

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<https://oversight.house.gov>

June 21, 2023

Alan H. Shaw
President and Chief Executive Officer
Norfolk Southern Corporation
650 W Peachtree Street, N.E.
Atlanta, GA 30308

Dear Mr. Shaw:

We write to renew our requests for the documents set forth in our March 5, 2023, letter.¹ We are dismayed that, instead of producing all of the information we requested, Norfolk Southern has turned over only a handful of materials that appear to be publicly available or referenced in publicly available filings while falsely claiming that the regulations of a federal agency prevent it from complying with congressional requests. Norfolk Southern should immediately cease its efforts to hide from oversight and produce to the Committee all of the documents we have requested.

On March 5, 2023, Committee Democrats wrote to you requesting seven categories of documents regarding your company's practices—including its policies, procedures, rules, and guidelines pertaining to wheel bearing detectors, wayside detectors, and track-side sensors; company-wide management strategies, including the deployment of precision scheduled railroading, workforce reductions, and efforts to boost revenues through cost-cutting initiatives; and the objectives of your company's influence activities. We also asked that you respond to three questions regarding the assistance provided to residents of East Palestine.² We note that Norfolk Southern provided brief answers to the questions in a letter to the Committee.³

In response to Committee Democrats' document requests, Norfolk Southern produced two small batches of documents consisting almost entirely of publicly available materials. The

¹ Letter from Ranking Member Jamie Raskin et al., to Alan Shaw, President and Chief Executive Officer, Norfolk Southern Corporation (Mar. 5, 2023) (online at <https://oversightdemocrats.house.gov/sites/democrats.oversight.house.gov/files/2023-03-05.JBR%20et%20al%20to%20Norfolk%20Southern%20re%20Ohio%20Train%20Derailment.pdf>).

² *Id.*

³ Letter from Alan Shaw, President and Chief Executive Officer, Norfolk Southern Corporation, to Ranking Member Jamie Raskin and Democratic Members of the Committee on Oversight and Accountability (Mar. 21, 2023).

first tranche of documents contained public transcripts of earnings calls and calls with investors and industry analysts, including calls in which your company heralded its “record financial results,” explained how it had “begun overhauling our railroad from top to bottom, leaving no stone unturned in the quest for efficiency, growth and shareholder value,” and discussed how Norfolk Southern had “returned over \$10 billion through buybacks alone.”⁴

On April 11, 2023, during a call requested by Democratic Committee staff to discuss the status of your company’s compliance with our document requests, counsel for Norfolk Southern raised, for the first time, objections to producing responsive documents.⁵ Specifically, Norfolk Southern’s counsel claimed that regulations promulgated by the National Transportation Safety Board (NTSB)—which is conducting a separate, independent investigation into the East Palestine train derailment—prevent your company from providing documents to the Committee.⁶ Norfolk Southern’s counsel repeated this claim in a letter dated April 28, 2023.⁷ Not only is this claim demonstrably false, but the Committee is not constrained by federal agencies’ investigative processes or by agency regulations. In fact, Congress frequently conducts independent investigations even when a related criminal investigation is ongoing. As the Supreme Court has acknowledged, legislative inquiries need not yield to parallel proceedings, even if those proceedings are criminal in nature.⁸

Further, information obtained by Committee Democrats shows that, just weeks after the February 3 train derailment, NTSB provided Norfolk Southern guidance regarding responses to Congressional oversight requests, making clear that the agency’s “message to parties is that they should not use the NTSB investigation as a shield.”⁹ Norfolk Southern’s April 28, 2023, letter to Committee Democrats demonstrates that it is aware it can consult with NTSB and seek approval to produce documents responsive to Congressional requests.¹⁰ However, NTSB informed

⁴ Thomson Reuters Streetevents, *Edited Transcript: NSC—Q3 2018 Norfolk Southern Corp Earnings Call* (Oct. 24, 2018) (online at www.nscorp.com/content/dam/QuarterlyEventFiles/3q-2018/3q2018_transcript.pdf); Thomson Reuters Streetevents, *Edited Transcript: NSC—Norfolk Southern Corp Investor and Financial Analyst Conference* (Feb. 11, 2019) (online at www.nscorp.com/content/dam/nscorp/get-to-know-ns/investor-relations/presentations/2019/2019-Investor-Day-Transcript.pdf).

⁵ Email from Minority Staff, Committee on Oversight and Accountability, to Alyssa DaCunha, WilmerHale (Apr. 14, 2023).

⁶ Email from Alyssa DaCunha, WilmerHale, to Minority Staff, Committee on Oversight and Accountability (Apr. 18, 2023).

⁷ Letter from Alyssa DaCunha, WilmerHale, to Ranking Member Jamie Raskin, Committee on Oversight and Accountability (Apr. 28, 2023).

⁸ *Hutcheson v. United States*, 369 U.S. 599, 618 (1962) (internal citations omitted) (“[S]urely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might be potentially harmful to a witness in some distinct proceeding, or when crime or wrongdoing is disclosed”).

⁹ Email from National Transportation Safety Board Officials, to Minority Staff, Committee on Oversight and Accountability (Apr. 25, 2023). Further, and consistent with 49 CFR § 831.13, the NTSB indicated that in the event there are “responsive documents that includes [sic.] investigative information,” Norfolk Southern can “coordinate with us [NTSB], but we will and have worked with Congress to accommodate.”

¹⁰ Letter from Alyssa DaCunha, WilmerHale, to Ranking Member Jamie Raskin, Committee on Oversight and Accountability (Apr. 28, 2023).

Committee Democrats that, as of June 15, Norfolk Southern had not initiated any consultation with NTSB regarding cooperation with Committee Democrats' requests.¹¹

With its letter of April 28, Norfolk Southern produced another batch of documents that are largely publicly available, including public lobbying disclosure forms, the transcript of a Congressional hearing, and comments to federal dockets and agencies, among other items.

Among other missing items, your company has not provided any internal documents regarding its implementation of precision scheduled railroading practices and their effects on Norfolk Southern's operations and financial position, nor has your company provided documents regarding positions cut as part of workforce reductions. Your company has also not provided documents relating to its internal policies regarding wayside detectors and sensors, and it has not provided its communications with state and federal agency officials involved in the response to the East Palestine derailment.

As detailed in our March 5 letter, the Committee is working to understand the evolution of Norfolk Southern's safety practices—including how your company communicated its safety practices and priorities to employees—as well as how efforts to enhance profits have affected the railroad's operations and the efforts in which your company has engaged to influence federal safety regulations.¹² The documents we have requested on these matters are essential to inform the Committee's legislative efforts.¹³

We are profoundly troubled by Norfolk Southern's illegitimate efforts to mislead Committee Democrats and use NTSB's investigation as a shield to impede Congressional oversight. As such, we request that you immediately produce all categories of documents requested in our March 5, 2023, letter by July 6, 2023. Please also indicate the date(s) on which Norfolk Southern consulted with NTSB regarding the production to the Committee of documents responsive to our requests.

The Committee on Oversight and Accountability is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

An attachment to this letter provides additional instructions for responding to this request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051. Thank you for your prompt attention to this matter.

¹¹ Email from National Transportation Safety Board Officials, to Minority Staff, Committee on Oversight and Accountability (June 15, 2023).

¹² *Id.*

¹³ Pub. L. No. 49-104.

Sincerely,



Jamie Raskin
Ranking Member



Cori Bush
Ranking Member
Subcommittee on Economic Growth,
Energy, and Regulatory Affairs



Katie Porter
Ranking Member
Subcommittee on Health Care and
Financial Services



Gerald E. Connolly
Ranking Member
Subcommittee on Cybersecurity,
Information Technology, and
Government Innovation



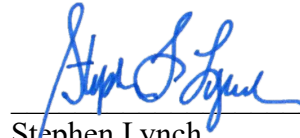
Kweisi Mfume
Ranking Member
Subcommittee on Government Operations
and the Federal Workforce



Robert Garcia
Ranking Member
Subcommittee on National Security,
the Border, and Foreign Affairs



Eleanor Holmes Norton
Member of Congress



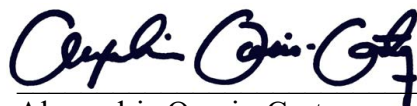
Stephen Lynch
Member of Congress



Raja Krishnamoorthi
Member of Congress



Ro Khanna
Member of Congress




Alexandria Ocasio-Cortez
Member of Congress




Jimmy Gomez
Member of Congress




Shontel Brown
Member of Congress



Melanie Stansbury
Member of Congress



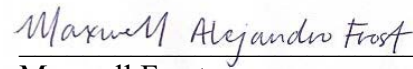
Becca Balint
Member of Congress



Summer Lee
Member of Congress



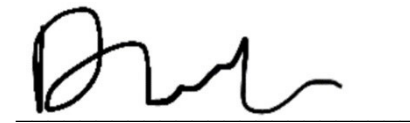
Greg Casar
Member of Congress



Maxwell Frost
Member of Congress



Jasmine Crockett
Member of Congress



Dan Goldman
Member of Congress



Jared Moskowitz
Member of Congress

Enclosure

cc: The Honorable James Comer, Chairman

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.