Dear FOIA Officer:

Under the Freedom of Information Act (FOIA), I request on the behalf of The Government Accountability Project, access to and copies of the following records from the Centers for Disease Control and Prevention (CDC), an agency of the Department of Health and Human Services, related to the East Palestine, Ohio Train Derailment (EPTD):

1. Any documents, memoranda, directives, guidelines or other communications generated or received by CDC personnel from February 3, 2023, to December 31, 2023, that include “biomonitoring” by medical personnel, health departments, laboratories or poison control centers of individuals exposed to contaminants from the February 3, 2023 Norfolk Southern train derailment in East Palestine, Ohio. Biomonitoring may include laboratory testing of samples from the body, usually blood or urine, to look for a chemical or markers of exposure to that chemical.

Search terms include “East Palestine” OR “Norfolk Southern” OR “EPTD” OR “Derailment” OR “Vinyl Chloride” OR “Butyl Acrylate” OR “Ethylhexyl acrylate” OR “heavy metals” OR “dioxin” AND “biomonitoring” AND “recommend” OR “discourage” OR “advise” OR “collect” OR “analyze” OR “blood” OR “urine” OR “biological.”

2. Records from February 3 to December 31, 2023 regarding cancers resulting following exposure to toxins in East Palestine following the East Palestine Train Derailment. Search terms include “East Palestine” OR “Norfolk Southern” OR “EPTD” OR “Derailment” OR “Vinyl Chloride” OR “Butyl Acrylate” OR “Ethylhexyl acrylate” AND “cancer.”

3. Internal communications regarding the ATSDR Regional Poison Control Clinical Guidance Document titled *“Regional Poison Control Guidance Document East Palestine Train Derailment”* in which medical providers were discouraged from collecting biomonitoring samples. Search terms include “East Palestine Train Derailment” OR “EPTD” AND “Poison Control” OR “blood” OR “urine.”

4. Internal communications from June 6, 2023 to July 6, 2023 regarding the June 6, 2023 ATSDR and CDC meeting in East Palestine to discuss early detection of cancers in East Palestine Ohio. Key search terms include: “Dr. Arthur Chang” OR “Arthur Chang” OR “Jill Shugart” AND “early detection” OR “cancer” OR “dioxin” or “vinyl chloride.”

5. Internal communications from March 1, 2023 to April 30, 2023 regarding the physicians and officers from the CDC’s Epidemic Intelligence Service became ill after working in East Palestine, Ohio after the East Palestine Train Derailment. Search terms include: “CDC” AND “workers” OR “officials” OR “team” OR “Epidemic Intelligence Service” AND “East Palestine” AND “ill” OR “sick” OR “exposure” OR “symptoms.

I am requesting these records for non-commercial purposes. As provided under FOIA, please supply all segregable portions of otherwise exempt material. I am requesting a waiver of search and review fees as this request is in the public interest regarding the health and safety of East Palestine residents exposed to hazardous contaminants. However, if my request for a fee waiver is denied, I agree to pay up to $50 in total for search and review fees. If the fee estimate exceeds this amount, please inform me first for approval.

If my request is denied in whole or in part, please provide a written explanation for the denial including reference to the specific statutory exemptions upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please contact me immediately if this FOIA request is unclear or needs clarification.

Thank you for your assistance. I look forward to your prompt response within the 20 working days allowed by statute.

Sincerely,

Lesley Pacey

Environmental Investigator

Government Accountability Project

**Request for Fee Waiver**

GAP requests that all fees incurred in connection with the attached request be waived, primarily as members of the news media and secondary because “disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester.” *5*U.S.C. **§***552*(a)(4)(A)(iii).

1. **Members of the News Media**

Under the language of the EPA Regulations, “The Agency will charge no search or review fees for requests by educational institutions or noncommercial scientific institutions, or representatives of the news media.” Moreover, ‘‘a representative of the news media’’ in this clause means “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ‘‘news’’ means information that is about current events or that would be of current interest to the public.”

[GAP uses editorial skills to author public disclosures,](https://www.documentcloud.org/documents/20984482-070721_elkin___mulaire_whistleblower_disclosure-final) which very often include FOIA-requested documentation references, and via our [Blog](https://whistleblower.org/blog/), weekly news bulletins, monthly roundtable presentations, and quarterly newsletters, and published to our [16,000+ followers on Twitter](https://twitter.com/GovAcctProj), and are picked up by top news outlets on a regular basis, including [NBC News](https://www.nbcnews.com/politics/immigration/whistleblowers-allege-poor-care-migrant-kids-contractor-specializing-disaster-cleanup-n1273124). As such, we request a determination on whether we are included in the news media fee category. Additionally, if for some reason you determined that we are not news media under the meanings and definitions of this regulation, we also request you provide explanation as to how you made that determination. Finally, we also request to reserve our right to appeal such determination after it has been made.

GAP employees are members of the public media. Its employees’ work has been published in outlets including [*The Washington Post*](https://www.washingtonpost.com/outlook/2020/07/07/whistleblowers-congress-intelligence-afghanistan/), [*Just Security*](https://www.justsecurity.org/77562/know-your-rights-whistleblowers-and-the-january-6th-select-committee/), and [*The Daily Beast*](https://www.thedailybeast.com/through-hassan-nasser-fawaz-trumps-longtime-lobbyist-has-some-very-iffy-middle-east-connections?ref=author). This request is made as part of the news gathering process. If there is any newsworthy material discovered from this FOIA request, there is a reasonable expectation of its publication.

Moreover, it is unnecessary for GAP to demonstrate the relevance of this particular subject in advance. Additionally, despite our past record, case law states that “proof of the ability to disseminate the released information to a broad cross-section of the public is not required.” *Judicial Watch, Inc. v. Dep’t of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see *Carney v. U.S. Dep’t of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). Further, courts have held that "qualified because it also had “firm” plans to “publish a number of . . . ‘document sets’” concerning United States foreign and national security policy." Under this criterion, as well, we qualify as members of the news media. Additionally, courts have held that the news media status "focuses on the nature of the requester, not its request. The provision requires that the request be ‘made by’ a representative of the news media. Id. § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information." As such, the details of the request itself are moot for the purposes of determining the appropriate fee category.

1. **Public Interest**

To be overly inclusive, GAP also includes a request for a waiver on the basis of the 6 public interest factors. Please accept the detailed explanation below of GAP’s intended use of such information and status as a 501(c)(3) nonprofit as sufficient justification in order to waive fees connected with GAP’s request.

*The Requesters’ Public Interest Status and History*

GAP is a non-profit, non-partisan, public interest organization chartered under IRS Code §501 (C)(3) as a non-profit, educational and charitable organization. We seek to serve the public through achieving governmental accountability by protecting and encouraging federal and corporate employees who observe or are victimized by wrongdoing, gross waste of public funds, threats to public health and safety, environmental contamination, corruption, abuse of the public trust and other abuses of power.

GAP accomplishes these goals primarily by conducting advocacy campaigns before Congress, through the media, and for the general public and by providing legal representation to whistleblowers to combat the retaliation they have suffered in exercising their right of occupational free speech. Our twin aims are to promote corporate and government accountability and to expose, investigate, and correct substantive problems that formed the basis of protected whistleblowing disclosures. GAP’s role is well-recognized by the courts and, as an organization, has informational standing under the First Amendment protecting its receipt of disclosed information. Taylor v. RTC. 56 F.3d 1437 (D.C. 1995); *United States v. Garde,* 573 F. Supp. 604 (D.D.C. 1987); ~ Generally *Virginia Pharmacy Bd. v. Virginia Consumer Council,* 425 U.S. 748, 756-57 (1976).

GAP has a 46-year history of working in the public interest. GAP does not take individual cases based on the client’s ability to pay, how much money GAP believes it can recover in legal fees through litigation or any other commercial interest. Rather, GAP takes cases of legitimately harassed whistleblowers, often pro-bono (without charge), that further public policy or legislative changes that make the law stronger for workers who witness and choose to tell the truth about corporate and taxpayer-financed wrongdoing and to pursue exposure and resolution of the wrongdoing. It is through this work and with the help of whistleblowers that GAP has, among other things, pushed for enactment of several whistleblower protection statutes, exposed unhealthy food at supermarket chains, pushed for independent reviews of the safety of the Alaska pipeline, exposed the threat of explosion in waste tanks at the Hanford nuclear site, and pushed for policy reform within numerous executive agencies. All this activity is done primarily with the interest of the public in mind.

*Dissemination of the Requested Information*

In our efforts to promote government accountability, GAP works closely with Members of Congress, the media, and the public to alert them to irregularities. The information requested will be used in connection with a campaign aimed at key decision-makers at the federal level, the general public, and self-selected subscribers. More specifically, GAP will publicize the responsive records so that all federal employees who seek assistance at the Office of Special Counsel (“OSC”) can be fully- informed about the office’s methods for investigating their complaints.

The combined circulation and viewer-base of our national, regional, and self-subscribed outlets ensure that the information will, indeed, be widely distributed to diverse segments of the public who will benefit from knowing the manner in which OSC investigates complaints, and the efforts that OSC has taken to ensure the highest quality training and instruction for its staff. As a consequence, public understanding, and trust of government operations will certainly be enhanced.

*Non-Commercial Use of the Requested Information*

Disclosure of this information by GAP is in no way connected with any commercial interest since GAP is a non-profit, tax-exempt organization under § 501 (c)(3) of the IRS Code. The information we are seeking is crucial to advance public knowledge and will not be put to any commercial use.

**Request for Expedited Processing**

Government Accountability Project recently was granted expedited processing by the EPA on its East Palestine FOIA because we proved “there is a compelling need for expedited processing of each part of this request.” That is both because “the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” and there exists “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” 40 C.F.R. § 2.104(f). *See also* 5 U.S.C. § 552(a)(6)(E)(v).

1. **Life or Physical Safety**

EPA has publicly stated that East Palestine residents are safe from chemicals that entered the environment after the February derailment.[[1]](#footnote-1) Residents are presumably relying on this representation to make medical choices, decide whether to relocate, and generally plan their lives.

Whether or not EPA is right about the current safety of East Palestine, residents continue to suffer from a long list of symptoms with which they became afflicted immediately after the derailment. Here is a non-exhaustive list of such symptoms gathered from my personal interviews with East Palestine residents in late September and early October:

* Heavy menstruation followed by a complete halt to menstruation;
* Uterine nodules;
* Seizures;
* Recurrent headaches;
* Dizziness;
* Insomnia;
* Constant fatigue;
* Coughing up blood;
* Bleeding out ears;
* Earaches;
* Numb extremities;
* Tingling and numbness in lips;
* Severe toothaches;
* Tooth decay;
* Lost teeth;
* Hypertension;
* Nausea;
* Diarrhea;
* Muscle aches;
* Hair falling out;
* Involuntary curling of hands;
* Chemical bronchitis.

These symptoms are not limited to residents. According to further news reports, seven CDC investigators contracted several of these symptoms on a temporary visit to East Palestine, and those symptoms disappeared soon after they left the area.[[2]](#footnote-2)

1. [↑](#footnote-ref-1)
2. 1. . <https://www.epa.gov/east-palestine-oh-train-derailment/home-and-office-cleaning#:~:text=Air%20monitor%20and%20sampling%20in,concern%20for%20incident%20specific%20chemicals>.

2. <https://www.cnn.com/2023/03/31/health/ohio-train-derailment-cdc-team-symptoms/index.html>.

3. [https://acrobat.adobe.com/id/urn:aaid:sc:VA6C2:0c485740-0531-49b9-a4b4-de53579f31c2](https://acrobat.adobe.com/id/urn%3Aaaid%3Asc%3AVA6C2%3A0c485740-0531-49b9-a4b4-de53579f31c2)

4. <https://www.commondreams.org/news/east-palestine-cdc-sick> [↑](#footnote-ref-2)