

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<https://oversight.house.gov>

August 31, 2020

The Honorable Robert M. Duncan
Chairman
U.S. Postal Service Board of Governors
475 L'Enfant Plaza, S.W., Room 4012
Washington, D.C. 20260

Dear Chairman Duncan:

Over the past two months, hundreds of Members of Congress have expressed concerns about widespread delays of mail, medications, and other critical supplies, as well as potential delays for election mail in November, previously undisclosed communications between Postmaster General Louis DeJoy and the Trump campaign, anomalies in the process used to select Mr. DeJoy, and other matters. Although Mr. DeJoy and his aides initially downplayed the extent and gravity of these delays, headlines from states across the nation—and internal Postal Service documents obtained by the Committee—have made clear that the delays are far worse than previously disclosed.

On June 14, 2020, Senate Democratic Leader Chuck Schumer wrote to you expressing the concerns of many of our colleagues about the selection of Mr. DeJoy as Postmaster General and asking for information about how he came to be considered.¹ On July 2, 2020, the Board of Governors responded by claiming that the Freedom of Information Act (FOIA) prohibits the disclosure of information to a Member of Congress who is not the Chair of a Committee:

It is the Postal Service's long-standing practice to provide confidential information to Members of Congress only when the disclosure fits squarely within the provision of the Freedom of Information Act (FOIA) concerning the disclosure of information to "Congress." ... The Department of Justice has interpreted this provision of FOIA as applying to official requests from "Congress" as an institution (including official requests from its committees and subcommittees), but not to requests from individual Members, including ranking minority members.²

¹ Letter from Senate Democratic Leader Charles E. Schumer to the Honorable Robert M. Duncan, Chairman, U.S. Postal Service Board of Governors (June 14, 2020) (online at www.democrats.senate.gov/imo/media/doc/CES%20to%20USPS%20Board%20of%20Govs%20FINAL.pdf).

² Letter from Michael J. Elson, Secretary, Postal Service Board of Governors, to Senate Democratic Leader Charles E. Schumer (July 2, 2020) (online at www.democrats.senate.gov/imo/media/doc/2020-07-02%20Sen%20Schumer%20re%20PMG%20Selection.pdf).

As a threshold matter, FOIA does not apply to Congress. To the contrary, the law states: “This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.”³

In addition, this argument has been rejected by Members of Congress on both sides of the aisle. One of the strongest refutations of this baseless legal claim came in a well-reasoned, six-page letter to President Donald Trump in 2017 from Senator Chuck Grassley, who was then the Chairman of the Senate Judiciary Committee. As Chairman Grassley wrote:

*Every member of Congress is a Constitutional officer, duly elected to represent and cast votes in the interests of their constituents. This applies obviously regardless of whether they are in the majority or the minority at the moment and regardless of whether they are in a leadership position on a particular committee. Thus, all members need accurate information from the Executive Branch in order to carry out their Constitutional function to make informed decisions on all sorts of legislative issues covering a vast array of complex matters across our massive federal government.*⁴

Chairman Grassley also rejected the Justice Department opinion prepared by the Office of Legal Counsel (OLC) and referenced in the Board of Governors’ letter, as well as the claim that FOIA prohibits any government entity from producing documents and information to Members of Congress who do not chair a committee. Regarding the OLC opinion, he wrote:

[T]he opinion equates requests from individual members to Freedom of Information Act (FOIA) requests from unelected members of the public. But the powers vested in the Congress—both explicitly and inherently by the Constitution—impose significant and far-reaching responsibilities on the people’s elected representatives.⁵

Chairman Grassley noted that the opinion “inexplicably asserts that this responsibility of congressional ‘oversight’ is restricted to only certain inquiries made by Chairmen or full committees on the grounds that only those responses can be compelled.” He added:

It is true that through this process Congress can compel the production of witnesses and documents. However, the scope of information Members of Congress need from the Executive Branch in order to carry out their Constitutional duties is far broader than merely what is obtained through compulsory process. The vast majority of information Congress obtains, even through a Chairman’s requests, is obtained voluntarily, not by compulsion. Yet, reading the OLC opinion, it would seem oversight is only “oversight” if it’s mandatory.⁶

³ 5 U.S.C. § 552(d) (emphasis added).

⁴ Letter from Chairman Charles E. Grassley, Senate Committee on the Judiciary, to President Donald Trump (June 7, 2017) (online at [www.judiciary.senate.gov/imo/media/doc/2017-06-07%20CEG%20to%20DJT%20\(oversight%20requests\).pdf](http://www.judiciary.senate.gov/imo/media/doc/2017-06-07%20CEG%20to%20DJT%20(oversight%20requests).pdf)) (emphasis in original).

⁵ *Id.*

⁶ *Id.*

Chairman Grassley called the Justice Department opinion referenced in the Board of Governors' letter "nonsense." He concluded that the Justice Department "utterly failed to live up to its own standards" and that its legal opinion "exposes its shocking lack of professionalism and objectivity."⁷

I agree with Chairman's Grassley's interpretation. In light of your refusal to produce documents in response to other Members of Congress, I am now writing in my capacity as Chairwoman of the Committee on Oversight and Reform to make a number of requests for documents and information. I am also requesting, on behalf of the Committee, additional documents sought during your recent testimony before the Committee on August 24, 2020, and by Members of our Committee and others. If there are any questions about whether you are legally authorized to produce these documents, please let the Committee know, and we will issue a subpoena to resolve these doubts and compel their production.

The Committee requests that you produce the following documents voluntarily by September 14, 2020:

1. All communications to or from Mr. DeJoy and any Member or staff of the Postal Service Board of Governors prior to June 15, 2020.
2. All transcripts, recordings, minutes, and notes from all non-public meetings in 2020 of the Postal Service Board of Governors or any committee or constituent entity of the Board of Governors, whether or not in person.
3. The complete, unredacted file documenting the search process undertaken by the Postal Service Board of Governors in 2019 and 2020 for a new Postmaster General, including but not limited to all documents referring or relating to:
 - a. written or oral presentations to or from the Board of Governors regarding candidates who underwent vetting processes;
 - b. individuals interviewed by the Board of Governors and any written or oral presentations about such individuals;
 - c. Mr. DeJoy's candidacy;
 - d. any background check on and vetting conducted of Mr. DeJoy;
 - e. the performance of New Breed Logistics, Inc. and XPO Logistics, Inc. under contracts with the Postal Service;
 - f. discussions about, instructions regarding, or analyses of Mr. DeJoy's assets, holdings, and obligations; his financial disclosure statements; and

⁷ *Id.*

- whether he should or is required to divest, recuse, or seek waivers for conflicts of interest to comply with federal ethics laws and regulations;
- g. discussions about, instructions regarding, or analyses of Mr. DeJoy's compliance with the Hatch Act, including but not limited to the prohibition against federal employees participating in certain partisan political activities, and any steps Mr. DeJoy took, considered, discussed, committed to take, or was required to take under federal laws and regulations; and
 - h. all other documents produced to the Board of Governors by Russell Reynolds Associates related to Mr. DeJoy; and
4. All documents referring or relating to any representations or commitments made by Mr. DeJoy to the Board of Governors, including but not limited to:
- a. the Postal Service's universal service obligation and accessibility of postal resources and services;
 - b. the affordability of products and services;
 - c. service standards and the quality of products and services;
 - d. the rights of Postal Service workers to unionize and collectively bargain; and
 - e. the Postal Service's workforce and financial condition; and
5. All communications to or from Members or staff of the Board of Governors with officials from the White House or the Department of the Treasury referring or relating to:
- a. the search process for a new Postmaster General;
 - b. the terms and conditions for the \$10 billion loan agreement authorized by the CARES Act; and
 - c. proposed or actual changes to operations, policies, practices, or standards, or to adherence to existing operations, policies, practices, or standards; and
6. The review of the ten largest Negotiated Service Agreements conducted by an outside firm at the request of the Postal Service Board of Governors and Treasury Secretary Stephen Mnuchin and all documents referring or relating to the review.

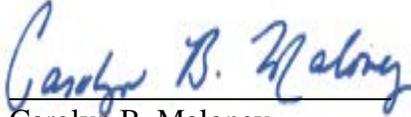
The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under

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House Rule X. If you have any questions about this request, please contact Committee staff at (202) 225-5051.

Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. Maloney". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn B. Maloney

Chairwoman

Committee on Oversight and Reform

Enclosure

cc: The Honorable James R. Comer, Ranking Member

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.