

EMPOWER OVERSIGHT

Whistleblowers & Research



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April 19, 2022

VIA ELECTRONIC TRANSMISSION: FOIA@SBA.GOV

Chief, Freedom of Information/Privacy Act Office
U.S. Small Business Administration,
409 Third St., S.W., 8th Floor
Washington, D.C. 20416

RE: FOIA Request for Documents Related to Paycheck Protection Program Loan Made to FreightCar America, Inc.

Dear Chief:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) established the Paycheck Protection Program (“PPP”), which funded \$659 billion in low-interest loans to small businesses to pay for up to 8 weeks of payroll costs, mortgage interest, rent, and utilities.¹ The terms of the loans include nontaxable debt forgiveness, on the condition that—during the period of the loan—the borrower maintains specified employee and compensation levels, spends loan proceeds on payroll and other eligible costs, and spends at least 60% of the loan proceeds on payroll costs.² The Small Business Administration (“SBA”) implements the PPP.³

¹ Pub. Law No. 116-136, 134 STAT. 286 – 294, § 1102 (March 27, 2020); see also, U.S. Treasury, *Policy Issues: Paycheck Protection Program* (Undated), available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program> (last viewed on April 14, 2022).

² Pub. Law No. 116-136, 134 STAT. 286 – 294, §§ 1101 and 1102 (March 27, 2020); see also, U.S. Treasury, *Policy Issues: Paycheck Protection Program* (Undated), available at <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-small-businesses/paycheck-protection-program> (last viewed on April 14, 2022).

³ Pub. Law No. 116-136, 134 STAT. 297 – 301, § 1106 (March 27, 2020); see also, U.S. Small Business Administration, *PPP Loan Forgiveness* (Undated), available at <https://www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/ppp-loan-forgiveness> (last viewed on April 14, 2022).

On April 7, 2020, BMO Harris Bank National Association made a \$10 million PPP loan to FreightCar America, Inc. (“FCA”), a Chicago-based manufacturer of railroad rolling stock.⁴ All loan proceeds were spent on payroll, and the loan principal as well as \$122,740 in accrued interest were forgiven in their entirety.⁵

It has been reported that, in connection with its application for the PPP loan, FCA certified that the loan would enable it to retain jobs at its Shoals, Alabama manufacturing plant.⁶ However, soon after loan approval, FCA announced to the workforce of its Shoals plant—the last manufacturing plant that FCA operated in the United States—that that it was shutting down the plant and moving its manufacturing operations to a new facility in Mexico.⁷ Some have speculated that FCA had long planned to close of the Shoals plant and move its manufacturing operations to Mexico and that it sought the PPP funds to support the transition.⁸

FCA laid off 550 people when it shut down the Shoals plant.⁹

RECORDS REQUEST

To shed light on the SBA’s implementation of the PPP, pursuant to the Freedom of Information Act (“FOIA”),¹⁰ Empower Oversight hereby requests:

1. FCA’s PPP loan documents.
2. All communications concerning FCA’s PPP loan documents.
3. All records, reports, and communications relating to FCA’s PPP loan, including those sent to, received from, or created by the SBA’s Office of Inspector General.
4. All records, report, and communications relating to any other federal funds received by FCA.

⁴ ProPublica, *Tracking PPP: Search Every Company Approved for Federal Loans: FreightCar America, Inc.* (as of June 1, 2021), available at <https://projects.propublica.org/coronavirus/bailouts/loans/freightcar-america-inc-7333177010> (last viewed on April 14, 2022).

⁵ ProPublica, *Tracking PPP: Search Every Company Approved for Federal Loans: FreightCar America, Inc.* (as of June 1, 2021), available at <https://projects.propublica.org/coronavirus/bailouts/loans/freightcar-america-inc-7333177010> (last viewed on April 14, 2022).

⁶ Overman, Stephenie, *Roanoke Plant Still Empty After FreightCar America Exit* (August 30, 2021), available at <https://www.virginiabusiness.com/article/roanoke-plant-still-empty-after-freightcar-america-exit/> (last viewed April 14, 2022).

⁷ DePillis, Lydia, *This Company Got a \$10 Million PPP Loan, The Closed Its Plant and Moved Manufacturing Jobs to Mexico* (June 30, 2021), available at <https://www.propublica.org/article/this-company-got-a-10-million-ppp-loan-then-closed-its-plant-and-moved-manufacturing-jobs-to-mexico> (last viewed on April 14, 2022).

⁸ Hammack, Laurence, *Questions Arise Two Years After Rail Car Manufacturer Leaves Roanoke* (July 17, 2021), available at https://roanoke.com/business/local/questions-arise-two-years-after-rail-car-manufacturer-leaves-roanoke/article_d122ab4e-e4bd-11eb-8972-97137eefecb.html (last viewed on April 14, 2022); DePillis, Lydia, *This Company Got a \$10 Million PPP Loan, The Closed Its Plant and Moved Manufacturing Jobs to Mexico* (June 30, 2021), available at <https://www.propublica.org/article/this-company-got-a-10-million-ppp-loan-then-closed-its-plant-and-moved-manufacturing-jobs-to-mexico> (last viewed on April 14, 2022).

⁹ DePillis, Lydia, *This Company Got a \$10 Million PPP Loan, The Closed Its Plant and Moved Manufacturing Jobs to Mexico* (June 30, 2021), available at <https://www.propublica.org/article/this-company-got-a-10-million-ppp-loan-then-closed-its-plant-and-moved-manufacturing-jobs-to-mexico> (last viewed on April 14, 2022).

¹⁰ 5 U.S.C. § 552.

DEFINITIONS

“LOAN DOCUMENTS” means all applications, loan agreements, promissory notes, mortgages/deeds of trust, disbursement records, payment receipts, payroll tax filings, state income tax filings, unemployment insurance filings, cancelled checks, transcripts of accounts, records verifying payments of mortgage/lease/utility obligations, approvals, forgiveness determinations, and certifications from FCA representatives.

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

INSTRUCTIONS

The time period of the requested records is March 1, 2020, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”¹¹ and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the SBA’s administration of the PPP program and, specifically, what efforts the SBA has undertaken or sponsored to investigate the accuracy or information included in PPP loan applications. For example, the records requested herein are designed to enlighten the public concerning the SBA’s monitoring of PPP loan applicants/recipients that lay off staff soon after the completion of the employment/payroll requirements applicable to their loans.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

¹¹ On September 23, 2021, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (September 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>.