

**Congress of the United States**  
**Washington, DC 20515**

May 19, 2020

The Honorable Howard R. Elliott  
Acting Inspector General  
Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Mr. Elliott:

On May 15, 2020, President Trump designated you to serve as Acting Inspector General of the Department of Transportation (DOT).<sup>1</sup> Your appointment displaced long-time public servant and Office of Inspector General veteran Mitch Behm. We are concerned that your appointment and Mr. Behm's removal is part of 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. To ensure that the DOT Office of Inspector General's work that was begun before your appointment continues unimpeded, we write to seek information about the office's matters at the time of your appointment.

In addition, we are concerned by reports that you will continue leading the Pipeline and Hazardous Materials Safety Administration (PHMSA) while serving as Acting Inspector General.<sup>2</sup> Under this troubling arrangement, you will report to Secretary Chao as PHMSA Administrator while simultaneously serving in a role that is required by law to be independent. This inherent conflict of interest would prohibit you from having the independence necessary to conduct fair and rigorous oversight of the Department and the Secretary. Your dual appointment 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 serving in the Department. It also may chill communication within the Office of Inspector General if auditors or investigators are concerned that you will share information with Secretary Chao before it is appropriate.

The positions of PHMSA Administrator and DOT Inspector General each require your 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

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

<sup>2</sup> *Trump Ramps Up Retaliatory Purge with Firing of State Department Inspector General*, Washington Post (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](http://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)).

and nearly 1 million daily shipments of hazardous materials.”<sup>3</sup> Your 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 resign as Acting Inspector General and allow Mr. Behm to continue in your place. If you choose to remain Acting Inspector General, you should resign as PHMSA Administrator and recuse yourself from all matters involving PHMSA or the Office of the Secretary.

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 and broad attacks on Inspectors General across government. In furtherance of these legislative efforts and to ensure that the DOT Office of Inspector General’s work continues unimpeded, we request that you produce the following documents and information by June 1, 2020:

1. A list of all DOT Inspector General audits, inspections, investigations, evaluations, reviews, or other engagements that were ongoing as of your appointment as Acting Inspector General, including a brief description of the subject matter, whether or not the review will result in a public report, the date the DOT Inspector General initiated the engagement, the current status of the work, and the expected timeframe for completion;
2. A list of all audits, inspections, investigations, evaluations, reviews, or other engagements relating to the Office of the Secretary of Transportation that were opened between January 20, 2017, and the present, including a brief description of the subject matter, the date the DOT Inspector General initiated the engagement, and the date that the engagement was closed (if applicable);
3. A list and description of any ongoing DOT Inspector General audits, inspections, investigations, evaluations, reviews, or other engagements for which the status, scope, or investigative plan was modified after your appointment as Acting Inspector General and a description of the modification<sup>4</sup>; and
4. If you remain as Acting DOT Inspector General, whether you agree to resign as PHMSA Administrator and recuse yourself from all matters involving PHMSA and the Office of the Secretary.

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<sup>3</sup> Pipeline and Hazardous Materials Safety Administration, Department of Transportation, *General FAQs* (Nov. 6, 2017) (online at [www.phmsa.dot.gov/faqs/general-faqs](http://www.phmsa.dot.gov/faqs/general-faqs)).

<sup>4</sup> Examples of modifications to the status, scope or investigative plan of an engagement include, for example, the closing of the engagement or changes to the timing, subject matter, interviews, or subpoenas for that engagement.

In addition, going forward, we ask that you notify our Committees of all audits, inspections, investigations, or other engagements for which the status, scope, or investigative plan is modified during your tenure as Acting 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.

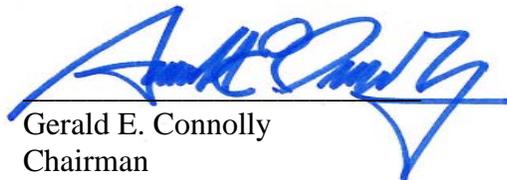
Sincerely,



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.