



VIA EMAIL

June 20, 2022

Office of Science and Technology Policy  
Rachel Wallace  
Deputy Counsel and Chief Operating Officer  
1650 Pennsylvania Ave, NW  
Washington, D.C., 20504  
Email: [ostpfoia@ostp.eop.gov](mailto:ostpfoia@ostp.eop.gov)

Dear Ms. Wallace:

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552a, 32 C.F.R. § 2402 (2020) (Office of Science and Technology Policy Regulations Implementing the Freedom of Information Act) and is submitted on behalf of the Center for AI and Digital Policy (“CAIDP”) to the Office of Science and Technology Policy (“OSTP”).

#### About CAIDP

The Center for AI and Digital Policy (CAIDP) is a non-profit, educational organization, incorporated in Washington, DC. The mission of the Center is “to promote a better society, more fair, more just — a world where technology promotes broad social inclusion based on fundamental rights, democratic institutions, and the rule of law.”<sup>1</sup>

The Center has expressed strong support for the OSTP’s proposed AI Bill of Rights. Shortly after the OSTP announced the initiative, Dr. Lorraine Kisselburgh and Marc Rotenberg, two members of the CAIDP board of directors, wrote, “[t]he President’s science advisors have launched a critical initiative. Their recommendations should build on earlier work and lead to concrete outcomes”<sup>2</sup> In May 2022, the Center organized a public campaign in support of the AI Bill of Rights, and gathered signatures from leading experts in the field of AI.<sup>3</sup>

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<sup>1</sup> Center for AI and Digital Policy, <https://www.caidp.org>

<sup>2</sup> The authors also warned against delay. “There is an urgent need now to make automated hiring and performance decisions fairer and more transparent.” Lorraine Kisselburgh and Marc Rotenberg, *Next Steps on the U.S. AI Bill of Rights*, Washington Spectator, November 2, 2021, <https://washingtonspectator.org/ai-bill-of-rights/>

<sup>3</sup> “We are writing to you regarding the need to move forward the proposal for a Bill of Rights for the Age of Artificial Intelligence.” CAIDP Statement to the US Office of Science and Technology Policy, *Support the OSTP AI Bill of Rights*, May 18, 2022, <https://www.caidp.org/statements/ostp/>

## Documents Requested

- 1) All records, possessed by the agency, concerning the AI Bill of Rights
- 2) All records, possessed by the agency, concerning Eric Schmidt’s involvement in the development of the AI Bill of Rights and related AI policy initiatives, including but not limited to, communications involving representatives of Schmidt Futures / Schmidt Ventures, which includes those on the OSTP staff who received funding from Schmidt Futures / Schmidt Ventures
- 3) All records, possessed by the agency, concerning the agency’s use of AI to process FOIA requests

## Background

- 1) All records, possessed by the agency concerning the AI Bill of Rights

On October 22, 2021, the President’s Science Advisor and Director of the White House Office of Science & Technology Policy (OSTP) Dr. Eric Lander and OSTP Deputy Director for Science & Society Dr. Alondra Nelson published a column in Wired titled “**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**,”<sup>4</sup> The column was subsequently published on the White House website.<sup>5</sup> The initiative received widespread, positive coverage.<sup>6</sup>

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<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/>

<sup>5</sup> The White House, *ICYMI: WIRED (Opinion): Americans Need a Bill of Rights for an AI-Powered World*, October 22, 2021, <https://www.whitehouse.gov/ostp/news-updates/2021/10/22/icymi-wired-opinion-americans-need-a-bill-of-rights-for-an-ai-powered-world/>

<sup>6</sup> See, e.g., Anjana Ahuja, *A global AI bill of rights is desperately needed, Algorithmic decision-making has long put technology first, with due diligence an afterthought*, Financial Times, October 11, 2021, <https://www.ft.com/content/7e42c58e-b3d4-4db5-9ddf-7e6c4b853366>; 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*, Tech Target, November 9, 2021, [https://www.techtarget.com/searchenterpriseai/news/252509301/Bidens-top-science-advisor-working-on-AI-bill-of-right](https://www.techtarget.com/searchenterpriseai/news/252509301/Bidens-top-science-advisor-working-on-AI-bill-of-right;); Steve Ritter, *The U.S. urgently needs an A.I. Bill of Rights*, Fortune, November 12, 2021, (“The nation’s leading scientists believe that artificial intelligence is such a risk that we need another Bill of Rights to protect what makes us human. They are right.”), <https://fortune.com/2021/11/12/ai-bill-of-rights-biden-artificial-intelligence-steve-ritter-mitek-systems/>

In the article, the President’s top science advisors warned that the deployment of artificial intelligence has “led to serious problems.”<sup>7</sup> They explained that “training machines based on earlier examples can embed past prejudice and enable present-day discrimination.”<sup>8</sup> They warned that hiring tools can reject applicants who are dissimilar from existing staff despite being well qualified.<sup>9</sup> They described how mortgage approval algorithms could extend decades of housing discrimination into the digital age.<sup>10</sup> They also highlighted the fact that the failings of AI disproportionately affect marginalized individuals and communities. They concluded:

Americans have a right to expect better. Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly. Codifying these ideas can help ensure that.<sup>11</sup>

The President’s top science advisors outlined several key elements for the AI Bill of Rights:

- Your right to know when and how AI is influencing a decision that affects your civil rights and civil liberties;
- Your freedom from being subjected to AI that hasn’t been carefully audited to ensure that it’s accurate, unbiased, and has been trained on sufficiently representative data sets;
- Your freedom from pervasive or discriminatory surveillance and monitoring in your home, community, and workplace; and
- Your right to meaningful recourse if the use of an algorithm harms you.

The also outlined several strategies to implement these rights:

- The federal government could refuse to buy software or technology products that fail to respect these rights;
- Federal contractors could be required to use technologies that adhere to this “bill of rights,” and
- New laws and regulations could be adopted.

The White House subsequently encouraged public participation in the development of the AI Bill of Rights.<sup>12</sup> The White House announced several ways for the public to “join this mission and share their perspectives,” including responses to a Request for Information and emails to

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</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/>

OSTP. As the OSTP stated, “If you would like to provide input into the OSTP Bill of Rights for an Automated Society policy process, email us at [AI-equity@ostp.eop.gov](mailto:AI-equity@ostp.eop.gov).”<sup>13</sup>

The OSTP also announced public listening sessions and “six public events that will bring together stakeholders to discuss the risks and benefits artificial intelligence holds for democratic participation.” The public events highlighted:

- Consumer Rights and Protections
- The Criminal Justice System
- Equal Opportunities and Civil Justice
- Artificial Intelligence and Democratic Values
- Social Welfare and Development
- The Healthcare System

On information and belief, the listening sessions were held as were the public events. But to date there has been no report published and no outcomes from these meeting.

These has been no summary provided regarding the public request for comments to OSTP regarding AI.

The Request for Information on Public and Private Sector Uses of Biometric Technologies opened on October 8, 2021, and closed on January 15, 2022.<sup>14</sup> No further information has been provided regarding this initiative.

There was a brief mention of the OSTP AI Bill of Rights in early February 2022 blog post:

OSTP has issued a call for the development of an [AI Bill of Rights](#), and is working closely with both domestic and international partners across bilateral and multilateral venues to advance development, adoption, and oversight of AI in a manner that aligns with our democratic values.<sup>15</sup>

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<sup>13</sup> Id.

<sup>14</sup> Notice of Request for Information (RFI) on Public and Private Sector Uses of Biometric Technologies, 86 FR 56300-302, October 8, 2021, <https://www.federalregister.gov/documents/2021/10/08/2021-21975/notice-of-request-for-information-rfi-on-public-and-private-sector-uses-of-biometric-technologies>

<sup>15</sup> Lynne Parker, Director, National AI Initiative Office, and Rashida Richardson, Senior Policy Advisor for Data and Democracy, *OSTP’s Continuing Work on AI Technology and Uses that Can Benefit Us All*, February 3, 2022, <https://www.whitehouse.gov/ostp/news-updates/2021/10/22/icymi-wired-opinion-americans-need-a-bill-of-rights-for-an-ai-powered-world/>

In a recent interview with the OSTP Director, the AI Bill of Rights was described as OSTP’s “biggest policy push.”<sup>16</sup> According to the interview, “the bill of rights [was] due out in early May.”

The problems with the deployment of AI identified by Dr. Nelson and Dr. Lander in the October 2021 article have not subsided. By all accounts, these problems are growing worse. As Timnit Gebru and Margaret Mitchell, two leading experts on Artificial Intelligence, wrote recently in *The Washington Post*, “The race toward deploying larger and larger models without sufficient guardrails, regulation, understanding of how they work, or documentation of the training data has further accelerated across tech companies.”<sup>17</sup>

*CAIDP seeks all records, possessed by the agency, concerning the AI Bill of Rights, including, but not limited to, emails, reports, memoranda, and presentations*

2) Request for records concerning Eric Schmidt’s involvement in the development of OSTP policy priorities

The record request for the communications with Eric Schmidt, and his representatives, follows from the reporting of the role that Mr. Schmidt played in the policy work of OSTP. According to POLITICO, “A foundation controlled by Eric Schmidt, the multi-billionaire former CEO of Google, has played an extraordinary, albeit private, role in shaping the White House Office of Science and Technology Policy over the past year.”<sup>18</sup> The POLITICO article continued:

Schmidt maintained a close relationship with the president’s former science adviser, Eric Lander, and other Biden appointees. And his charity arm, Schmidt Futures, indirectly paid the salaries of two science-office employees, including, for six weeks, that of the

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<sup>16</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>

<sup>17</sup> Timnit Gebru and Margaret Mitchell, *Opinion We warned Google that people might believe AI was sentient. Now it’s happening*, *The Washington Post*, June 17, 2022, <https://www.washingtonpost.com/opinions/2022/06/17/google-ai-ethics-sentient-lemoine-warning/>

<sup>18</sup> Alex Thomson, *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>. Mr. Schmidt contested the POLITICO report in a blog post.

current chief of staff, Marc Aidinoff, who is now one of the most senior officials in the office following Lander's resignation in February.

The POLITICO article further explained, "The White House science office sets strategic priorities for the nation's more than \$1.4 trillion in annual health and science spending. It has also been increasingly focused on federal policy on artificial intelligence."<sup>19</sup>

Mr. Schmidt contested the POLITICO report in a blog post.<sup>20</sup> He stated that Schmidt Futures has "no authority" to make any policy decisions and also that OSTP "retain[s] full discretion" over policy decisions. There was no discussion of the extent of influence that Mr. Schmidt or Schmidt Futures may have exercised over the AI Bill of Rights initiative or AI generally.

Mr. Schmidt's opposition to the regulation of artificial intelligence is well known. Mr. Schmidt has opposed the EU Artificial Intelligence Act.<sup>21</sup> He chaired the National Security Commission on Artificial Intelligence, which called for a national framework to enable the use of biometric identification technologies.<sup>22</sup> He has an investment fund with deep ties to national security.<sup>23</sup> He published a book that mostly argues that humans should not stand in the way of AI deployment, which he called "negligent perhaps reckless." He even suggested in *The Age of AI*

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<sup>19</sup> Id.

<sup>20</sup> Schmidt Futures, *Statement on Science Funding*, March 28, 2022, <https://www.schmidtfutures.com/our-work/statement-on-science-funding/>

<sup>21</sup> Peiter Haec, *Ex-Google boss slams transparency rules in Europe's AI bill*, *Chair of US National Security Commission on Artificial Intelligence describes transparency plans as 'very big setback' for Europe*, POLITICO, May 31, 2021, <https://www.politico.eu/article/ex-google-boss-eu-risks-setback-by-demanding-transparent-ai/>; Kimanthi Sammy, *Ex-Google CEO says EU's AI bill is a big setback for Europe*, TechZine, June 1, 2021, <https://www.techzine.eu/news/analytics/60768/ex-google-ceo-says-eus-ai-bill-is-a-big-setback-for-europe/>

<sup>22</sup> Final Report, National Security Commission on Artificial Intelligence, <https://www.nscai.gov/wp-content/uploads/2021/03/Full-Report-Digital-1.pdf>

<sup>23</sup> Whizy Kim, *Google CEO Eric Schmidt's new investment fund deepens his ties to national security interests*, *America's Frontier Fund exemplifies the revolving door between the tech industry and government*, Recode, June 9, 2022, ("He's an investor and chair of Sandbox AQ, an AI software development company spun off from Google's parent company, Alphabet — and In-Q-Tel recently announced it was backing Sandbox AQ, saying it hopes to eventually sell the software to US intelligence agencies."), <https://www.vox.com/recode/2022/6/9/23160588/eric-schmidt-america-frontier-fund-google-alphabet-tech-government-revolving-door>

that AI will determine “what is relevant to our lives,”<sup>24</sup> – a dangerous invitation to disarm the human intellect.<sup>25</sup>

*CAIDP request all records, possessed by the agency, such as emails, reports, memoranda, and presentations, concerning Eric Schmidt’s involvement in the development of the AI Bill of Rights and related AI policy initiatives, including but not limited to, communications involving representatives of Schmidt Futures / Schmidt Ventures, which includes those on the OSTP staff who received funding from Schmidt Futures / Schmidt Ventures*

### 3) Request for Records Concerning the Agency’s Use of AI to Process FOIA Requests

The 2022 Chief Freedom of Information Act Officer Annual Report for OSTP states “We encourage the use of AI tools that would allow for real time reporting, something that would benefit both requestors and agencies.”<sup>26</sup> According to the Report, OSTP led an AI training event for federal agencies on November 5, 2020. “The AI 101 training session afforded OSTP the opportunity to provide extensive information on how Federal FOIA programs could effectively and efficiently maximize AI to meet their FOIA processing obligations. Additionally, it provided an avenue for attendees to share information regarding technologies currently in use at various agencies.”<sup>27</sup>

*CAIDP requests all records, possessed by the agency, concerning the agency’s use of AI to process FOIA requests, including, but not limited to, emails, reports, memoranda, and presentations*

Note that we request that record categories (1) and (2) be processed on an expedited basis. We do not make this request for this record category

#### Request for Expedited Processing

The CAIDP is entitled to expedited processing of this request because there is a “compelling need” to “inform the public” about the status of the OSTP AI Bill of Rights. 32 C.F.R. § 2402.6(d) (“Expedited processing of requests”).

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<sup>24</sup> Henry A Kissinger, Eric Schmidt, and Daniel Huttenlocher, *The Age of AI: And Our Human Future* (2021)

<sup>25</sup> Marc Rotenberg, *Artificial Intelligence and Galileo’s Telescope*, Issues in Science and Technology, December 17, 2021) <https://issues.org/artificial-intelligence-age-of-ai-review-rotenberg/>

<sup>26</sup> Rachel Wallace, Chief FOIA Officer, *Chief Operating Officer and Deputy Counsel, 2022 Chief Freedom of Information Act Officer Annual Report 1*, <https://www.whitehouse.gov/wp-content/uploads/2022/03/2022-OSTP-Chief-FOIA-Officers-Report.pdf>

<sup>27</sup> Id at. 3.

First, CAIDP is an organization “primarily engaged in disseminating information.” 32 C.F.R. § 2402.6(d)(ii). The Center for AI and Digital Policy is non-profit educational organization, incorporated in Washington, DC in 2021. CAIDP has received a 501(c)(3) determination. CAIDP maintains a public website [caidp.org](http://caidp.org) concerning AI policy which is one of the top-rated websites in the world for a search on “AI policy.” CAIDP also publishes annually *Artificial Intelligence and Democratic Values*, a comprehensive review of AI policies and practices. The 2022 *AI and Democratic Values* report included a specific discussion about the status of the OSTP Bill of Rights initiative.<sup>28</sup> The Center also publishes the *CAIDP Update*.

Second, there is an “urgency to inform the public concerning [an] actual . . . Government activity.” 32 C.F.R. § 2402.6(d)(ii). The OSTP AI Bill of Rights initiative is an “actual . . . Government activity” as the OSTP itself has acknowledged and Mr. Schmidt’s role in funding the OSTP has been widely reported. The urgency arises from the ongoing delay in the finalization and publication of the previously announced AI Bill of Rights, following the agency’s prior public consultations, the White House endorsement, the receipt of public comments, and ongoing concern about the fairness of AI-based decision-making, as noted, for example, in the recent Gebru/Mitchell commentary in *The Washington Post*.

In submitting this request for expedited processing, CAIDP certifies that this explanation is true and correct. 32 C.F.R. § 2402.6(d)(3); 5 U.S.C. § 552(a)(6)(E)(vi).

#### Request for “News Media” Fee Status

CAIDP is a “representative of the news media” for fee classification purposes because CAIDP “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.”

As explained above, the Center for AI and Digital Policy is non-profit educational organization, incorporated in Washington, DC in 2021. CAIDP has received a 501(c)(3) determination. CAIDP maintains a public website [caidp.org](http://caidp.org) concerning AI policy which is one of the top-rated websites in the world for a search on “AI policy.” CAIDP also publishes annually *Artificial Intelligence and Democratic Values*, a comprehensive review of AI policies and practices. The 2022 *AI and Democratic Values* report included a specific discussion about the status of the OSTP Bill of Rights initiative.<sup>29</sup> The Center also publishes the *CAIDP Update*.

As such, “No search fee shall be charged if the request is not sought for a commercial use and is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research, or by a representative of the news media.” 32 C.F.R. §

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<sup>28</sup> *Artificial Intelligence and Democratic Values* 480-81 (CAIDP 2022) (“Although the OSTP issued an update on its ‘continuing work’ on AI that ‘aligns with our democratic values’ in February 2022, progress on the AI Bill of Rights and its impact remain unclear.”)

<sup>29</sup> *Artificial Intelligence and Democratic Values* 480-81 (CAIDP 2022),

2402.9(b)(1)(i) (*Fees - Educational, scientific, or news media requests*). Moreover, review fees should not be charged as “Review fees shall be assessed only with respect to those requesters who seek records for a commercial use.” 32 C.F.R. § 2402.9(b)(2) (*Review fees*) CAIDP is engaged in only non-commercial activity.

Further, any duplication fees should also be waived because “disclosure of the information is in the public interest.” 32 C.F.R. § 2402.10(a)

### Request for Public Interest Fee Waiver

Further, CAIDP requests a waiver of all fees because the “disclosure of the requested information is in the public interest. 32 CFR § 2402.10(a). “Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations or activities and is not primarily for commercial purposes.” *Id.* To determine whether a fee waiver requirement is met, OSTP considers several factors. *Id.*

First, disclosure of the requested documents is in the public interest because it is “likely to shed light on the operations or activities of government.” § 2402.10(a)(1). Disclosure of records concerning the development and status of the AI Bill of Rights, one of the OSTP’s top priorities, will necessarily shed light on the operations or activities of government.

Second, disclosure of the requested documents “is likely to contribute significantly to public understanding of those operations or activities.” § 2402.10(a)(2). This factor is satisfied because (1) the release of the requested records will be “meaningful informative,” as information already in the public domain is not requested, § 2402.10(a)(2)(i), and (2) the release of the requested records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” as the activities of the Office of Science and Technology Policy, particularly concerning AI, are of widespread public interest. § 2402.10(a)(2)(ii)

Third, the disclosure is not “primarily in the commercial interest of the requester.” § 2402.10(a)(3). CAIDP is a non-profit, educational organization that routinely publishes, without charge, news concerning AI policy.

*For these reasons, CAIDP should be granted a public interest fee waiver.*

### Conclusion

We anticipate your response within ten (10) calendar days. 32 C.F.R. § 2402.6(d)(2). Contact information for the requester, 32 C.F.R. § 2402.4(d): [rotenberg@caidp.org](mailto:rotenberg@caidp.org), (email)

Center for AI and Digital Policy  
1100 13<sup>th</sup> St. NW  
Suite 800  
Washington, DC 20005



Note that this FOIA request is contained in an email and not as an attachment as per 32 CFR § 2402.4(a)(3).

This FOIA request may also be downloaded from the CAIDP website:  
<https://www.caidp.org/app/download/8398565063/CAIDP-OSTP-FOIArequest-20062022.pdf>

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