOT's failure to conduct an adequate search for responsive records violates FOIA.

21. Plaintiff Restore Public Trust is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to Restore Public Trust's FOIA requests.

**COUNT II**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Responsive Records**

22. Restore Public Trust repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

23. Restore Public Trust properly requested records within the possession, custody, and control of DOT.

24. DOT is an agency subject to FOIA and must therefore release in response to a FOIA requests any non-exempt records and provide a lawful reason for withholding any materials.

25. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to produce non-exempt records responsive to its FOIA requests.

26. DOT is wrongfully withholding non-exempt agency records requested by Restore Public Trust by failing to segregate non-exempt information in otherwise exempt records responsive to Restore Public Trust's FOIA requests.

27. DOT's failure to provide all non-exempt responsive records violates FOIA.

28. Plaintiff Restore Public Trust is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

### **REQUESTED RELIEF**

WHEREFORE, Restore Public Trust respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to Restore Public Trust's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to Restore Public Trust's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to Restore Public Trust's FOIA requests;
- (4) Award Restore Public Trust the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant Restore Public Trust such other relief as the Court deems just and proper.

Dated: June 10, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

D.C. Bar No. 1002367

AMERICAN OVERSIGHT

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Washington, DC 20005

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*Counsel for Plaintiff Restore Public Trust*

# **EXHIBIT A**

Re: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, Restore Public Trust requests access to and copies of certain records held by the Department of Transportation. We seek access to and copies of certain correspondence involving the following individuals, or any individual communicating on their behalf, between January 31, 2017 and the date this request is processed:

- Secretary Elaine Chao
- Jeffrey Rosen
- Geoff Burr
- Derek Kan
- Mark Buzby
- Richard Balzano

Specifically, we request access to and copies of all correspondence sent by, sent to or carbon copying ("CC") any of these individuals that references any of the following terms:

- Bao May Maritime Corporation Ltd.
- Ping May Maritime LLC
- Zhong May Maritime LLC
- Guo May Maritime LLC
- Yue May Maritime Corporation Ltd.
- Lan May Maritime LLC
- Dan May Maritime LLC
- Qing May Maritime LLC
- Min May Maritime LLC
- Kang May Maritime LLC
- Nan May Maritime LLC
- Cheng May Maritime LLC
- Rong May Maritime LLC
- Ing May Maritime LLC
- Ou May Maritime LLC
- En May Maritime LLC
- Jia May Maritime LLC
- Bao May
- Ping May
- Zhong May
- Guo May
- Yue May
- Lan May
- Dan May

- Qing May
- Min May
- Kang May
- Nan May
- Cheng May
- Rong May
- Ing May
- Ou May
- En May
- Jia May
- Shanghai Waigaoqiao Shipbuilding
- Shanghai Jiangnan-Changxing Shipbuilding
- Qingdao Beihai Shipbuilding Heavy Industry
- Oshima Shipbuilding Co. Ltd.
- Qingdao Beihai Shipbuilding Heavy Industry
- Chinese State Shipbuilding Corporation (CSSC)
- UK P&I Club
- Foremost Group
- Foremost Maritime Corporation
- Foremost Maritime Company
- Foremost Holdings Corporation
- Super Prosper Industrial Ltd
- Foremost (Ship) Management Company LLC
- Foremost Management Company LLC
- Foremost (Hong Kong) Company Limited
- Foremost Company Limited
- Foremost Investments LLC
- Foremost Capital Reserve LLC
- Foremost Shipping Agency LLC
- Foremost Bulkers Group LLC
- Foremost International LLC
- Export-Import Bank of China
- Hong Kong and Shanghai Banking Corporation Limited (HSBC)
- Bank Sinopac Co. Ltd.
- Mega International Commercial Bank Co. Ltd.
- Credit Suisse AG
- First Commercial Bank
- Land Bank of Taiwan
- Bank of Taiwan
- Hua Nan Commercial Bank Ltd.
- Cargill
- Louis Dreyfus & Co.

- Nippon Yusen Kaisha (NYK)
- Tradigrain SA
- Bunge SA
- SK Shipping
- Rio Tinto
- BHP Billiton
- Wuhan Iron & Steel Co.
- Traxys

Additionally, we request all correspondence sent by, sent to or carbon copying any of these individuals that was sent by, sent to or carbon copied any of the following individuals:

- James Chao
- Christine Chao
- Angela Chao

If possible, I would prefer to receive this information electronically via e-mail at [info@restorepublictrust.org](mailto:info@restorepublictrust.org). If you have questions or need additional information, please feel free to call me at 202-255-9759.

### **Fee Waiver Request**

Restore Public Trust 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 government operations and is not "primarily in the commercial interest of the requester." The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how public funds are spent and how officials conduct the public's business.

This request is primarily and fundamentally for non-commercial purposes. As a project of a 501(c)(3) organization, Restore Public Trust does not have a commercial purpose and the release of the information requested is not in Restore Public Trust financial interest. Restore Public Trust will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Restore Public Trust will also make materials it gathers available on its public website.

Accordingly, Restore Public Trust qualifies for a fee waiver.

### **Conclusion**

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. Additionally, if any documents are withheld based on the

Agency's interpretation of any exemption, Restore Public Trust requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974). Specifically, this Vaughn index should describe withheld documents with enough specificity to determine whether the material is exempt under the act and must describe each document or portion withheld.

Thank you for your assistance.

Sincerely,

Caroline Ciccone  
Executive Director, Restore Public Trust

# **EXHIBIT B**

Michael Bell  
1200 New Jersey Ave., SE  
W94-122  
Washington, DC 20590  
Submitted Via Email: [ost.foia@dot.gov](mailto:ost.foia@dot.gov)

Restore Public Trust  
1875 Connecticut Ave NW  
Floor 10  
Washington, DC 20009

Re: Freedom of Information Act Request

Pursuant to the Freedom of Information Act, Restore Public Trust requests access to and copies of records demonstrating total costs reimbursed or paid directly by the Department of Transportation for any expenses associated with Secretary Elaine Chao's travel between January 31, 2017, and the date on which this request is processed, including the following expenses and reimbursements:

- Expenses associated with the travel of any staff or security detail
- Cost of government transportation
- Cost of individual airfare for government employees and their spouses
- Lodging, meals and per diem payments
- Rental vehicles
- Overtime payments
- Other reimbursable travel expenses

If possible, I would prefer to receive this information electronically via e-mail at [info@restorepublictrust.org](mailto:info@restorepublictrust.org). If you have questions or need additional information, please feel free to call me at 202-255-9759.

**Fee Waiver Request**

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Sincerely,

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Executive Director, Restore Public Trust