



VIA EMAIL

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OSTP-FOIA Control number: 22-080

APPEAL OF DENIAL OF EXPEDITED PROCESSING AND  
NEW REQUEST FOR EXPEDITED PROCESSING

CAIDP FOIA Request

On June 20, 2022, the Center for AI and Digital Policy (“CAIDP” or “the Center”) sent a Freedom of Information Act (“FOIA”) request to the Office of Science and Technology Policy (“OSTP” or “the Agency”) concerning the OSTP’s proposed AI Bill of Rights.<sup>1</sup> CAIDP described three categories of records in the FOIA Request. Citing the urgency of the AI policy initiative, the widespread public interest, and the OSTP’s prior statements and prior actions, CAIDP requested expedited processing for the first two categories of the FOIA Request. CAIDP also requested a fee waiver. The OSTP responded by email to CAIDP on June 28, 2022.<sup>2</sup>

Agency Response

The OSTP granted the fee waiver to CAIDP. Moreover, the OSTP did not dispute that CAIDP “is primarily engaged in disseminating information,” 32 C.F.R. § 2402.6(d)(2)(ii), or that CAIDP certified that the explanation, in support of its request for expedition, is “true and correct.” 32 C.F.R. § 2402.6(d)(3). However, the OSTP denied CAIDP’s request for expedited processing.

Therefore, the only issue in dispute in this Appeal is whether the Center has “demonstrate[d] that an urgency to inform the public concerning actual or alleged federal government agency exists.” 32 C.F.R. § 2402.6(d)(2)(ii).

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<sup>1</sup> The “CAIDP FOIA Request.”

<sup>2</sup> OSTP Response to CAIDP FOIA Request, June 28, 2022 (“OSTP Response”)

## Appeal of Agency Determination and New Request for Expedition

CAIDP both appeals the determination to deny expedited processing, 32 C.F.R. § 2402.8(a), and makes a new request for expedited processing, incorporating the original Request as well as additional facts and arguments presented in this Appeal. “A requester may make a request for expedited processing at any time.” 32 C.F.R. § 2402.6(d)(1). As this Appeal also constitutes a new request for expedited processing, CAIDP certifies that this explanation is true and correct. 32 C.F.R. § 2402.6(d)(3).

### Determination of Expedited Processing

According to the D.C. Circuit, the determination for expedited processing hinges on three factors: (1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity. *Al-Fayed v. CIA*, 254 F.3d 300, 310 (2002). See, e.g., *Protect Democracy Project, Inc. v. United States DOD*, 263 F. Supp. 3d 293 (2017) (ruling that an agency failed to grant expedited processing as required.)

The Agency does not dispute that CAIDP’s request concerns actual or alleged federal government activity, but claims that the “requestor has not demonstrated that producing the information sought on an expedited basis is a ‘matter of current exigency to the American public.’”<sup>3</sup> The Agency makes this claim even after the former Director of the OSTP – *the President’s top science advisor* -- published an article describing the urgency of the AI Bill of Rights initiative,<sup>4</sup> the initiative that has apparently now stalled, and is the focus of CAIDP’s FOIA Request.

It should be unnecessary for a FOIA requester to make clear the compelling need for an agency to inform the public, on an expedited basis, about an agency initiative when the Agency Director, who is also a Cabinet official and the top advisor to the President in the subject matter domain, has described the importance of the initiative for the American public, (“these tools can embed past prejudice and enable present-day discrimination”), organized the American public in support of the initiative, and indicated that delay that would leave in place “powerful

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<sup>3</sup> OSTP Response [at 4]. No page numbers appear on the OSTP Response.

<sup>4</sup> Eric Lander and Alondra Nelson, *Americans Need a Bill of Rights for an AI-Powered World: The White House Office of Science and Technology Policy is developing principles to guard against powerful technologies—with input from the public*, *Wired*, October 8, 2021, <https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/> cited in CAIDP FOIA Request at 2. See also Dave Nyczepir, *White House technology policy chief says AI bill of rights needs ‘teeth*, *FedScoop*, Nov. 4, 2021, (“We see this [as a way] to improve the quality of products by not rewarding people who cut corners and instead setting ground rules to reward people who produce safe, effective, fair, equitable products.”), <https://www.fedscoop.com/ai-bill-of-rights-teeth/>

technologies” that fail to “respect our democratic values and abide by the central tenet that everyone should be treated fairly.”

Speaking at the 2021 Stanford University Human-Centered Artificial Intelligence Fall Conference, Dr. Lander said an AI bill of rights will give consumers a right to transparency and explainable AI, a technology approach that provides insight into algorithmic processes.<sup>5</sup> He also stated that the AI Bill of Rights will provide the basis for regulation and legislation.<sup>6</sup> Some of the rights could include a right for individuals to govern their personal data and the right to know what data was used to create and test an AI algorithm.<sup>7</sup>

These prior statements and prior actions by the OSTP Director make clear that the OSTP itself has determined that the subject of the FOIA request is (1) “a matter of current exigency to the American public” and (2) “the consequences of delaying a response would compromise a significant recognized interest.” *Al-Fayed*, 254 F.3d at 310.

But if further elaboration is necessary, CAIDP makes the following additional arguments, supplemented with additional facts, in support of expedited processing, emphasizing the first two prongs of the *Al-Fayed* factors.

1) *The AI Bill of Rights is of widespread interest to the American Public*

First, there is no issue of greater interest to the American public, *within the purview of the Office of Science and Technology Policy*, than the proposed AI Bill of Rights. The agency itself made it of interest to the American public with the decisions to (1) announce the initiative, (2) promote the initiative, (3) organize public events about the initiative, (4) request public comment on the initiative, and (5) promote the initiative on the White House website and with the media.” A search on Lexis in the News file on “Office of Science and Technology Policy” and “Bill of Rights” returned 281 news items. Google Search turned approximately 53,900 items. A sample is attached in Exhibit 1.

As described above, the former Director and current Acting Director have *themselves* stated the urgency of this policy initiative. The title of their Wired article was literally “Americans Need a Bill of Rights for an AI-Powered World” (emphasis added) The subtitle of the article makes clear that matter “is of current exigency to the American public.” The former Director and the current Acting Director wrote, “The White House Office of Science and

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<sup>5</sup> Makenzie Holland, *Biden's top science advisor working on AI bill of rights: A national AI bill of rights could include the rights to transparency and data governance, according to Biden's top science advisor*, TechTarget, Nov. 9, 2021, <https://www.techtarget.com/searchenterpriseai/news/252509301/Bidens-top-science-advisor-working-on-AI-bill-of-rights>

<sup>6</sup> Id.

<sup>7</sup> Id.

Technology Policy is developing principles to guard against powerful technologies—with input from the public.”

As the former Director and current Acting Director explained (which CAIDP highlighted in the FOIA Request):

[T]he deployment of artificial intelligence has “led to serious problems.” They [Dr. Lander and Dr. Nelson] explained that “training machines based on earlier examples can embed past prejudice and enable present-day discrimination.” They warned that hiring tools can reject applicants who are dissimilar from existing staff despite being well qualified. They described how mortgage approval algorithms could extend decades of housing discrimination into the digital age. They also highlighted the fact that the failings of AI disproportionately affect marginalized individuals and communities.<sup>8</sup>

Having alerted the public to the risks of AI and proposed an AI Bill of Rights, the OSTP cannot now argue that there is no compelling need to provide information to the public about the status of the initiative. In their own words, “Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly.”<sup>9</sup>

2) *The American Public provided many comments in response to the OSTP Request for Information*

Second, there was widespread public response to the OSTP request for comments on the proposal, underscoring the current exigency to the American public of the Bill of Rights initiative. For example, a coalition of artists, scientists, journalists, media-makers and human rights activists who actively engage with Artificial Intelligence submitted a detailed statement to the OSTP along with a list of reports and projects “created by members of our communities that use or address AI technologies.”<sup>10</sup> They wrote, “We urge the process of developing an AI Bill of Rights be actively animated and informed by this work, and our community.”<sup>11</sup>

A brief Internet search reveals that many other organizations submitted comments to the OSTP in response to the Agency’s request for comments on the AI Bill of Rights initiative. The Business Software Alliance . The HR Policy Association wrote, “Large employers are committed to the prevention of bias in the workplace, and use cases for AI in the workplace vary widely. If not implemented and used responsibly, artificial intelligence has the potential to produce adverse

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<sup>8</sup> CAIDP FOIA Request at 3 (footnotes omitted).

<sup>9</sup> Id.

<sup>10</sup> Immerse, *A Collaborative Proposal for a United States AI Bill of Rights*, Mar. 3, 2022, <https://immerse.news/a-collaborative-proposal-for-a-united-states-ai-bill-of-rights-11f37b7631aa> A public statement submitted to the Office of Science and Technology Policy

<sup>11</sup> Id.

outcomes and negate diversity efforts.”<sup>12</sup> In comments to the Agency, the Bipartisan Policy Center noted that “OSTP will play a vital role in defining the future of AI-enabled biometric technologies.”<sup>13</sup> The US Chamber of Commerce Technology Engagement Center wrote in support of the initiative, stating “the Chamber stands committed to working with the Office of Science Technology Policy around its work to develop an AI Bill of Rights that allows for the ‘equitable harnessing’ of the benefits of AI and Biometrics technology.”<sup>14</sup> The Software and Information Industry Association (“SIIA”) wrote:

SIIA commends OSTP’s efforts to develop a Bill of Rights for an Automated Society and appreciate the steps that OSTP has taken, through this RFI and a series of roundtables and listening sessions, to hear from consumers, businesses, academics, and the American public. Artificial intelligence (AI) is having a profound impact on all aspects of society and the impact will only continue. Leadership in developing policy to ensure that AI technologies are developed and used responsibly and in accordance with societal expectations is critical.<sup>15</sup>

But the full extent of the public response to the proposed AI Bill of Rights – which would further establish the “compelling need” for expedited processing -- is difficult to determine precisely because the OSTP has failed to disclose the comments it received. In these circumstances, equitable interests also favor the grant of expedited processing of a FOIA request.

3) *The nomination of a new Director for OSTP establishes a date certain for “public and congressional debates about issues of vital national importance”*

Third, *and this fact is subsequent to the filing of the initial FOIA request*, on June 21, 2022, President Biden announced that he would nominate Dr. Arati Prabhakar to head the Office

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<sup>12</sup> *HR Policy Provides Comments to White House on AI-Enabled Biometric Technologies in the Workplace*, Jan. 21, 2022, <https://www.hrpolicy.org/insight-and-research/resources/2022/hr-workforce/public/01/hr-policy-provides-comments-to-white-house-on-ai-e/>

<sup>13</sup> Bipartisan Policy Center, *Bipartisan Policy Center Response to OSTP’s RFI on Public and Private Sector Uses of Biometric Technologies*, Feb. 1, 2022, <https://bipartisanpolicy.org/explainer/bipartisan-policy-center-response-to-ostps-rfi-on-public-and-private-sector-uses-of-biometric-technologies/>

<sup>14</sup> US Chamber of Commerce Technology Engagement Center, *Letter Responding to the OSTP Request for Information on Public and Private Sector Uses of Biometric Technologies*, Jan. 14, 2022, <https://americaninnovators.com/advocacy/letter-responding-to-the-ostp-request-for-information-on-public-and-private-sector-uses-of-biometric-technologies/>

<sup>15</sup> Software and Information Industry Association, *Comments of the Software & Information Industry Association (SIIA) on the Request for Information on Public and Private Sector Uses of Biometric Technologies: Submitted to the Office of Science and Technology Policy*, Jan. 14, 2022, <https://www.sii.net/wp-content/uploads/2022/01/SIIA-Submission-on-OSTP-Biometrics-RFI.pdf>

of Science of Technology Policy.<sup>16</sup> As a consequence, Dr. Prabhakar will appear before the Senate Commerce to discuss her views regarding the future of the agency and the program priorities.<sup>17</sup> The current status of the AI Bill of Rights initiative could well provide the basis for an exchange between the Committee members and the Nominee regarding the future work of the Office of Science and Technology Policy. And it is likely that the hearing will be held soon as both the Chair and Ranking Member of the Senate Commerce Committee previously urged President Biden to “nominate a new Director of OSTP as soon as possible.”<sup>18</sup>

Give these circumstances, the delay in release would "compromise a significant recognized interest." *Project Democracy*, 263 F.Supp. 3d at 299, citing *Al-Fayed*, 254 F.3d at 310. As the *Project Democracy* Court explained:

In particular, if production is unduly delayed, both Protect Democracy and the public at large will be "precluded . . . from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of" a high-profile government action, [*EPIC v. Dept. of Justice*, 416 F. Supp. 2d, 30, 41] . . . Being closed off from such a debate is itself a harm in an open democracy. See *Elec. Frontier Found. v. Office of Dir. of Nat. Intelligence*, 2007 U.S. Dist. LEXIS 89585, 2007 WL 4208311, at \*7 (N.D. Cal.

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<sup>16</sup> The White House, *President Biden to Nominate Dr. Arati Prabhakar to Lead Office of Science and Technology Policy*, June 21, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/21/president-biden-to-nominate-dr-arati-prabhakar-to-lead-office-of-science-and-technology-policy/>

<sup>17</sup> See, e.g., U.S. Senate Committee on Commerce, Science and Transportation, *Nomination Hearing of Dr. Eric S. Lander, of Massachusetts, to be Director of the Office of Science and Technology Policy (OSTP)*, April 29, 2021 (“America’s future depends on science and technology like never before. We see amazing opportunities ahead, but also unprecedented challenges. The choices we make now will determine our path for the generations to come.”) <https://www.commerce.senate.gov/2021/4/nomination-hearing/cfae127c-0c1f-4e0d-8492-32ba7671c3c9>. Senator Wicker remarked (emphasis added):

The Director of the OSTP has been a critically important position since it was first created. The person occupying this role directly advises the President on the scientific, engineering, and technological aspects of a wide range of federal government activity. In addition, it falls to the Director of the OSTP to coordinate science and technology policy across all federal agencies. Notably, under the Industries of the Future Act – which I had the opportunity to author and see enacted last congress – the Director of the OSTP is required to submit a report on federal government research and development investments, infrastructure, and workforce development. The report must include a plan to advance U.S. leadership in industries of the future such as *artificial intelligence* and quantum science, . . .

<sup>18</sup> Letter from Senator Maria Cantwell and Senator Roger Wicker to President Joseph R. Biden, Jr, Apr. 1, 2022, <https://www.commerce.senate.gov/services/files/A479492D-F94D-4784-963D-E169AB573050>

Nov. 27, 2007) (“[O]ngoing public and congressional debates about issues of vital national importance cannot be restarted [\*\*11] or wound back.”)

Given that the Senate Commerce Committee will set a date for the hearing for the next OSTP Director, “this is the rare case where after a date certain, the value of the information sought by the [FOIA requester] to inform the public about these matters would be materially lessened or lost.” *Brennan Center for Justice at NYU School of Law v. Department of Commerce*, 498 F. Supp. 3d 87 (D.D.C. 2020) (granting expedited processing).

- 4) “*The subject matter of the request[s] [-the nation’s policy for Artificial Intelligence-] [is] central to a pressing issue of the day.*”

Fourth, Artificial Intelligence is of widespread interest to the American public. “There is little doubt, in other words, that ‘the subject matter of the request[s] [is] central to a pressing issue of the day.’” *Project Democracy*, 263 F.Supp. 3d at 299, citing *Wadelton v. Dep’t of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013). At issue in the CAIDP FOIA Request is not simply the current status of the proposed AI Bill of Rights but more broadly, the response of the lead science agency in the United States to the policy challenges posed by the deployment of AI systems. This topic is the focus of numerous books, articles, conferences, and movies.<sup>19</sup>

The OSTP AI Bill of Rights initiative also implicates other activities across the federal government. For example, lawmakers working in related fields of Artificial Intelligence policy anticipated that the OSTP AI Bill of Rights would have a foundational role in the development of the US Artificial Intelligence research strategy. In January 2022, lawmakers urged officials from the Office of Science and Technology Policy (OSTP) and the National Science Foundation (NSF) to staff the National Artificial Intelligence Research Resource (NAIRR) task force with AI experts.<sup>20</sup> In a letter to the OSTP Director and the NSF Director, Senators Rob Portman, R-Ohio, and Martin Heinrich, D-N.M., and Reps. Anthony Gonzalez, R-Ohio, and Anna Eshoo, D-Calif., wrote, “We also are pleased to see your efforts to design an Artificial Intelligence (AI) Bill of Rights to protect civil rights in our high-tech age, and believe there are unique synergies

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<sup>19</sup> See, e.g., Nick Bostrom, *Superintelligence: Paths, Dangers, Strategies* (2016); Kate Crawford, *Atlas of AI* (2021); Safiya Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (2018); Cathy O’Neil, *Weapons of Math Destruction* (2017); Stuart Russell, *Human Compatible: Artificial Intelligence and the Problem of Control* (2020); and Joseph Weizenbaum, *Computer Power and Human Reason: From Judgment to Calculation* (1976). See also ACM Conference on Fairness, Accountability, and Transparency (ACM FAccT), “A computer science conference with a cross-disciplinary focus that brings together researchers and practitioners interested in fairness, accountability, and transparency in socio-technical systems.” <https://facctconference.org>. And see also *Minority Report* (2002) (on the use of predictive policing techniques).

<sup>20</sup> Lisbeth Perez, *Lawmakers Urge NSF and OSTP to Staff National AI Resource With Experts*, Merritalk, Jan. 28, 2022, <https://www.meritalk.com/articles/lawmakers-urge-nsf-and-ostp-to-staff-national-ai-resource-with-experts/>

between the work of the Task Force and the development of the AI Bill of Rights.”<sup>21</sup> The lawmakers continued, we “hope that assessment by the Task Force draws from your work to articulate rules for the ethical use of AI with the AI Bill of Rights.”<sup>22</sup> The lawmakers further said:

Additionally, the NAIRR should be used as a means to test and improve AI along the lines of the requirements associated with an AI Bill of Rights. As a federated, heterogeneous system-of-systems, the NAIRR should include a number of testbeds suited for conducting evaluations and research with implications for ethical AI across myriad disciplines and implementations. In this way the NAIRR can be used to operationalize aims of the AI Bill of Rights, while imbuing the AI Bill of Rights with the NAIRR’s core tenet of leveling the playing field for American’s access to technology.<sup>23</sup>

Thus, the current status of the AI Bill of Rights implicates a wide range of policy activities across the federal government, which further implicates the interests of researchers, universities, businesses, and developers, all constituents of the “American public.”

5) *The CAIDP FOIA Request concerns also alleged government conduct*

Fifth, the CAIDP FOIA Request concerns both *actual* government conduct (the development and current status of the AI Bill of Rights) and *alleged* government conduct (the influence of Eric Schmidt’s payments to OSTP on OSTP policy). The concern that a government agency acted improperly provides a separate and independent reason to grant expedited processing. Indeed, many federal agencies also expedite FOIA requests when the request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” See, e.g. 28 C.F.R. §§ 16.5(e)(1) (Department of Justice provision for expedited processing.)

As one D.C. District Court recently made clear, “[n]either FOIA nor the departmental regulations require the requester to prove wrongdoing by the government in order to obtain documents on an expedited basis. The request must simply provide grounds to support the contention that the matter is time sensitive, and that it is a ‘matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.’ 28 C.F.R. § 16.5(e)(1).” *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, 436 F. Supp. 3d 354, 360 (D.D.C. 2020).

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<sup>21</sup> Letter from Lawmakers to Sethuraman Panchanathan, Director, National Science Foundation and Dr. Eric S. Lander, Director, The White House Office of Science and Technology Policy, Jan. 25, 2022, <https://www.hsgac.senate.gov/imo/media/doc/NAIRR%20Letter%20Final.pdf>

<sup>22</sup> Id.

<sup>23</sup> Id.



CAIDP’s FOIA Request set out the background concerning Mr. Schmidt’s involvement in the OSTP and provided citations to many news stories regarding the conflict of interest.<sup>24</sup> These facts satisfy the “widespread and exceptional media interest” standard as the story of Mr. Schmidt’s involvement in the OSTP was widely reported,<sup>25</sup> and these activities led to the resignation of the OSTP Director, which is certainly exceptional.

As POLITICO reported, Schmidt’s “foundation’s involvement in funding positions for specific figures raised repeated red flags from internal White House watchdogs. . . . The science office’s efforts to arrange for Schmidt Futures to pay the salaries of Lander’s staff sparked ‘significant’ ethical concerns, given Schmidt’s financial interests in areas overlapping with OSTP’s responsibilities . . .”<sup>26</sup> POLITICO reported that internal emails show that members of the science office’s legal team regularly flagged potential conflicts of interests related to Schmidt and Schmidt Futures.<sup>27</sup> The former OSTP General Counsel stated, “I and others on the legal team had been noticing a large number of staff with financial connections to Schmidt Futures and were increasingly concerned about the influence this organization was able to have through these individuals.”<sup>28</sup> The POLITICO investigation emphasizes, in several places, Eric Schmidt’s particular interest in Artificial Intelligence:

Schmidt sits on the boards of a wide variety of technology companies, particularly those focused on artificial intelligence. He maintains a 20 percent stake in the hedge fund DE Shaw that boasts over \$60 billion in investments and committed capital, sits on the board of the AI-focused defense contractor Rebellion Defense, is an investor in Abacus.AI and this month invested in and became chair of Sandbox AQ – a new company that is a spin-off of an internal Google software team that says it will combine “AI + Quantum tech to solve hard problems impacting society.”<sup>29</sup>

There is, therefore, an additional and independent reason to grant expedited processing for CAIDP’s FOIA Request. The Request concerns “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which

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<sup>24</sup> CAIDP FOIA Request at 5-7.

<sup>25</sup> See, e.g., Lizzie O’Leary, *The Ex-Google CEO Inside the White House Science Office*, Apr. 4, 2022, <https://slate.com/technology/2022/04/eric-schmidt-eric-lander-white-house-science-policy.html>

<sup>26</sup> Alex Thompson, *A Google billionaire’s fingerprints are all over Biden’s science office: Eric Schmidt has long sought influence over U.S. science policy. Under Biden’s former science chief, Eric Lander, Schmidt’s foundation helped cover officials’ salaries, even as the office’s general counsel raised ethical flags*, POLITICO, March 28, 2022, <https://www.politico.com/news/2022/03/28/google-billionaire-joe-biden-science-office-00020712>

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> Id.

affect public confidence." See Exhibit 2. The FOIA gives an agency "latitude to expand the criteria for expedited access" beyond cases of "compelling need." 5 U.S.C. § 552(a)(6)(E)(i). *Al-Fayed*, 254 F.3d at 308, n. 7 (citing H.R. REP. NO. 104-795, at 26)

- 6) *In accord with the Al-Fayed analysis, CAIDP's FOIA Request is specifically focused on "a currently unfolding story"*

Sixth, the Agency claims that the requester "squarely fails to satisfy" the *Al-Fayed* reference to "specified categories for compelling need are to be narrowly applied."<sup>30</sup> In the *Al-Fayed* case the D.C. Circuit denied the request for expedited processing because, as Judge Garland explained, "All of the events and alleged events occurred two to three years before plaintiffs made their requests for expedited processing. Although these topics may continue to be newsworthy, none of the events at issue is the subject of a currently unfolding story." At 311.

CAIDP FOIA's Request is directly focused on a "currently unfolding story," beginning with the OSTP's October 2021 announcement of the AI Bill of Rights initiative,<sup>31</sup> the subsequent solicitation of public comments, the organization of public events, the controversy surrounding the funding provided to OSTP by Eric Schmidt (an opponent of AI regulation),<sup>32</sup> a public campaign to move forward Bill of Rights initiative,<sup>33</sup> the statement by the Acting Director that the AI Bill of Rights would be released "in early-May,"<sup>34</sup> further delay, and now the upcoming Congressional hearing for the next OSTP director and Congressional review of the Agency's activities.

This is almost precisely the circumstances that the drafters of the 1996 amendments anticipated when they set out the standard for expedited processing, as described by Judge Garland in *Al-Fayed* and applied by lower courts in such cases as *Project Democracy*. Moreover, in *Leadership Conf. on Civil Rights v. Gonzales*, 404 F.Supp.2d 246 (D.D.C. 2005), Judge Lamberth, who ruled in favor of expedited processing, observed that "Plaintiff's FOIA request could have a vital impact on development of the substantive record in favor of re-authorizing or

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<sup>30</sup> OSTP Response at 4.

<sup>31</sup> The White House, *Join the Effort to Create A Bill of Rights for an Automated Society*, November 10, 2021, <https://www.whitehouse.gov/ostp/news-updates/2021/11/10/join-the-effort-to-create-a-bill-of-rights-for-an-automated-society/>

<sup>32</sup> Whizy Kim, *The real scandal behind billionaire Eric Schmidt paying for Biden's science office, Maybe government employees should be paid for with tax dollars, not private philanthropy*, Vox, March 30, 2022, <https://www.vox.com/recode/23001543/eric-schmidt-white-house-office-science-technology-policy-philanthropy-ethical-concerns>

<sup>33</sup> CAIDP, *Support the OSTP Bill of Rights*, <https://www.caidp.org/statements/ostp/>

<sup>34</sup> Nancy Scola, *Can Alondra Nelson Remake the Government's Approach to Science and Tech? The new director of OSTP is asking hard questions about equity in science and tech. But how much power will she have?* POLITICO, April 28, 2022, <https://www.politico.com/news/magazine/2022/04/28/alondra-nelson-profile-ostp-eric-lander-resignation-00027604>



making permanent the special provisions of the Voting Rights Act.” *Leadership Conf.*, 404 F.Supp.2d at 260. Similarly, *the expeditious processing of CAIDP’s FOIA Request could help move forward the single most important AI policy initiative currently under consideration in the United States.*

### Conclusion

The OSTP claimed that the “requestor has not demonstrated that producing the information sought on an expedited basis is a ‘matter of current exigency to the American public.’” This was not correct as a matter of law at the time the CAIDP FOIA Request was submitted to the OSTP for the reasons stated above. The nomination of a new OSTP Director and the upcoming Congressional hearing further buttresses CAIDP’s arguments for expedited processing.

“FOIA directs the agencies to provide expedited processing where a requestor demonstrates “compelling need,” *id.* § 552(a)(6)(E)(i)(II).” *Al Fayed* 254 F.3d at 306. The OSTP should reverse its earlier determination, grant expedited processing, and process the CAIDP FOIA Request as soon as practicable.

This FOIA Appeal is included as an email. 32 CFR § 2402.4(a)(3). For your convenience, it is also provided as an attachment. The Appeal will also be posted at the CAIDP website – [caidp.org](http://caidp.org).

We anticipate your expeditious consideration of this appeal. 32 C.F.R § 2402.6(d)(4).

Thank you for your assistance with the processing of this request.

Sincerely,

A handwritten signature in blue ink that reads "Marc Rotenberg".

Marc Rotenberg, President  
Center for AI and Digital Policy



EXHIBIT 1

SAMPLE NEWS ARTICLES CONTAINING  
“Office of Science and Technology Policy” and “Bill of Rights”  
(URLs provided where readily available)

*Americans Need a Bill of Rights for an AI-Powered World: The White House Office of Science and Technology Policy is developing principles to guard against powerful technologies—with input from the public,*

Eric Lander and Alondra Nelson, Wired, October 8, 2021

<https://www.wired.com/story/opinion-bill-of-rights-artificial-intelligence/>

*White House proposes tech 'bill of rights' to limit AI harms*

Newsbank - Arkansas News Sources, October 8, 2021

*White House proposes tech 'bill of rights' to limit AI harms*

ABC News, October 8, 2021

<https://abcnews.go.com/Technology/wireStory/white-house-proposes-tech-bill-rights-limit-ai-80480774>

*White House Proposes Tech 'Bill of Rights' to Limit AI Harms*

US News, October 8, 2021

<https://www.usnews.com/news/business/articles/2021-10-08/white-house-proposes-tech-bill-of-rights-to-limit-ai-harms>

*White House proposes tech 'bill of rights' to limit AI harms*

The Independent (United Kingdom), October 8, 2021

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Computerworld (US), March 4, 2022

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*OSTP's Continuing Work on AI Technology and Uses that Can Benefit Us All*

February 3, 2022

Lynne Parker, Director, National AI Initiative Office, and Rashida Richardson, Senior Policy Advisor for Data and Democracy

(A search on Lexis for "office of science and technology policy" and "bill of rights" produced 281 results in the News file. A similar search on Google Search produced approximately 53,900 results. Illustration below.)



"office of science and technology policy" "bill of rights"



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Tools

About 53,900 results (0.51 seconds)

<https://www.whitehouse.gov> > ... > Press Releases

### Join the Effort to Create A Bill of Rights for an Automated Society

Nov 10, 2021 — The White House **Office of Science and Technology Policy** (OSTP) ... in the process of developing a **Bill of Rights** for an Automated Society.

<https://www.whitehouse.gov> > ... > OSTP Blog

### ICYMI: WIRED (Opinion): Americans Need a Bill of Rights for ...

Oct 22, 2021 — In the coming months, the White House **Office of Science and Technology Policy** (which we lead) will be developing such a **bill of rights**, ...

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### White House Developing AI "bill of rights"

Oct 21, 2021 — The White House **Office of Science and Technology Policy** announced a plan to develop a "**bill of rights**" to protect against potentially ...

<https://www.caidp.org> > statements > ostp

### Support the OSTP AI Bill of Rights

May 18, 2022 — US **Office of Science and Technology Policy** ... to move forward the proposal for a **Bill of Rights** for the Age of Artificial Intelligence.





EXHIBIT 2

SAMPLE NEWS ARTICLES CONTAINING  
“Office of Science and Technology Policy” and “Eric Schmidt”  
(URLs provided where readily available)

*A Google billionaire's fingerprints are all over Biden's science office: Eric Schmidt has long sought influence over U.S. science policy. Under Biden's former science chief, Eric Lander, Schmidt's foundation helped cover officials' salaries, even as the office's general counsel raised ethical flags.*

Alex Thompson, POLITICO, March 28, 2022

<https://www.politico.com/news/2022/03/28/google-billionaire-joe-biden-science-office-00020712>

*Whistleblower Alleges Former Google CEO Has Unprecedented Sway Over White House Science Office*

Anna Venarchik, Daily Beast, March 28, 2022

<https://www.thedailybeast.com/eric-schmidt-former-google-ceo-has-unprecedented-sway-over-white-house-science-office-whistleblower-alleges>

*Ex-Google CEO Eric Schmidt's charity paid salaries of 2 Biden science advisors, Politico reports*

Rebecca Cohen, Business Insider India, March 28, 2022

<https://www.businessinsider.in/politics/world/news/ex-google-ceo-eric-schmidts-charity-paid-salaries-of-2-biden-science-advisors-politico-reports/articleshow/90502015.cms>

*Google billionaire Eric Schmidt denies channeling money into Biden's science office, directly paying staff salaries and having 'undue influence' on policy*

Morgan Phillips, The Daily Mail, March 28, 2022

<https://www.dailymail.co.uk/news/article-10661039/Google-billionaire-Eric-Schmidt-PAID-salaries-staff-inside-Bidens-science-office.html>

*Ex-Google CEO funneled money into the White House science office: Eric Schmidt's contributions raised ethical concerns, Politico reported*

Nicole Westman, The Verge, March 28, 2022

<https://www.theverge.com/2022/3/28/22999754/eric-schmidt-google-money-white-house-science-ai-lander>

*Ex-Google CEO Schmidt's charity helped fund WH science office: report*

Mark, Moore, N.Y. Post, March 28, 2022

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*Ethical flags raised by former Google CEO's influence over Biden science office*

Nihal Krishan, Washington Examiner, March 28, 2022

<https://www.washingtonexaminer.com/policy/ethical-flags-raised-by-former-google-ceos-influence-over-biden-science-office>

*Eric Schmidt Reportedly Donated To The White House Science Office*

Hamid Ganji, Android Headlines, March 29, 2022

<https://www.androidheadlines.com/2022/03/eric-schmidt-reportedly-donated-to-the-white-house-science-office.html>

*Google billionaire Eric Schmidt has PAID the salaries of staff inside Biden's science office*

Newshunt365, March 29, 2022

<https://newshunt365.net/google-billionaire-eric-schmidt-has-paid-the-salaries-of-staff-inside-bidens-science-office/>

*Ex-Google CEO funneled money into Biden's science office, paid salaries*

Business Standard, March 29, 2022

[https://www.business-standard.com/article/companies/ex-google-ceo-funneled-money-into-biden-s-science-office-paid-salaries-122032900222\\_1.html](https://www.business-standard.com/article/companies/ex-google-ceo-funneled-money-into-biden-s-science-office-paid-salaries-122032900222_1.html)

*The real scandal behind billionaire Eric Schmidt paying for Biden's science office:*

*Maybe government employees should be paid for with tax dollars, not private philanthropy*

Whizy Kim, Vox, March 30, 2022

<https://www.vox.com/recode/23001543/eric-schmidt-white-house-office-science-technology-policy-philanthropy-ethical-concerns>

*The Ex-Google CEO Inside the White House Science Office*

Lizzy O'Leary, Slate, April 4, 2022

<https://slate.com/technology/2022/04/eric-schmidt-eric-lander-white-house-science-policy.html>

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