

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

AMERICANS FOR PUBLIC TRUST,  
107 S. West Street, Suite 442  
Alexandria, VA 22314-2824

Plaintiff,

v.

FEDERAL AVIATION ADMINISTRATION,  
800 Independence Avenue SW,  
Washington, DC 20591

Defendant.

CIVIL ACTION NO.

**COMPLAINT**

**INTRODUCTION**

1. Plaintiff Americans for Public Trust (“APT”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, challenging the failure of Defendant the Federal Aviation Administration (the “FAA”) to respond to and fulfill APT’s request for records.

2. APT submitted three FOIA requests to the FAA on November 22, 2022; January 9, 2023; and January 11, 2023, respectively.

3. APT’s First FOIA Request seeks documents and records consisting of flight logs, including aircraft type, flight number, time of departure, time of arrival, departure airport, arrival airport, and passenger manifest for aircraft with the FAA registration numbers N1, N2, and N3.

4. APT’s Second FOIA Request seeks documents and records sufficient to identify every instance of any executive branch agency secretary, administrator, commissioner, chair, director, or other agency head, member of the White House staff or Member of Congress or their staff using FAA-owned aircraft N1, N2, or N3 for official or personal travel.

5. APT's Third FOIA Request seeks documents and records sufficient to identify every instance of any executive branch agency secretary, administrator, commissioner, chair, director, or other agency head, member of the White House staff or Member of Congress or their staff using FAA-owned aircraft N1, N2, or N3, or any other FAA-owned aircraft housed at Washington D.C.-Reagan National Airport (DCA) for official or personal travel.

6. Although more than one hundred days have passed since the FAA acknowledged receipt of these three FOIA requests, the FAA has not communicated with APT concerning whether the FAA will fulfill its FOIA requests since missing two self-imposed extended deadlines of May 1 and May 18, 2023. Nor has the FAA provided any indication as to when APT can expect its requests to be processed. The only documents that the FAA has produced to APT were documents previously produced in response to a FOIA request from a different party, and the documents produced are not fully responsive to all three of APT's requests.

7. APT accordingly brings this lawsuit to compel the FAA to immediately respond to APT's FOIA requests and promptly disclose all responsive, non-exempt records.

## **PARTIES**

8. Plaintiff APT is a Section 501(c)(3) nonprofit corporation existing under the laws of the Commonwealth of Virginia with a principal place of business at 107 S. West Street, Suite 442, Alexandria, VA 22314-2824. APT is a nonpartisan watchdog organization dedicated to restoring trust in government by holding the powerful accountable.

9. Defendant the FAA is a component of the U.S. Department of Transportation and is a federal agency within the meaning of the Freedom of Information Act, 5 U.S.C. § 552(f)(1).

## LEGAL STANDARD

10. FOIA requires a federal administrative agency to promptly make available requested, non-exempt agency records in response to a request that (a) reasonably describes such records, and (b) “is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed.” 5 U.S.C. § 552(a)(3)(A); *see also* 21 C.F.R. §§ 20.40, 20.41.

11. FOIA requires federal agencies to respond to a valid request within 20 working days (*i.e.*, exempting Saturdays, Sundays, and legal public holidays) after receipt of such request, including notifying the requester immediately of its determination, the reasons therefore, and the right to appeal any adverse determination. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41.

12. In “unusual circumstances,” FOIA allows the 20-day time limit to be extended 10 working days by written notice “setting forth the unusual circumstances for such extension and the date by which a determination is expected to be dispatched.” 5 U.S.C. § 552(a)(6)(B)(i); *see also* 21 C.F.R. § 20.41(b)(3)(i)(A).

13. If “unusual circumstances” are invoked, the agency must not only provide written notice as detailed above but must also provide the requester “an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request.” 5 U.S.C. § 552(a)(6)(B)(ii); *see also* 21 C.F.R. § 20.41(b)(3)(i)(B).

14. “Unusual circumstances” (as used in the context of FOIA) only occur when, to the extent reasonably necessary to the proper processing of the requester’s requests, the agency would need to (1) search for and collect records from another facility separate from the office processing the request; (2) search for, collect, and properly examine a voluminous amount of records

demanded in a single request; or (3) consult with another agency to satisfy the request. *See* 5 U.S.C. § 552(a)(6)(B)(iii); *see also* 21 C.F.R. § 20.41(b)(3)(ii).

15. If the federal agency does not respond to a FOIA request by the statutory deadline, the requester is deemed to have exhausted administrative remedies and may immediately pursue judicial review. 5 U.S.C. § 552(a)(6)(C)(i).

### **JURISDICTION AND VENUE**

16. This Court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201.

17. Venue lies within this district under 28 U.S.C. § 1391(e)(1) because an agency of the United States is a defendant, and because this is a district “in which the [requested] agency records are situated,” 5 U.S.C. § 552(a)(4)(B). Specifically, the FAA is located at 800 Independence Avenue SW, Washington, DC 20591. *See* Fed. Aviation Administration, <https://www.faa.gov/> (last visited June 13, 2023). The FAA’s National Freedom of Information Act Office is located at the same address. *See* Fed. Aviation Administration, *Regional, Aeronautical Center, and Headquarters FOIA Service Center Contact Information*, available at: [https://www.faa.gov/foia/foia\\_coordinators/regional\\_service\\_centers#washington](https://www.faa.gov/foia/foia_coordinators/regional_service_centers#washington) (last visited June 13, 2023).

### **FACTS**

18. On December 12, 2022, Fox News Digital reported that Secretary of Transportation Pete Buttigieg (“Secretary Buttigieg”) had taken at least eighteen flights on taxpayer-funded private jets during his first two years in office. *See* Thomas Catenacci, *Pete Buttigieg Often Flies on Taxpayer-Funded Private Jets, Flight Data Show*, Fox News (Dec. 12, 2022),

<https://www.foxnews.com/politics/pete-buttigieg-flies-taxpayer-funded-private-jets-flight-data-show>.

19. The misuse of government resources for trips that blend personal and official travel is a serious violation of the public trust. When Politico revealed in 2017 that former Secretary of Health and Human Services Tom Price had taken at least 24 trips on private charter planes at taxpayer expense, he resigned within eight days. See Rachana Pradhan & Dan Diamond, *Price Traveled by Private Plane at Least 24 Times*, Politico (Sept. 21, 2017), <https://www.politico.com/story/2017/09/21/tom-price-private-charter-plane-flights-242989#:~:text=Health%20and%20Human%20Services%20Secretary%20Tom%20Price%20has%20taken%20at,a%20review%20of%20HHS%20documents>.

20. On February 27, 2023, the Department of Transportation Office of Inspector General announced that it had initiated an audit to “determine whether the Office of the Secretary complied with Federal regulations, policies, and procedures regarding executive travel on DOT aircraft.” Ian Duncan, *Transportation Department Watchdog to Audit Buttigieg’s Use of Government Jets*, Wash. Post (Feb. 27, 2023), <https://www.washingtonpost.com/transportation/2023/02/27/buttigieg-faa-planes-travel/>.

21. Plaintiff APT is a nonprofit organization interested in openness and transparency in government, with an emphasis on educating the public through reporting and restoring trust in government by exposing corruption and holding politicians and government agencies accountable for corrupt and unethical behavior. To that end, Plaintiff seeks to review and publicize any records in Defendant’s possession related to Secretary Buttigieg’s use of taxpayer-funded private charter flights, including the cost of such flights. Although the precise cost to American taxpayers of Secretary Buttigieg’s trips is not yet ascertainable due to the agency’s failure to release all of the

requested documents, the Washington Post previously determined that the cost of Secretary Price's similar trips was \$456,000. See Dan Diamond & Carol D. Leonnig, *How Trump's Health Department Fell in Love with Charter Jets*, Wash. Post (Oct. 6, 2021), <https://www.washingtonpost.com/health/2021/10/06/tom-price-hhs-charter-jets/>.

22. Over the course of two months, APT submitted three FOIA requests to seek records regarding the use of certain FAA-owned aircraft by any head of a federal agency or Member of Congress in order to determine the extent to which these government planes are being utilized for private charter flights.

#### **A. The APT FOIA Requests**

23. APT submitted FOIA Request One on November 22, 2022, requesting records related to “[f]light logs, to include the aircraft type, flight number, time of departure, time of arrival, departure airport, arrival airport, and passenger manifest for aircraft with the FAA registration numbers N1, N2, and N3,” with the requested date range from November 1, 2020 through the date of production. Ex. 1 at 1.

24. FOIA Request One included a request that responsive documents be made available as soon as they are located and reviewed via a rolling production. *Id.* at 2.

25. After submitting FOIA Request One, APT received no acknowledgement or reference number from the FAA to confirm receipt of its request.

26. APT submitted FOIA Request Two on January 9, 2023, requesting “[r]ecords sufficient to identify every instance of any executive branch agency secretary, administrator, commissioner, chair, director, or other agency head, member of the White House staff or Member of Congress or their staff used FAA-owned aircraft N1, N2, or N3 for official or personal travel, including, but not limited to email correspondence, authorizations, etc. related to the use of the

*same aircraft,*” with the requested date range from November 1, 2020 through the date of production. Ex. 2 (emphasis added).

27. FOIA Request Two was broader in scope than FOIA Request One because it sought not only the underlying flight logs for aircraft N1, N2, and N3, but also documents and internal correspondence related to authorization for executive use of the aircraft.

28. FOIA Request Two included a request that responsive documents be made available as soon as they are located and reviewed via a rolling production. *Id.* at 2.

29. After submitting FOIA Request Two, APT received no acknowledgement or reference number from the FAA to confirm receipt of its request.

30. APT submitted FOIA Request Three on January 11, 2023, requesting “[r]ecords sufficient to identify every instance of any executive branch agency secretary, administrator, commissioner, chair, director, or other agency head, member of the White House staff or Member of Congress or their staff used FAA-owned aircraft N1, N2, or N3, including, but not limited to any and all other FAA-owned aircraft housed at Washington D.C.-Reagan National Airport (DCA) for official or personal travel, *including, but not limited to email correspondence, memoranda, requests for approval, authorizations, costs, costs analysis, passenger manifests, schedules, FAA itineraries, etc. related to the use of the same aircraft,*” with the requested date range from November 4, 2020 through the date of production. Ex. 3 (emphasis added).

31. FOIA Request Three was broader in scope than either FOIA Request One or FOIA Request Two because it sought records related to *any* FAA-owned aircraft housed at Reagan National Airport, not only N1, N2, and N3, as well as documents and internal correspondence related to authorization for executive use of the aircraft and the cost of such use.

32. FOIA Request Three included a request that responsive documents be made available as soon as they are located and reviewed via a rolling production. *Id.* at 2.

33. After submitting FOIA Request Three, APT received no acknowledgement or reference number from the FAA to confirm receipt of its request.

#### **B. The FAA's Response to the APT FOIA Requests**

34. On February 27, 2023, after weeks without any form of response or acknowledgement from the FAA, APT sent an email to the FAA noting that APT had “submitted several FOIA requests that have yet to be acknowledged” and requesting a status update on the processing of those requests. Ex. 4.

35. On March 2, 2023, the FAA responded to APT by noting that “[t]his information was made public. . . . in response to another FOIA request” and providing a link to a website containing flight logs for FAA-owned aircraft N1, N2, and N3. *Id.* In other words, because APT's FOIA Request One appeared facially similar to a different FOIA request the FAA had already responded to, the FAA simply directed APT to those records.

36. Within ten minutes of receiving the FAA's email, APT responded to the FAA explaining that “the release provided does not include all relevant information requested. In addition to the information provided in the posted log, we've also requested email correspondence, memoranda, requests for approval, authorizations, costs, and cost analyses related to the logged flights.” *Id.* This was because each subsequent FOIA request submitted by APT requested a broader range of information, and the documents provided by the FAA were not fully responsive to FOIA Request Two or FOIA Request Three.



37. Later the same day, on March 2, 2023, the FAA finally sent via email a written acknowledgement of APT's three FOIA requests, noting that "[w]e have aggregated your three requests for processing." *Id.*

38. On March 29, 2023, the day before the 20-day statutory deadline, the FAA contacted APT again via email to explain "[w]e are still in the process of searching for records" and requesting an extension of the production deadline to May 1, 2023. Ex. 5. The March 29th email made no mention of "unusual circumstances" pursuant to the statute, and the requested extension exceeded the 10 additional working days permitted under the statute. Nevertheless, on March 30, 2023, APT approved the FAA's request for an extension to May 1, 2023. *Id.*

39. On April 17, 2023, APT sent an email to the FAA to inquire whether the agency still intended to produce responsive records by the extended May 1, 2023 deadline. *Id.* The FAA did not acknowledge or respond to this inquiry.

40. On May 1, 2023, the FAA sent an email to APT noting that the agency was seeking an internal update on the status of APT's FOIA requests and apologizing for the delay. *Id.*

41. On May 2, 2023, the FAA sent an email to APT noting that the agency "anticipate[d] answering your request on or about May 18" and explaining that "[i]f additional time is needed, we will contact you." *Id.* The FAA's May 2nd email was not phrased as a request for extension and contained no mention of "unusual circumstances" necessitating additional time pursuant to the statute.

42. On May 12, 2023, APT followed up with the FAA via email "to ensure we're on track for receiving records next week" (*i.e.*, by the agency's extended deadline of May 18, 2023) and requesting an update on the status of its three FOIA requests. *Id.*

43. On May 16, 2023, the FAA notified APT via email that “we won’t likely meet this week’s deadline. Please accept our apologies for the delay.” *Id.* The FAA’s May 16th email was not phrased as a request for extension, provided no revised estimate of the date that responsive documents would be produced, and contained no mention of “unusual circumstances” necessitating additional time pursuant to the statute.

44. On May 26, 2023, the FAA contacted APT via email to explain “[w]e will do our best to get your request processed as soon as we can” but providing no date by which the agency expected to produce responsive documents. *Id.* The FAA also stated that “[w]hile we would ordinarily ask if you were agreeable to an additional due date extension, we understand that you may not be agreeable to such, especially in light of the fact that you agreed to previous due date extensions.” *Id.* In other words, the FAA did not produce documents *or* request an additional extension.

45. From May 26, 2023, through June 14, 2023, APT received no additional communications from the FAA or updates on the status of its three FOIA requests. On June 15, 2023, shortly after Fox News Digital published an article detailing the FAA’s failure to produce documents in response to APT’s FOIA requests, the FAA sent APT an email apologizing for the delay and stating that “we anticipate that your request will be answered by June 30, or sooner, if possible.” Ex. 6. The FAA’s June 15th email was not phrased as a request for extension, proposed a production date well outside of the statutory deadline window, and contained no mention of “unusual circumstances” necessitating additional time pursuant to the statute.

46. Even counting from March 2, 2023, the date that the FAA belatedly acknowledged receipt of APT’s three FOIA requests, the 20-day statutory deadline expired at the close of business hours on March 30, 2023. *See* 5 U.S.C. § 552(a)(6)(A)(i). APT granted a single extension to May

1, 2023, but the FAA failed to produce any responsive documents by that extended deadline and has not informed APT of any “unusual circumstances” justifying any delay.

47. To date, the FAA has not (1) made or communicated its determination in response to FOIA Request One, FOIA Request Two, or FOIA Request Three, (2) provided any responsive materials beyond the documents already produced to a different requester who submitted a different FOIA request, (3) explained that responsive materials have been or will be withheld, (4) communicated any basis for withholding records, or (5) communicated any timeline by which APT can expect its requests to be processed after the agency failed to produce any documents by its two self-imposed deadlines of May 1 and May 18, 2023 without any explanation.

**FIRST CLAIM FOR RELIEF<sup>1</sup>**  
**(Failure to Comply with Statutory Deadlines in**  
**Violation of FOIA)**

48. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

49. FOIA requires the FAA to provide a final determination within 20 working days after the receipt of APT’s FOIA request. 5 U.S.C. § 552(a)(6)(A). This 20-day time limit may be extended for a maximum of 10 working days in the event of “unusual circumstances,” but written notice must be provided to APT setting forth the unusual circumstances justifying such extension and the date on which a determination is expected to be dispatched. *See* 5 U.S.C. § 552(a)(6)(B)(i); *see also* 21 C.F.R. § 20.41(b)(3)(i)(A).

50. If “unusual circumstances” are invoked by an agency through written notice, that agency must also provide the requester with an opportunity to limit the scope of its request so that it may proceed within the statutory time limit or provide the requester an opportunity to arrange

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<sup>1</sup> Each claim for relief brought by APT in this Complaint applies to all three FOIA requests detailed above.

with the agency an alternative time frame for processing the request or a modified request. *See* 5 U.S.C. § 552(a)(6)(B)(ii); *see also* 21 C.F.R. § 20.41(b)(3)(i)(B).

51. More than 20 working days have passed since the FAA acknowledged the receipt of APT's three FOIA requests on March 2, 2023. *See* Ex. 4.

52. More than 10 working days have passed since the extended deadline of May 1, 2023, to which APT agreed. *See* Ex. 5.

53. To date, the FAA has not provided a final determination in response to APT's FOIA requests, nor has it communicated when APT can expect its requests to be processed after missing two self-imposed extended deadlines (the second of which APT never approved).

54. The FAA has not provided written notice to APT that it is invoking "unusual circumstances" under the statute. In its March 29, 2023, email, the FAA notified APT that it was "still in the process of searching for records" and anticipated a final determination by May 1, 2023. *See* Ex. 5. On May 2, 2023, in response to a question from APT as to the anticipated date of production, the FAA responded by stating that it anticipated "answering your request on or about May 18," and that the agency would contact APT "[i]f additional time is needed." *Id.* Extensions requested without any proffered justification or citation of "unusual circumstances" do not satisfy the statutory requirement of providing written notice to APT setting forth the "unusual circumstances" that could justify such an extension. *See* 5 U.S.C. § 552(a)(6)(B)(i). Based only upon the communications APT has received from the FAA, APT has no way of determining the basis for the agency's delay because the FAA has never offered any reason.

55. The FAA has also failed to give APT an opportunity to limit the scope of its requests so that they may be processed within the statutory time frame, which FOIA requires if "unusual circumstances" are to be invoked. *See* 5 U.S.C. § 552(a)(6)(B)(ii); *see also* 21 C.F.R. §

20.41(b)(3)(i)(B). Nor has the FAA provided APT an opportunity to arrange for an alternative time frame for processing the request or a modified request that would be acceptable to both parties. *See* 5 U.S.C. § 552(a)(6)(B)(ii); *see also* 21 C.F.R. § 20.41(b)(3)(i)(B).

56. The FAA has therefore failed to make a timely determination in response to APT's FOIA requests, in violation of FOIA. *See* 5 U.S.C. § 552(a)(6).

57. All administrative remedies required by FOIA have been constructively exhausted. *See* 5 U.S.C. § 552(a)(6)(C)(i).

**SECOND CLAIM FOR RELIEF  
(Unlawful Withholding of Agency Records in Violation of FOIA)**

58. The allegations in the foregoing paragraphs are expressly incorporated herein as if restated in full.

59. FOIA requires the FAA to process records requests and promptly provide the requested records or the reasonably segregable portion of records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3)(A).

60. To date, the FAA has neither provided nor made available any responsive documents in response to APT's FOIA requests, nor has the FAA claimed that any responsive records are exempt from disclosure.

61. Therefore, the FAA's failure to promptly produce the requested records or claim applicable exemptions violates FOIA. 5 U.S.C. § 552(a)(3)(A).

**THIRD CLAIM FOR RELIEF  
(Declaratory Judgment)**

62. The allegations in the foregoing paragraphs are expressly incorporated herein as if restated in full.

63. For the same reasons described in each of the previous counts, APT is entitled to a declaratory judgment that the FAA has been and is violating the law.

### **PRAYER FOR RELIEF**

Plaintiff respectfully requests that the Court:

A. Declare that the FAA failed to make and communicate a timely determination regarding each of APT's three requests, in violation of FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(E)(iii);

B. Declare that the FAA failed to promptly provide records responsive to each of APT's three requests, in violation of FOIA, 5 U.S.C. § 552(a)(3);

C. Order the FAA to immediately conduct a reasonable search for all responsive records and demonstrate that it employed search methods reasonably calculated to uncover all records responsive to the requests as required by FOIA, 5 U.S.C. § 552(a)(3)(C);

D. Order the FAA to immediately provide a determination on APT's requests as required by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), and produce a *Vaughn* index of any responsive records withheld under claim of exemption, *see Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 145-46 (D.C. Cir. 2006);

E. Order the FAA to promptly make available to APT all responsive, non-exempt records, as required by FOIA, 5 U.S.C. § 552(a)(3);

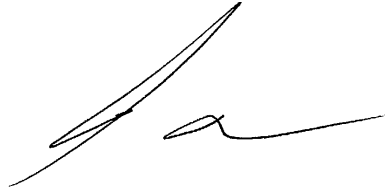
F. Maintain jurisdiction over this action to ensure that the FAA produces all non-exempt responsive records to APT, and that any non-exempt portions of responsive records are not improperly withheld;

G. Award reasonable attorneys' fees and allowable costs, including under 5 U.S.C. § 552(a)(4)(E); and

H. Grant APT such other and further relief to which it is justly entitled under law and equity.

Dated: June 15, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jason Torchinsky', with a long horizontal flourish extending to the right.

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