



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

May 17, 2013

VIA CERTIFIED MAIL

Ava Littlejohn
Disclosure Manager
Internal Revenue Service
Disclosure Scanning Operation - Stop 93A
P.O. Box 621506
Atlanta, GA 30362-3006

RE: Freedom of Information Act Request

Dear Ms. Littlejohn:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that educates the public on government accountability, to request access to the following records pertaining to the Internal Revenue Service's (IRS) Exempt Organization (EO) Division for the time period January 1, 2009 to the present:

- (1) Copies of any criteria that the IRS Cincinnati Service Center has used to assess applicants for 501(c)(4) status;
- (2) Communications from the Treasury Inspector General for Tax Administration (TIGTA) to the EO Division concerning any audit or investigation conducted of the EO Division;
- (3) Copies of any Form 990 Schedule B (Schedule of Contributors) released by the IRS to a third party in response to a Freedom of Information Act¹ (FOIA) request, as well as copies of the IRS's FOIA response letter to that request;
- (4) All records, including documents and emails, relating or referring to any disclosure of an exempt organization's Form 990 Schedule B to any employee, contractor or officer of the Executive Office of the President, excluding any such records disclosed pursuant to 26 U.S.C. § 6103(c) or 26 U.S.C. § 6103(g);
- (5) All records, including documents and emails, referring or relating to any request from the President, Vice President, Cabinet official, employee in the Executive Office of the President, or employee in the Executive Office of the Vice President to any officer or employee of the IRS to conduct an audit or other investigation of any particular taxpayer; and
 - a. If any requests are located in response to this item, then all communications between the IRS and TIGTA concerning those requests.

¹ 5 U.S.C. § 552 (2006 & Supp. IV 2010).

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

Cause of Action requests a waiver of any search, duplication and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records 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.”² As in previous FOIA requests to the IRS,³ Cause of Action, in the present matter, satisfies the statutory standard for a fee waiver.

A. Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

As an initial matter, we note that “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”⁴ It is for this reason that Cause of Action seeks disclosure of the requested records. In this instance, the request meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.⁵ First, the requested records concern identifiable “operations or activities of the government,” namely the IRS’s policies and practices concerning applicants for nonprofit tax status.⁶ Second, the requested information is “likely to contribute”⁷ to the understanding of the IRS’s operations because the information is not already in the public domain and consists largely of substantive material, as opposed to routine administrative information. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.⁸ We note in this context that Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. 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. Fourth, and lastly, disclosure is likely to contribute “significantly” to the public understanding of the IRS’s activities, as these records are not readily available from other sources.⁹

B. Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.

² *Id.*

³ See, e.g., Letter from Bertrand Tzeng, Acting Disclosure Manager, HQ Disclosure Program Operations & FOIA, Internal Revenue Serv., to Cause of Action at 2 (Dec. 11, 2012) (granting Cause of Action’s fee waiver request).

⁴ *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Ctr. to Prevent Handgun Violence v. U.S. Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁵ See, e.g., 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of IRS’s fee waiver regulation).

⁶ § 601.702(f)(2)(A).

⁷ § 601.702(f)(2)(B).

⁸ § 601.702(f)(2)(C).

⁹ § 601.702(f)(2)(D).

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under § 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. Rather, this information will be used to further the knowledge and interests of the general public regarding how the Internal Revenue Service evaluates applicants for nonprofit, 501(c)(4) status. In the event the disclosure of this 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.¹⁰ Therefore, Cause of Action satisfies this element.¹¹

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" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). 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 various 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."¹²

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 freedom; 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. As a result, multiple federal government agencies have recognized Cause of Action as a representative of the media in connection with its FOIA requests.¹³

¹⁰ See *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

¹¹ See 26 C.F.R. § 601.702(f)(2)(D)-(E).

¹² Newsletters, Cause of Action, *available at* <http://causeofaction.org/newsletters/>.

¹³ See, e.g., FOIA Request HQ-2012-00752-F, Dep't of Energy (Feb. 15, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012); FOIA Request 12-267, Fed. Emergency Mgmt. Agency (Feb. 9, 2012); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-078, Dep't of Homeland Sec. (Feb. 15, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request, Dep't of Labor (Apr. 20, 2012); FOIA Request CRRIF 2012-00077, Dep't of Commerce (Mar. 1, 2012).

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Production of Information and Contact Information.

In an effort to facilitate record production and to mitigate the cost of duplication (if applicable), Cause of Action requests records be produced in electronic format (*e.g.*, e-mail, pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at Allan.Blutstein@causeofaction.org, or telephone at (202) 499-4232. Should the IRS deny Cause of Action's request for a public-interest fee waiver or news media status, please contact me before proceeding with this records request.

Thank you for your attention to this matter.



ALLAN BLUTSTEIN
SENIOR COUNSEL