



May 17, 2012

VIA E-MAIL AND CERTIFIED MAIL

Mr. Alexander C. Morris
FOIA Officer
United States Department of Energy
FOIA Requester Service Center
1000 Independence Avenue, SW
Washington, DC 20585
E-mail: FOIA-Central@hq.doe.gov

RE: Freedom of Information Act Request

Dear Mr. Morris,

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom. We write to request information pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

In accordance with section 1703 of the Energy Policy Act of 2005¹ and the American Recovery and Reinvestment Act of 2009², the United States Department of Energy (“DOE”) is authorized to issue loan guarantees to entities investing in certain types of energy ventures that require additional funding and financial support. As of March 2012, this Loan Guarantee Program (“LGP”) is authorized to issue loan guarantees in the amount of \$34 billion for projects meeting the established criteria.³

Under the LGP, nine (9) different application periods, referred to as solicitations, have been opened for specialized areas of energy technology.⁴ From the inception of the LGP until September 30, 2011,⁵ a total of 460 applications⁶ have been submitted.⁷ From this number, the

¹ 42 U.S.C. § 15801.

² The American Recovery and Reinvestment Act of 2009 added section 1705 to the Energy Policy Act of 2005, effectively expanding the scope of the programs under the United States Department of Energy’s Loan Guarantee Program to the renewable commercial energy technology, electric power transmissions, and certain leading-edge biofuel sectors.

³ U.S. Government Accountability Office. 2012. *DOE Loan Guarantees: Further Actions Are Needed To Improve Tracking And Review Of Applications*. Publication No. GAO-12-157. Retrieved from GAO Reports Main Page via GPO Access database: <<http://www.gao.gov/assets/590/589210.pdf>>.

⁴ *Id.* at 7.

⁵ On September 30, 2011, section 1705 of the Energy Policy Act of 2005 authorizing loan guarantees with a credit subsidiary expired.

DOE guaranteed loans for thirty (30) applicants, or seven (7) percent of all applicants, in the amount of \$15.1 billion.⁸ Additionally, the LGP conditionally committed \$15 billion for ten (10) applicants, or two (2) percent of all applicants.⁹ The names and corresponding information of the forty (40) entities which the DOE has guaranteed or conditionally accepted have been made available to the public. However, the names and corresponding information for the 420 applicants which are still under review, or have not been guaranteed or conditionally accepted into the LGP, have not been publically released.

In 2011, the names of all 460 applicants¹⁰ to the LGP were provided to the Government Accountability Office (GAO).¹¹ The resultant GAO report found that the DOE did not have consolidated data on the applicants under the LGP and recommended tactics to facilitate more efficient management and program oversight.¹² Throughout the report, the GAO repeatedly referenced the lack of accurate LGP applicant information at DOE's disposal and the lengthy periods of time it took DOE to obtain data.¹³ In addition to these concerns raised by the GAO, potential connections between political donations and recipients under the LGP have been reported, most notably Solyndra.¹⁴ As a result, grave concerns have surfaced that LGP recipient(s) may have received preferential treatment during the applicant process.¹⁵

Cause of Action is entitled to receive the names of all 460 applicants to the LGP which have been shared with the GAO. The GAO is an independent, nonpartisan agency, supporting Congress to ensure accountability within the federal government. Therefore, barring an applicable exemption, information made available to GAO is subject to disclosure under the FOIA.

With this request, none of the nine (9) FOIA exemptions¹⁶ that may prevent disclosure apply, most notably exemption 4. Exemption 4 protects certain types of business information, such as trade secrets and privileged and confidential commercial and financial information.¹⁷ None of the information in this request relates to the productive process of any of the applicants' businesses, thus cannot be deemed trade secrets. *See, e.g., Public Citizen Health Research Group*

⁶ For the purposes of this request, the term "applications" refers to all submissions which demonstrated a level of interest in the LGP, including applicants who did not pay the application fee or withdrew their application prior to any determination by the DOE.

⁷ *See supra* note 3 at 3.

⁸ *See supra* note 3 at 11.

⁹ *Id.*

¹⁰ For the purposes of this request, the term "applicant" refers to any natural person, firms, partnerships, associations, agents, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

¹¹ *See supra* note 3.

¹² *Id.*

¹³ *Id.* at 11.

¹⁴ Matthew Most, Brian Ross & Ronnie Greene, *Emails: Obama White House Monitored Huge Loan to 'Connected' Firm*, ABC NEWS, (Sept. 13, 2011), available at <<http://abcnews.go.com/Blotter/emails-obama-white-house-monitored-huge-loan-connected/story?id=14508865&singlePage=true>>.

¹⁵ *Id.*

¹⁶ 5 U.S.C. § 552 (b).

¹⁷ 5 U.S.C. § 552 (b)(4).

v. *FDA*, 704 F.2d 1280 (D.C. Cir. 1983); see also *Herrick v. Garvey*, 298 F.3d 1184, 1190 (10th Cir. 2002). Furthermore, since none of the information requested will impair the government's ability to obtain necessary information regarding the LGP in the future or cause substantial harm to the competitive position of the applicants, it cannot be considered confidential under exemption 4. *National Parks & Conservation Assn. v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Lastly, no privileged relationship in the context of privilege under FOIA exists between the DOE and GAO.¹⁸

The names and information requested on the 460 applicants of the LGP is vital to the public's understanding of the LGP and the DOE as a whole. This information will also allow the public to better ascertain how its tax dollars are being spent. Therefore, pursuant to the FOIA, Cause of Action hereby requests that your department identify¹⁹ within the next twenty (20) business days the names of the 460 applicants whom have applied to the LGP since its inception, along with the following information:

1. Solicitation period applicant applied under.
2. Applicant sponsor.
3. Technology sector in which applicant is engaged.
4. Date DOE issued a guarantee to an applicant (if applicable).
5. Date DOE conditionally committed to an applicant (if applicable).
6. Date DOE rejected an applicant (if applicable).
7. Date applicant withdrew application (if applicable).
8. Amount DOE guaranteed or conditionally committed for each applicant (if applicable).
9. Date closed (if applicable).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge 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." Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

- 1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the government, specifically DOE's LGP. The information Cause of Action requests

¹⁸ The legislative history suggests the term "privilege" includes commonly recognized ones, e.g., attorney-client.

¹⁹ For the purposes of this request, the term "identify" means to provide the applicant's name, business address, and contact information.

specifically concerns identifiable “operations or activities of the government” because it relates to the activities of the DOE, a department under the executive branch of the federal government. The activity in this case, DOE’s LGP, is funded with taxpayer dollars. This information will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons.²⁰ As outlined above, the information requested is also not in the public domain, and therefore would be of value to members of the public through disclosure. Thus, this element is met.

2) Disclosure of the requested information is not in the commercial interest of Cause of Action.

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. This information will be used to further the knowledge and interests of the general public regarding the DOE’s LGP and the DOE as a whole. Even if disclosure of information creates a profit motive, that is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.²¹ Therefore, Cause of Action satisfies this element.

3) Cause of Action has an ability to disseminate the requested information to the public and specifically intends to do so.

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy, and regularly disseminated publications to advance its mission. Our staff has a combined forty-five (45) years of 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 Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its website, www.causeofaction.org, which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action’s litigation and agency complaints. Lastly, after the production of the requested information, Cause of Action intends to produce a report on the DOE’s LGP, which may be published at www.casueofaction.org, distributed to the news media, and sent to interested persons through our regular periodicals, including “Agency Check” and “Cause of Action News.” An ability to show the presence of a website with occasional, consistent traffic is enough

²⁰ See, e.g., *Carney v. Department of Justice*, 19 F.3d 807, 814 n.3 (2d Cir. 1994); *Prison Legal News v. Lappin*, 436 F. Supp. 2d 17, 27 n.5 (D.D.C. 2006).

²¹ See *Campbell v. Department of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

to show that a requester has an ability to disseminate information.²² As with the other two (2) outlined above, Cause of Action has also met this element, in effect, justifying a fee waiver.

Cause of Action Is Entitled to News Media Requester Category Status.

Cause of Action also asks that it not be charged search or review fees for this request because it qualifies as a “representative of the news media, or news media requester,” under 5 U.S.C. § 552(a)(4)(A)(ii)(II).²³ In *National Security Archive v. U.S. Dep’t of Defense*,²⁴ the Court of Appeals for the District of Columbia Circuit noted that FOIA’s legislative history demonstrates that “it is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected In fact, any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’”²⁵

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, www.causeofaction.org. Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action’s activities and information the organization has received from government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled “Agency Check,” which informs interested persons about actions of federal agencies, and another periodical, “Cause of Action News.”²⁶

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews, and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds, and social and economic freedoms; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter, and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news, and journalism. Based on these extensive publication

²² *FedCURE v. Lappin*, 602 F. Supp. 2d 197 (D.D.C. 2009).

²³ Other agencies of the federal government have granted Cause of Action “representative of the news media” category status. *See, e.g.*, FOIA Request HQ-2012-00752-F (Department of Energy), news media status granted on Feb. 15, 2012; FOIA Request No. 12-00455-F (Department of Education), news media status granted on Jan. 20, 2012; FOIA Request 12-267 (Federal Emergency Management Agency), news media status granted on Feb. 9, 2012; FOIA Request CRRIF 2012-00077 (Department of Commerce), interim rolling production of documents on Mar. 1, 2012 without charge. As the D.C. federal circuit court noted in *Oglesby v. United States Dep’t of Army*, 920 F.2d 57 (D.C. Cir. 1990), agencies should grant news media requestor status when other agencies have done so because of “the need for uniformity among the agencies in their application of FOIA.” *Id.* at 66.

²⁴ 880 F.2d 1381, 1386 (D.C. Cir. 1989).

²⁵ 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *Id.*

²⁶ CAUSE OF ACTION WEBSITE, Newsletters, *available at* <<http://causeofaction.org/newsletters/>>.

activities,²⁷ Cause of Action qualifies for a fee waiver as a “representative of the news media, or news media requester,” under FOIA and agency regulations.

Cause of Action’s activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines “representative[s] of the news media” broadly to include organizations that disseminate news through electronic communications, including “*publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.*”²⁸ Moreover, the FOIA statute itself, as amended in 2007, explicitly defines “representative of the news media”—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.²⁹ The statutory definition

²⁷ See, *e.g.*, Matthew Boyle, *Report: ACORN-affiliated group gets \$300,000 more in taxpayer money*, THE DAILY CALLER, (Sept. 16, 2011), available at <<http://dailycaller.com/2011/09/16/report-acorn-affiliated-group-gets-300000-more-in-taxpayer-money/>>; Matthew Boyle, *Long-time ACORN affiliate secures \$350,000 in new taxpayer funding*, THE DAILY CALLER, (Sept. 19, 2011), available at <<http://dailycaller.com/2011/09/19/long-time-acorn-affiliate-secures-350000-in-new-taxpayer-funding/>>; Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, (Oct. 24, 2011); Bobby McMahon, *EPA Stalls Utility MACT Until December, Fights Industry Bid For Year Delay*, INSIDEEPA, (Oct. 24th, 2011), available at <<http://insideepa.com/2011/10/24/2011102412379934/EPA-Daily-News/Daily-News/epa-stalls-utility-mact-until-december-fights-industry-bid-for-year-delay/menu-id-95.html>>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-185, (Nov. 9, 2011); Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*, POLITICO, (Nov. 10, 2011), available at <<http://www.politico.com/morningenergy/1111/morningenergy374.html>>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-187, (Nov. 15, 2011); Frank Maisano, *Nov 14 Energy Update: Chu'd Out in Congress*, ENERGYNOW!, (Nov. 15, 2011), available at <<http://www.energynow.com/energypanel/2011/11/15/nov-14-energy-update-chud-out-congress>>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASHINGTON EXAMINER, (Nov. 27, 2011), available at <<http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASHINGTON TIMES, (Nov. 28, 2011), available at <<http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>>; Matthew Boyle, *Obama administration, GAO appear to have ignored group's ACORN affiliation to award \$700K*, THE DAILY CALLER, (Nov. 28, 2011), available at <<http://dailycaller.com/2011/11/28/obama-administration-gao-appear-to-have-ignored-groups-acorn-affiliation-to-award-700k/>>; WORLDNETDAILY, *See which radicals got more taxpayer dollars: Support maintained despite organization's accounting 'problems,'* (Nov. 29, 2011), available at <<http://www.wnd.com/index.php?fa=PAGE.view&pageId=372685>>; Perry Chiaramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS, (Nov. 30, 2011), available at <<http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>>; Marsha Shuler, *Group challenges La. contribution limit*, THE ADVOCATE, (Nov. 30, 2011), available at <<http://theadvocate.com/news/1437637-123/group-challenges-la.-contribution-limit>>; Margaret Menge, *Justice Audit Alleges ACORN Spin-Off in New York Misused Money*, NEWSMAX, (Dec. 1, 2011), available at <<http://www.newsmax.com/US/ACORN-justice-audit-funds/2011/12/01/id/419672>>; PITTSBURGH TRIBUNE-REVIEW, *Acorn lives: Meet AHCOA*, (Dec. 5, 2011), available at <http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html>; Tom Fitton, *Obama Administration Violating ACORN Funding Ban According to New Audit*, BIG GOVERNMENT, (Dec. 5, 2011), available at <<http://biggovernment.com/tfitton/2011/12/05/obama-administration-violating-acorn-funding-ban-according-to-new-audit/>>; NATIONAL RIGHT TO WORK COMMITTEE, *NLRB: Law Breakers?*, (Dec. 10, 2011), available at <<http://www.nrtwc.org/nlr-law-breakers/>>.

²⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(III) (emphasis added).

²⁹ The FOIA statute, as amended in 2007, defines “representative of the news media” as follows:

unequivocally commands that organizations that electronically disseminate information and publications via “alternative media *shall* be considered to be news-media entities.”³⁰ As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a “representative of the news media” under the FOIA.

In *Electronic Privacy Information Center v. Dep’t of Defense*,³¹ the court broadly construed a Department of Defense regulation defining “representative of the news media” to include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter. Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a “representative of the news media,” where the agency’s own regulations explicitly provide that “publishers of periodicals” qualify as representatives of the news media.³²

The information requested regarding DOE’s LGP concerns current events and will undoubtedly be of current interest to a large segment of the general public. Cause of Action will ultimately disseminate the information it is statutorily entitled to, *inter alia*, through its regularly published online newsletter. Additionally, Cause of Action will take the information that is disclosed, using its editorial skills and judgment, to publish news articles that will be published on our website, distributed to other media sources, and distributed to interested persons through our newsletters.

As outlined above, the plain language of 5 U.S.C. § 552(a)(4)(A)(ii)(III), controlling precedent, and the agency’s regulations clearly require the conclusion that Cause of Action is a representative of the news media.

[T]he term “a representative of the news media” means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), *such alternative media shall be considered to be news-media entities*.

5 U.S.C. § 552(a)(ii)(III) (emphasis added).

³⁰ *Id.* (emphasis added). See generally *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word “shall” is generally imperative or mandatory).

³¹ 241 F. Supp. 2d. 5, 12-15 (D.D.C. 2003). The court pointedly noted that “a ‘periodical,’ unlike a daily newspaper, has been defined simply as ‘a publication issued at regular intervals of more than one day.’” *Id.* at 14 n.4 (quoting *American Heritage Dictionary*, Second College Edition, at p. 923 (2000)).

³² See *Id.* at 12 (agency’s “own regulation establishes that...[an organization] is a representative of the news media” because the organization “publishes a periodical..., which is a biweekly electronic newsletter” (citations omitted)).

Production of Information and Contact Information.

We call your attention to President Obama's January 21, 2009, Memorandum concerning the FOIA, which states in relevant part:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The presumption of disclosure should be applied to all decisions involving FOIA.³³

On the same day, President Obama spoke on the FOIA to incoming members of the Cabinet and staff of the White House and stated in relevant part:

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.³⁴

If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide an index of the allegedly exempt information, as required pursuant to *Vaughn v. Rosen*.³⁵ A *Vaughn* index must "describe each document or portion thereof withheld, and for each withholding, it must discuss the consequences of supplying the sought-after information."³⁶ Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"³⁷

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-

³³ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <<http://www.whitehouse.gov/the-press-office/freedom-information-act>>.

³⁴ PRESIDENT BARACK OBAMA, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House*, Jan. 21, 2009, available at <<http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>>.

³⁵ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972).

³⁶ *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis added).

³⁷ *Id.* at 224 (emphasis added) (citing *Mead Data Central v. Department of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

Mr. Alexander C. Morris

May 17, 2012

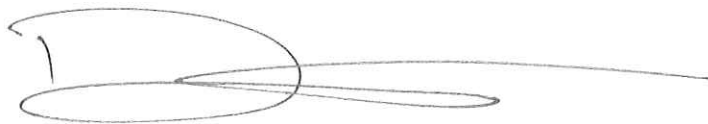
Page 9

exempt portions of the requested record.³⁸ If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document.³⁹ Claims of non-segregability must be made with the same degree of detail as required for exemptions requiring a *Vaughn* index. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the “rolling production” of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately me (Dale.Wilcox@causeofaction.org) at (757) 560-7539, or Adam Butschek (Adam.Butschek@causeofaction.org) at (202) 507-5880. Please note that, for the purposes of responding to this request, the attached Definition of Terms should be interpreted consistently. We look forward to receiving the requested information and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale L. Wilcox", with a long horizontal flourish extending to the right.

DALE L. WILCOX
OF COUNSEL

Encl. “Responding to Information Request” and “Definitions”

³⁸ See 5 U.S.C. § 552(b).

³⁹ See *Mead Data Central*, 566 F.2d at 261.

Responding to Information Requests

1. In complying with this request, you should produce all responsive information and/or documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (*i.e.*, CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce information and/or documents, you should identify the paragraph in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce information and/or documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with Cause of Action's staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that information and/or documentation is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any information and/or documentation responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to an applicant and/or document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all information

and/or documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is included in the attached request.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings, and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, e-mail, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, agents, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” when used in a question about an applicant, means to provide the following information: (a) the applicant’s complete name and title; and (b) the applicant’s business address and phone number.
6. The term “referring or relating” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “application” refers to all submissions which demonstrated a level of interest in the LGP, including applicants who did not pay the application fee or withdrew their application prior to any determination by the DOE.
8. The term “applicant” refers to any natural person, firms, partnerships, associations, agents, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business, or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.