

Congress of the United States
Washington, DC 20515

May 19, 2020

The Honorable Elaine L. Chao
Secretary
Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary Chao:

We oppose President Trump's removal of long-time public servant Mitch Behm from his position as Acting Inspector General of the Department of Transportation (DOT) and urge that he be immediately reinstated. Mr. Behm's removal is the latest in a series of politically motivated firings of Inspectors General by President Trump. This assault on the integrity and independence of Inspectors General appears to be an intentional campaign to undermine their ability to expose corruption and protect taxpayer dollars from waste, fraud, and abuse.

We also oppose President Trump's selection of Howard R. Elliott, the Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA), to replace Mr. Behm as Acting Inspector General.¹ Mr. Elliott lacks the independence, qualifications, and experience necessary to be an effective Inspector General. Prior to becoming PHMSA Administrator, Mr. Elliott spent his entire career as an executive in the freight rail industry.² Mr. Elliott appears to have no investigatory or law enforcement experience, which leaves him unprepared to oversee the DOT Office of Inspector General.

In contrast, Mr. Behm has served in the DOT Office of Inspector General since 2003 and has received numerous awards for his contributions to audits and reviews.³ The DOT Office of Inspector General has hundreds of ongoing investigations, is involved in dozens of criminal convictions each year, and issues scores of audits saving the taxpayer tens of millions of dollars annually.⁴ Without an experienced and qualified Inspector General, these results will be endangered.

Mr. Elliott reportedly will continue leading PHMSA while serving as Acting Inspector General.⁵ Under this troubling arrangement, Mr. Elliott would report to you as PHMSA

¹ Memorandum from President Donald J. Trump to Howard R. Elliott, Administrator of the Pipeline and Hazardous Materials Safety Administration (May 15, 2020).

² Pipeline and Hazardous Materials Safety Administration, Department of Transportation, *Biography of Howard "Skip" Elliott* (Apr. 17, 2019) (online at www.phmsa.dot.gov/about-phmsa/leadership/howard-skip-elliott).

³ Office of Inspector General, Department of Transportation, *Biography of Mitch Behm* (accessed May 17, 2020) (online at www.oig.dot.gov/about-oig/deputy-inspector-general).

⁴ Office of Inspector General, Department of Transportation, *Semiannual Report to Congress: April 1, 2019—September 30, 2019* (Oct. 1, 2019) (online at www.oig.dot.gov/library-item/37600).

⁵ *Trump Ramps Up Retaliatory Purge with Firing of State Department Inspector General*, Washington Post

Administrator while simultaneously serving in a role that is required by law to be independent. Mr. Elliott would have an inherent conflict of interest that would prohibit him from having the independence necessary to conduct fair and rigorous oversight of the Department and of your actions. This environment could severely chill whistleblower disclosures to the Office of Inspector General because whistleblowers might fear that their identities could become known to an official still reporting to you. Mr. Elliott's dual appointment also may chill communication within the Office of Inspector General if auditors or investigators are concerned that he will share information with you before it is appropriate.

In addition, the positions of PHMSA Administrator and DOT Inspector General each require Mr. Elliott's full attention and time. PHMSA is a critical agency responsible for "the safe, reliable, and environmentally sound operation of the nation's 2.6 million mile pipeline transportation system and nearly 1 million daily shipments of hazardous materials."⁶ Mr. Elliott's dual roles threaten both the safety of our transportation system and the integrity of the DOT Office of Inspector General.

We therefore urge you to advise President Trump to reinstate Mr. Behm as Acting Inspector General instead of Mr. Elliott. At a minimum, if Mr. Elliott remains Acting Inspector General, he should immediately resign as PHMSA Administrator and recuse himself from all matters involving PHMSA or the Office of the Secretary. Currently, the DOT Office of Inspector General has at least one ongoing audit of PHMSA's "Safety Culture," which may reflect on the management priorities and abilities of Mr. Elliott as PHMSA Administrator.⁷ This creates a tremendous conflict of interest for Mr. Elliott as Acting Inspector General.

Finally, we remind you that the Inspector General Act prohibits you from interfering with or preventing the DOT Office of Inspector General from "initiating, carrying out, or completing any audit or investigation."⁸ Last October, the House Committee on Transportation and Infrastructure asked the DOT Inspector General to investigate your possible conflicts of interest, including reports that your office was giving preferential treatment to Kentucky, where your husband, Senate Majority Leader Mitch McConnell, is seeking reelection.⁹ We are concerned that Mr. Behm's removal could be an effort to undermine the progress of this investigation, which we understand is ongoing. Any attempt by you or your office to interfere with the Office of Inspector General's investigation of yourself is illegal and will be thoroughly examined by our Committees.

(May 16, 2020) (online at www.washingtonpost.com/politics/trump-ramps-up-retaliatory-purge-with-firing-of-state-department-inspector-general/2020/05/16/8f8b55da-979a-11ea-82b4-c8db161ff6e5_story.html).

⁶ Pipeline and Hazardous Materials Safety Administration, Department of Transportation, *General FAQs* (Nov. 6, 2017) (online at www.phmsa.dot.gov/faqs/general-faqs).

⁷ Office of Inspector General, Department of Transportation, *Audit Initiated of PHMSA's Safety Culture* (Mar. 13, 2019) (online at www.oig.dot.gov/library-item/37049).

⁸ 5 U.S.C. App. § 3.

⁹ Committee on Transportation and Infrastructure, *Chair DeFazio Urges DOT IG to Investigate Reports of Secretary Chao's Conflicts of Interest* (Oct. 15, 2019) (online at <https://transportation.house.gov/news/press-releases/chair-defazio-urges-dot-ig-to-investigate-reports-of-secretary-chaos-conflicts-of-interest>).

The Committee on Oversight and Reform has jurisdiction over the Inspector General Act, and the Committee on Transportation and Infrastructure has jurisdiction over matters involving DOT. Our Committees are considering legislative reforms in response to the President's removal of Mr. Behm, appointment of Mr. Elliott, and broad attacks on Inspectors General across government. In furtherance of these legislative efforts and our oversight of DOT, we request that you produce to the Committees all documents and communications related to the following topics by June 1, 2020, including communications with the White House or within DOT:

1. The change in status including removal, demotion, or replacement of Mr. Behm in his role as Acting IG; and
2. Any evaluation of the qualifications, experience, or suitability of Mr. Elliott to perform the duties of DOT Inspector General.

An attachment to this letter provides additional instructions for responding to the Committees' requests. If you have any questions about this request, please contact Oversight Committee staff at (202) 225-5051 or Transportation and Infrastructure Committee staff at (202) 225-4472.

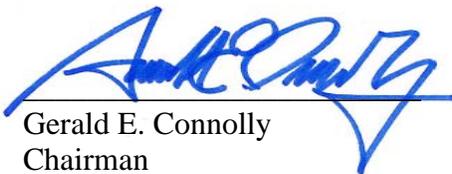
Sincerely,



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Peter A. DeFazio
Chair
Committee on Transportation and
Infrastructure



Gerald E. Connolly
Chairman
Subcommittee on Government Operations

Enclosure

cc: The Honorable Jim Jordan, Ranking Member
Committee on Oversight and Reform

The Honorable Sam Graves, Ranking Member
Committee on Transportation and Infrastructure

The Honorable Jody B. Hice, Ranking Member
Subcommittee on Government Operations

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.