



1875 Eye Street, NW, Suite 800, Washington, DC 20006

June 24, 2016

VIA CERTIFIED MAIL

Information and Privacy Coordinator
Central Intelligence Agency
Washington, D.C. 20505

Re: Freedom of Information Act Request

Dear Coordinator:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. To that end, we are investigating the decision by the Obama Administration to redact and purge the use of certain terms relating to Islamic terrorism in law enforcement and counterterrorism training materials and in presentations to the public and the media.

Following the June 12, 2016 mass murder of American citizens in Orlando, CIA Director John Brennan testified in an open session of the Senate Select Committee on Intelligence held on June 16, 2016. During his testimony, Director Brennan reported on the status of the United States fight against the Islamic State (“ISIL”), explaining that “despite all our progress against ISIL on the battlefield and in the financial realm, our efforts have not reduced the group’s terrorism capability and global reach.”² Indeed, Director Brennan explained that ISIL’s efforts to export its violence to the West can only be expected to increase because “ISIL is training and attempting to deploy operatives for further attacks [and] has a large cadre of Western fighters who could potentially serve as operatives for attacks in the West.”³

Director Brennan left unaddressed the significant handicap that he and others in the Obama administration have placed on law enforcement and counterterrorism personnel by censoring and eliminating references to the underlying religious motivations of Islamic terrorism. An early example of this move toward censorship was the cancellation of an anti-terrorism

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about (last visited June 23, 2016).

² Statement by Central Intelligence Agency Director John O. Brennan before the Senate Select Committee on Intelligence at 2 (June 16, 2016), *available at* <http://1.usa.gov/28Rw3AJ>.

³ *Id.* at 2–3.

conference scheduled for August 10–12, 2011, to be hosted by the CIA Threat Management Unit, after certain Islamic groups protested the content of several presentations and speakers.⁴

Later that year, while serving as Assistant to the President for Homeland Security and Counterterrorism, Brennan led a campaign to purge any critical references to, or even mention of, Islamic ideology, beliefs, and cultural terms from intelligence and law enforcement training materials.⁵ As he stated in his response to a demand from Islamic groups to censor the way Islamic terrorism is described by government officials and in training materials:

Your letter requests that ‘the White House immediately create an interagency task force to address this problem,’ and we agree that this is necessary. That is why the White House’s national Security Staff identified training as a critical area for improvement last November, and tasked the Department of Homeland Security (DHS) to form an Interagency Working Group on Training to catalogue, review, and improve [countering violent extremism]-related instruction across all levels of government.⁶

The Brennan letter then went on to catalogue the “aggressive steps” that departments and agencies across the federal government were taking to collect and rewrite all training materials relating to terrorism and threats posed to the homeland.⁷ Most recently, those efforts resulted in a June 2016 report of the Department of Homeland Security recommending that law enforcement involved in fighting violent extremism “[r]eject religiously-charged terminology and problematic positioning by using plain meaning American English.”⁸ Among other matters, the report recommended to avoid use of “religious, legal and cultural terms like ‘*jihad*,’ ‘*sharia*,’ ‘*takfir*’ or ‘*umma*.’”⁹

The consequence of the decision to purge training materials of references to the religious motivations of Islamic terrorists is reflected in the comments of James Copenhaver, a veteran investigator and former Orlando law enforcement officer, following the Orlando massacre. As he stated, he had no clue—because he had not been trained to recognize the potential—that Islamic terrorists would direct violence against gay and lesbian targets:

I have been in this business for 30 years, and we all in law enforcement have talked about one of the theme parks getting hit by these terrorist killers. Never in all my years of training, and being involved in several investigative units, to include the

⁴ See Frank J. Gaffney, Jr. & Clare M. Lopez, *See No Sharia: ‘Countering Violent Extremism’ and the Disarming of America’s First Line of Defense* 95–96 (2016), available at <http://bit.ly/28SWFkC>; Bill Gertz, *Inside the Ring: Anti-Terror Trainers Blocked*, WASH. TIMES (Oct. 5, 2011), <http://bit.ly/28SOfsO> (explaining that “the event was ordered ‘postponed’ after Muslim advocacy groups contacted the Department of Homeland Security and the White House about the scheduled speakers, who included Stephen Caughlin [sic] and Steve Emerson, both specialists on the Islamist terror threat”).

⁵ See, e.g., Letter from John O. Brennan, Ass’t to the Pres. for Homeland Sec. & Counterterrorism, to Farhana Khera, Pres. & Exec. Dir., Muslim Advocates (Nov. 3, 2011), available at <http://bit.ly/28Vy9xs>.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ U.S. DEP’T OF HOMELAND SEC., HOMELAND SEC. ADVISORY COUNCIL, COUNTERING VIOLENT EXTREMISM (CVE) SUBCOMM., INTERIM REPORT AND RECOMMENDATIONS 13 (June 2016), available at <http://1.usa.gov/28OwWpA>.

⁹ *Id.*

FBI Task Force, would we have ever guessed a LGBT club be a target of an terrorist attack.¹⁰

To better understand the genesis and consequences of this censorship, CoA Institute hereby requests access under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to the following records for the time period January 21, 2009 to the present:¹¹

1. All records regarding the cancellation or postponement of the anti-terrorism conference to be hosted by the CIA Threat Management Unit and scheduled for August 10–12, 2011.
2. All records regarding Stephen C. Coughlin, Steven Emerson, or both¹² in connection with the cancellation or postponement of the anti-terrorism conference to be hosted by the CIA Threat Management Unit and scheduled for August 10–12, 2011.
3. All communications between CIA Director Brennan or his office and any outside advocacy group concerning CIA policies, criteria, or guidelines for how to refer to Muslims, Islam, Islamic terrorists, or Islamic terrorism.
4. All records setting forth policies, criteria, or guidelines for CIA presentations, media communications, curricula, and training materials for how to refer to Muslims, Islam, Islamic terrorists, or Islamic terrorism.
5. All records, including final agency memoranda, guidance, or proposed regulations, directing CIA personnel to cease using specific terms to describe terrorism or to remove any prior use of such terms.
6. All communications between any component of the CIA and the Executive Office of the President, including the White House Office, regarding how government officials or employees should refer to Muslims, Islam, Islamic terrorists, or Islamic terrorism.
7. All communications between any component of the CIA and the Office of the Secretary of the Department of Homeland Security or the Department of Homeland Security Advisory Council, regarding how government officials or employees should refer to Muslims, Islam, Islamic terrorists, or Islamic terrorism.

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge

¹⁰ *Report: Orlando Nightclub Shooter Cased Other Gay Clubs*, E. ORLANDO POST (June 12, 2016), <http://bit.ly/28SRRLq>.

¹¹ For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

¹² See *Stephen C. Coughlin*, UNCONSTRAINED ANALYTICS, <http://bit.ly/28TcK9M> (last visited June 23, 2016); *Steven Emerson*, THE INVESTIGATIVE PROJECT ON TERRORISM, <http://bit.ly/28QpA3P> (last visited June 23, 2016).

if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”¹³

In this case, the requested records unquestionably shed light on the “operations or activities of the government,” namely, the decision-making processes at the CIA that led to the cancellation of the anti-terrorism conference scheduled for August 10-12, 2011, as well as any decision to self-censor the way CIA personnel refer to Islamic terrorism and the parameters within which CIA personnel are allowed to discuss and think about the threat that terrorism poses to the interests of the United States. The requested records also will provide insight into the potential politicization of an area that concerns all Americans. These sorts of records have not been widely distributed, and their disclosure and dissemination would contribute to public understanding about how the government is or is not acting in the best interests of the safety of its citizens.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.¹⁴ In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.¹⁵ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.¹⁶ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.¹⁷ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather

¹³ 5 U.S.C. § 552(a)(4)(A)(iii); 32 C.F.R. § 1900.13(b)(2); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

¹⁴ *See also Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 1900.02(h)(3).

¹⁶ *See Cause of Action*, 799 F.3d at 1121.

¹⁷ CoA Institute notes that the agency’s definition of “representative of the news media” (32 C.F.R. § 1900.02(h)(3)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *See Cause of Action*, 799 F.3d at 1125 (“Congress . . . omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”). Under either definition, however, CoA Institute qualifies as a representative of the news media.

distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.¹⁸ These distinct works are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."¹⁹ In light of the foregoing, numerous federal agencies have appropriately recognized the Institute's news media status in connection with its FOIA requests.²⁰

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on

¹⁸ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

¹⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

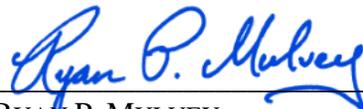
²⁰ See, e.g., FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.²¹

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at lee.steven@causeofaction.org. Thank you for your attention to this matter.



RYAN P. MULVEY
COUNSEL

4825-8389-5347, v. 3

²¹ See 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).