


# EXHIBIT


## 31

From: [Joel Beauvais](#)  
To: [Siskel, Edward](#)  
Subject: Fw: Consultation on responsive FOIA documents  
Date: 10/26/2011 09:43 AM  
Attachments: 

Hi, Ed - Just checking in on these. Where do things stand? I'm assuming we're still on for 5 today - let me know if you're not able to talk then.

Joel

----- Forwarded by Marna McDermott/DC/USEPA/US on 10/26/2011 09:24 AM -----

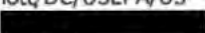

From: Marna McDermott/DC/USEPA/US  
To: "Siskel, Edward" < >  
Date: 10/20/2011 09:28 AM  
Subject: Re: Consultation on responsive FOIA documents

Just a reminder that we would like to hear back about these tomorrow.

Thanks.

Marna McDermott  
Special Assistant  
EPA Office of General Counsel  
mcdermott.marna@epa.gov  
(202) 564-2890

▼ Marna McDermott---09/30/2011 04:48:49 PM---Hi Ed, EPA is in the process of responding to a FOIA appeal and we have identified the following two

From: Marna McDermott/DC/USEPA/US  
To: "Siskel, Edward"  < >  
Date: 09/30/2011 04:48 PM  
Subject: Consultation on responsive FOIA documents

Hi Ed,

EPA is in the process of responding to a FOIA appeal and we have identified the following two documents as requiring consultation with your office:



We are proposing to release these after applying the redactions marked.

I am also attaching the original FOIA request and the appeal:



We need to complete a final appeal determination by October 26, 2011, and would very much appreciate your review by October 21, 2011.

Please let me know if any further information would be useful.

Thanks,  
Marna

Marna McDermott  
Special Assistant  
EPA Office of General Counsel  
mcdermott.marna@epa.gov  
(202) 564-2890

# EXHIBIT

## 32



Keable, Edward &lt;edward.keable@sol.doi.gov&gt;

---

## Occupy DC Documents

1 message

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**Keable, Edward T** <Edward.Keable@sol.doi.gov>

Fri, Jun 1, 2012 at 6:56 PM

To: "Hartnett, Kathleen R." <EOP (b) (6)>

Kathleen,

At the risk of harassing you too much, have you had a chance to review the two Occupy DC documents yet?

(b) (6)

Did I say welcome back?!

Thanks.

Ed

# EXHIBIT 33

**Hitter, Thomas E.**

---

**From:** Hitter, Thomas E.  
**Sent:** Friday, July 20, 2012 9:52 AM  
**To:** Su, Jonathan  
**Subject:** FOIA re health care legislation

Jonathan – I wanted to check in on the status of the documents responsive to the Judicial Watch FOIA request for records pertaining to the health care legislation. Do you think we could be in a position to send that response sometime next week?

Thanks again for the help.

Tom

# EXHIBIT

## 34



**Edwards, Ronako**

---

**From:** Smilansky, Gene  
**Sent:** Thursday, August 08, 2013 7:59 AM  
**To:** Gallagher, Nicole A  
**Subject:** Fw: Document Review

RELEASE IN PART B5,B3  
NATSECACT1947,B6

**Categories:** ~C

Nicole - Instructions are below. It occurs to me that DS only needs to fill out the F2 form, as long as you all already have active ClassNet accounts. Sorry for the confusion. Thanks.

---

**From:** Smilansky, Gene  
**Sent:** Wednesday, August 07, 2013 05:05 PM  
**To:** Cohen, Ilona [REDACTED]  
**Cc:** Leinwand, Jessica [REDACTED]  
**Subject:** RE: Document Review

B6

Ilona - Many thanks. Gene

REVIEW AUTHORITY: Frank Tumminia, Senior Reviewer

This email is UNCLASSIFIED.

---

**From:** Cohen, Ilona [REDACTED]  
**Sent:** Wednesday, August 07, 2013 4:38 PM  
**To:** Smilansky, Gene  
**Cc:** Leinwand, Jessica  
**Subject:** RE: Document Review

B6

Gene - Here are my forms. Our badges do not have an agency badge number. Please let me know if you need any additional information.

Best,  
Ilona

---

**From:** Smilansky, Gene [mailto:SmilanskyGM@state.gov]  
**Sent:** Tuesday, August 06, 2013 4:51 PM  
**To:** Leinwand, Jessica; Cohen, Ilona  
**Cc:** Johnston, Amy L; Rodriguez, Laura I  
**Subject:** FW: Document Review

Jess, Ilona - Good speaking with you. Attached are the forms I mentioned, which we will need back as soon as possible in order to create profiles for you in the online review tool. Instructions for completing the forms are below.

DS 7667 ("New/Transfer Account Form")

- Section 1
  - #5: Provide the full name of your parent agency.
  - #10: Provide your parent agency badge number.

- o #11: For employee type, select "Other Federal Agencies."
- Section 2 – Select "New Account" under ClassNet. Leave the OpenNet and Distribution Lists fields blank.
- Sections 3,4 – Leave blank.
- Section 5 – Leave blank. Your access request will be sponsored by a DoS official.

F2 access form ("Employee Request for System Access")

- Only fill out the top part (up to and including "Level of Clearance").
  - o For "Date Reporting for Duty," indicate 8/6/2013.
  - o For "Status," cross out DoS and provide the full name of your parent agency.
  - o For "DoS Badge Number," provide your parent agency badge number.
- Sign and date the second-to-last line at the bottom of the form.

Many thanks,  
Gene

B3 NATSECACT1947

**From:** Johnston, Amy L

**Sent:** Thursday, August 01, 2013 6:33 PM

**To:** [redacted] Jessica B Leinwand [redacted]

Ilona R. Cohen [redacted] Tammi Simpson [redacted]

[redacted] Tess,

Caroline; [redacted]

**Cc:** Smilansky, Gene; Rodriguez, Laura I

**Subject:** RE: Document Review

Hi all—following up on this.

[redacted]

Thanks,  
Amy

This email is UNCLASSIFIED.

**From:** Johnston, Amy L

**Sent:** Wednesday, July 31, 2013 7:38 AM

**To:** [redacted] Jessica B Leinwand [redacted]

Ilona R. Cohen [redacted] Tammi Simpson [redacted]

[redacted] Tess,

Caroline; [redacted]

[redacted]

**Cc:** Smilansky, Gene; Rodriguez, Laura I

**Subject:** RE: Document Review

B5  
B6

This email is UNCLASSIFIED.

**From:** [REDACTED] B3 NATSECACT1947  
**Sent:** Tuesday, July 30, 2013 1:47 PM  
**To:** Johnston, Amy L; Rodriguez, Laura I; [REDACTED] Jessica B Leinwand [REDACTED] B6  
Ilona R. Cohen [REDACTED] Tammi Simpson [REDACTED]  
Tess,  
Caroline; [REDACTED]  
**Cc:** Smilansky, Gene  
**Subject:** RE: Document Review

Amy, before we commit to two bodies, can you give us a better idea of what these documents contain?

**From:** Johnston, Amy L [mailto:JohnstonAL@state.gov] B3 NATSECACT1947  
**Sent:** Tuesday, July 30, 2013 1:10 PM  
**To:** Rodriguez, Laura I; [REDACTED] Jessica B Leinwand [REDACTED]  
Ilona R. Cohen [REDACTED] Tammi Simpson [REDACTED] B6  
Tess, Caroline; [REDACTED]  
**Cc:** Smilansky, Gene  
**Subject:** RE: Document Review

Hi all—if you haven't done so already, please contact me directly to identify two individuals from your agency to review these documents. Let me know if you have any questions about the process.

Best,  
Amy

Amy L. Johnston  
Legislative Affairs  
U.S. Department of State  
(202) 647-8068

SBU  
This email is UNCLASSIFIED.

**From:** Rodriguez, Laura I

B3 NATSECACT1947

**Sent:** Thursday, July 25, 2013 6:12 PM

**To:** [redacted]; Jessica B Leinwand [redacted]

Ilona R Cohen [redacted] Tammi.Simpson [redacted]

Tess,

Caroline; [redacted]

**Cc:** Smilansky, Gene; Johnston, Amy L

**Subject:** Document Review

Good afternoon all,

Because I will be out starting tomorrow and all of next week, Amy Johnston (copied here) has graciously agreed to be your POC once you've identified the persons that will be reviewing for your agency and she will forward you the forms that they will need to fill out.

I know this is a very tedious and annoying task and we truly appreciate your help.

Thanks,

Laura I. Rodriguez

House Affairs

Bureau of Legislative Affairs

Department of State

Office: (202) 647-3033

[redacted]

# EXHIBIT 35

DEPARTMENT OF HEALTH AND HUMAN SERVICES



Office of the Secretary  
Assistant Secretary for Public Affairs  
Freedom of Information/Privacy Acts Division  
330 C Street S.W., Room 2206  
Washington, D.C. 20201

Request Number: 2013-1179 - GD

August 13, 2013

Date Received: 8/13/2013

Allan Blutstein  
1919 Pennsylvania Ave., NW, Suite 650  
Washington, DC 20006

Dear Requester:

This acknowledges your Freedom of Information Act request received in this Office on the above date. We have asked the appropriate action Office(s) to send the requested records to us for review.

Your request has been assigned a case number based on the date of its receipt in this office and is being processed as expeditiously as possible. Pursuant to Departmental regulations, 43 CFR Part 5 Subpart D, charges can be made if applicable. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. These agencies will provide a direct response to you. There may be a charge for those records and, in some cases, the charges may be substantial.

You may contact this office by phone at (202) 690-7453, at any time concerning your request. When making an inquiry, we request that you please refer to the FOIA Request Number above.

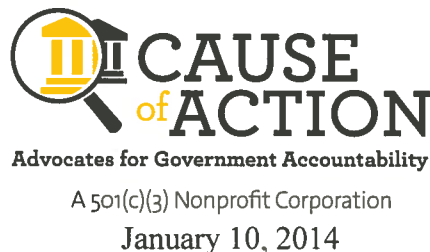
Freedom of Information/Privacy Acts Division  
Office of the Assistant Secretary for Public Affairs  
330 C Street, S.W.  
Switzer Building, Room 2206  
Washington, DC 20201

A handwritten signature in black ink, which appears to read "Robert Eckert", is positioned above the typed name.

Robert Eckert  
Director  
FOI/Privacy Acts Division

# EXHIBIT

## 36



**VIA FACSIMILE**

Mr. Robert Eckert  
Director  
Freedom of Information/Privacy Acts Division  
Office of the Assistant Secretary for Public Affairs  
U.S. Department of Health & Human Services  
330 C Street, S.W.  
Switzer Building, Room 2206  
Washington, D.C. 20201  
Phone: (202) 690-7453  
Fax: (202) 690-8320

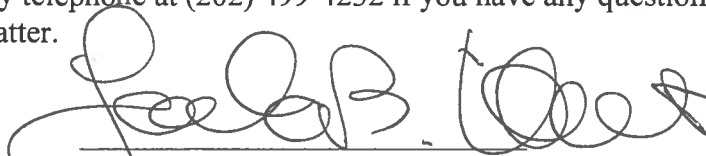
**Re: FOIA Request No. 2013-1179-GD**

Dear Mr. Eckert:

Cause of Action submitted a Freedom of Information Act (FOIA) request dated August 6, 2013, seeking "access to the work calendars of the Secretary, Deputy Secretary and Chief of Staff from January 2013 to the present" (appended hereto as Exhibit A). Your office acknowledged our request in a letter dated August 13, 2013 (appended hereto as Exhibit B).

The FOIA requires that each agency "determine within twenty days . . . after the receipt of any such request whether to comply with such request . . . ." 5 U.S.C. §552(a)(6)(A)(i). It has been well over twenty days since the Department of Health and Human Services received Cause of Action's request. Accordingly, pursuant to §552(a)(6)(A)(i), we ask that you provide us with an estimated date by which HHS will begin producing documents. *See* 5 U.S.C. §552(a)(7)(B)(ii) (requiring that each agency provide "an estimated date on which the agency will complete action on the request").

I look forward to hearing from you, and please contact me by email at [lorinda.harris@causeofaction.org](mailto:lorinda.harris@causeofaction.org), or by telephone at (202) 499-4232 if you have any questions. Thank you for your attention to this matter.



Lorinda Harris  
Senior Counsel



# EXHIBIT

## 37



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

Request No. 2013-1157 BK

January 31, 2014

Mr. Allan Blutstein  
Senior Counsel  
Cause of Action  
1919 Pennsylvania Ave. NW – Suite 650  
Washington, DC 20006

Dear Mr. Blutstein:

This is an interim response to your August 6, 2013 Freedom of Information Act (FOIA) request seeking the work calendars of the HHS Secretary, Deputy Secretary, and Chief of Staff from January 2013 to the present. Enclosed, in electronic format, is the Secretary's calendar for January-September 2013, totaling 653 pages. The Deputy Secretary's calendar for January-August is still undergoing review and totals 158 pages. The Chief of Staff's calendar has not yet been provided to the FOIA office for processing.

The information withheld from the Secretary's calendar consists of:

- personal privacy information (e.g., personal appointments, individuals' personal and direct-dial work telephone numbers and' home addresses, and names and other descriptive information about friends and family members), withheld based on FOIA exemption (b)(6) to avoid a clearly unwarranted invasion of the individuals' personal privacy and/or unwanted contacts; and
- information that would identify security personnel, withheld based on FOIA exemptions (b)(6) to avoid unwanted contacts and (b)(7)(F) because the information could reasonably be expected to endanger the life or physical safety of an individual.

No fees are charged for these records, based on your status as a media requester (which subjects you to only duplication fees) and because we processed the records electronically.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. E. Daley", is written above the typed name.

Garfield Daley  
Government Information Specialist  
FOI/Privacy Acts Division  
Office of Public Affairs

# EXHIBIT

## 38

**Flamberg, Gemma (HHS/OGC)**

---

**From:** Flamberg, Gemma (HHS/OGC)  
**Sent:** Wednesday, February 05, 2014 4:52 PM  
**To:** Leinwand, Jessica  
**Subject:** FOIA Request #2013-1157BK  
**Attachments:** WH Pages Blutstein FOIA.pdf; BlutsteinFOIArequest.pdf

FYI – FOIA request for Dep Sec's calendar.

# EXHIBIT

## 39



November 1, 2013

**VIA EMAIL AND CERTIFIED MAIL**

Mr. Garfield Daley  
(Acting) FOIA Officer  
U.S. Department of Health and Human Services  
Mary E. Switzer Building, Room 2206  
330 C Street, S.W.  
Washington, D.C. 20201  
E-mail: Garfield.Daley@hhs.gov

Dear Mr. Daley:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, Cause of Action hereby requests access to all records that relate to the creation, award, implementation, oversight, review and/or audit by the U.S. Department of Health and Human Services (HHS) of the Early Innovator Grants<sup>1</sup> awarded<sup>2</sup> by HHS, pursuant to Section 1311(a) of the Patient Protection and Affordable Care Act (PPACA),<sup>3</sup> as amended,<sup>4</sup> regarding the following states: Connecticut, Kansas, Maine, Maryland, Massachusetts, Rhode Island and Vermont. The time period for this request is March 23, 2010 to the present.

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. §552(a)(4)(A)(iii), which 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.” As discussed below, Cause of Action 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

<sup>1</sup> U.S. Dep’t of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Ctr. for Consumer Info. & Ins. Oversight, States Leading the Way on Implementation: HHS Awards “Early Innovator” Grants to Seven States (Feb. 6, 2011), available at <http://www.cms.gov/CCIIO/Resources/Grants/states-leading-the-way.html>.

<sup>2</sup> Such grants are subject to the Federal Funding Accountability and Transparency Act of 2006, P.L. 109-282 (2013), as amended by § 6202 of P.L. 110-252 and implemented by 2 C.F.R. Part 170.

<sup>3</sup> Patient Protection and Affordable Care Act, P.L. 111-148, 124 Stat. 119 (March 23, 2010).

<sup>4</sup> Health Care and Education Reconciliation Act, P.L. 111-152, 124 Stat. 1029 (March 30, 2010).

Mr. Garfield Daley  
November 1, 2013  
Page 2

the government is a well-recognized public interest in the FOIA [context].”<sup>5</sup> 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 HHS to determine whether disclosure of the requested information is in the public interest.<sup>6</sup>

First, the requested records concern identifiable “operations or activities of the government;”<sup>7</sup> namely, measures HHS has taken to ensure compliance with the requirements of any applicable Funding Opportunity Announcement(s) for Early Innovator Grants, reporting and review requirements under PPACA, 45 C.F.R. Part 256, Standard Form (SF) 425, SF-269, SF-269A, SF-272, SF-272A, HHS’s internal and/or external audit and financial compliance controls, OMB Circular A-133, and/or OMB Circular A-87.

Second, the requested information is “likely to contribute”<sup>8</sup> to understanding HHS’s operations because the information is not already in the public domain and the public is largely unaware of the subject matter.

Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>9</sup> 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 media. Our staff members have a wealth of 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 Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. For example, Cause of Action recently published two reports on its website that reached a broad segment of the public via Twitter and email.<sup>10</sup>

Fourth, disclosure is likely to make a “significant” contribution to the public understanding of HHS policies and procedures, as the requested records are not readily available from other sources.<sup>11</sup>

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

<sup>5</sup> 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.”).

<sup>6</sup> *See* 5 C.F.R. § 5.45(b) (HHS FOIA regulation setting forth the four-factor “public interest” test).

<sup>7</sup> *Id.*, §5.45(b)(1).

<sup>8</sup> *Id.*, §5.45(b)(2).

<sup>9</sup> *Id.* §5.45(b)(3).

<sup>10</sup> *See* CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), *available at* <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>; *see also* 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://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>.

<sup>11</sup> §5.45(b)(4).

Mr. Garfield Daley  
November 1, 2013  
Page 3

Cause of Action does not seek this information to benefit commercially.<sup>12</sup> 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 ensure 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 HHS policies and procedures. In the event disclosure of this information creates a profit motive, that is not dispositive for the commercial interest test; media requesters may have a profit motive as long as the dissemination of the information is in their professional capacity and would further the public interest.<sup>13</sup> Therefore, Cause of Action satisfies this element.

#### **Request for news media status**

For fee purposes, Cause of Action also 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, among other things, 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 gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.<sup>14</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>15</sup>

#### **Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, pdf). If a certain set of responsive records can be produced more readily, we request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit. If our request for a fee waiver is denied, we respectfully ask that you contact us before responding to this request.

<sup>12</sup> See § 5.45(c) (setting forth the requirement that the request "not be primarily in the interest of the requester").

<sup>13</sup> See *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).


<sup>14</sup> See [www.causeofaction.org](http://www.causeofaction.org).

<sup>15</sup> See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (October 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 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).



Mr. Garfield Daley  
November 1, 2013  
Page 4

If you have any questions about this request, please contact me by email at [lorinda.harris@causeofaction.org](mailto:lorinda.harris@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
\_\_\_\_\_  
LORINDA HARRIS  
SENIOR COUNSEL

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop N2-20-16  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Openness, Transparency & Accountability Group**  
Refer to: Control Number 110420137013 and PIN NW9X

11/19/2013

Lorinda Harris  
Cause of Action  
1919 Pennsylvania Ave, NW, Suite 650  
Washington, DC 20006

Dear Ms. Harris:

I am acknowledging receipt of your Freedom of Information Act (FOIA) request dated November 5, 2013. Because we receive a very heavy volume of FOIA requests, we have had to establish a policy of "first in, first out" case processing. This policy is consistent with court decisions regarding FOIA's time limits. Please be assured that a search has been initiated for records falling within the scope of your request. If any such records are located, they will be reviewed as soon as possible, and you will be notified of our decision regarding release or non release of those documents.

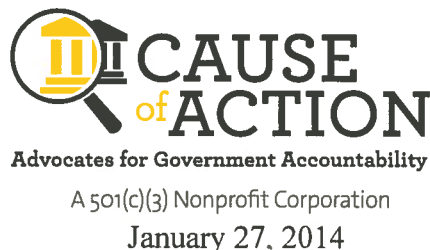
You have asked for a waiver or reduction of the fees that we would customarily charge for furnishing agency records. I have reviewed your request for a fee waiver and have determined that disclosure to you of the information meets two basic requirements necessary for the granting of the fee waiver, i.e., (1) disclosure of information "is in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government" and (2) disclosure of the information "is not primarily in the commercial interest of the requester"

Therefore, I grant your request for fee waiver.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael S. Marquis".

Michael S. Marquis  
Director  
Division of Freedom of Information



**VIA E-MAIL & FACSIMILE**

Michael Marquis  
Freedom of Information Officer  
Centers for Medicare & Medicaid Services  
U.S. Department of Health & Human Services  
7500 Security Boulevard  
Mail Stop N2-20-16  
Baltimore, Maryland 21244  
Phone: (410) 786-3153  
Fax: (410) 786-5353  
E-mail: michael.marquis@hhs.cms.gov

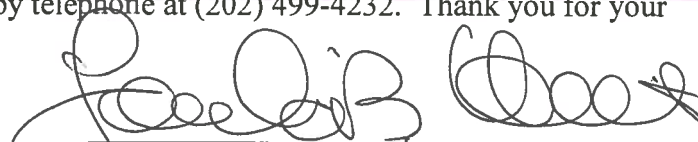
**Re: FOIA Request Control No. 110420137013 PIN NW9X**

Dear Mr. Marquis:

Cause of Action submitted a Freedom of Information Act (FOIA) request dated November 1, 2013, seeking documents related to “the creation, award, implementation, oversight, review and/or audit” of Early Innovator Grants awarded by the Department of Health and Human Services (HHS) (appended hereto as Exhibit A). Your office acknowledged our request in a letter dated November 19, 2013 (appended hereto as Exhibit B).

The FOIA requires that each agency “determine within twenty days . . . after the receipt of any such request whether to comply with such request . . .” 5 U.S.C. § 552(a)(6)(A)(i). It has been well over twenty days since HHS received Cause of Action’s request. Accordingly, pursuant to § 552(a)(6)(A)(i), we ask that you provide us with an estimated date by which HHS will begin producing documents. *See* 5 U.S.C. § 552(a)(7)(B)(ii) (requiring that each agency provide “an estimated date on which the agency will complete action on the request”).

If you have any questions about this request, please contact me by email at [lorinda.harris@causeofaction.org](mailto:lorinda.harris@causeofaction.org), or by telephone at (202) 499-4232. Thank you for your attention to this matter.



LORINDA HARRIS  
SENIOR COUNSEL



Centers for Medicare &amp; Medicaid Services

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## Check the Status of Your FOIA Request

Please enter the Control Number and Personal Identification Number (PIN) that you received in your acknowledgement letter.

### Search Criteria

An asterisk (\*) indicates a required field

\*Control Number:

\*PIN:

[Check Your Status](#)

### Your FOIA Request Status

Control Number: 110420137013

Date Received: 11/4/2013

Subject: HEALTHCARE.GOV - HIGH PRIORITY/NEWS MEDIA: Early Innovator Grants

Status of the Request: FOIA request referred to program office(s) for responsive records search and fee estimate

Projected Date of Response: Undetermined

Date of Response: No data is available at this time

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# EXHIBIT 40



December 24, 2013

**VIA E-MAIL & CERTIFIED MAIL**

Mr. Garfield Daley  
(Acting) FOIA Officer  
U.S. Department of Health and Human Services  
Mary E. Switzer Building, Room 2206  
330 C Street, S.W.  
Washington, D.C. 20201  
E-mail: Garfield.Daley@hhs.gov

**Re: Freedom of Information Act Request**

Dear Mr. Daley:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, Cause of Action hereby requests access to the categories of requested records set forth below. To be clear, Cause of Action does not seek the release of any individual's Personally Identifiable Information.<sup>1</sup>

1. All records relating to efforts by the Department of Health and Human Services (HHS) to investigate the unauthorized disclosure of Personally Identifiable Information by persons employed by, or otherwise working on behalf of, Minnesota's MNsure health insurance exchange. The time period for this request is August 1, 2013 to the present.
2. All records describing the number and dates of incidents when Personally Identifiable Information was disclosed without authorization by: any health insurance exchange created under the Patient Protection and Affordable Care Act (PPACA);<sup>2</sup> any non-exchange entity required to comply with privacy and security standards established pursuant to 45 C.F.R. §155.260;<sup>3</sup> and/or the Federal Data Services Hub. The time period for this request is March 23, 2010 to the present.

<sup>1</sup> The Office of Management and Budget defines Personally Identifiable Information as "information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc." OMB Memorandum 07-16, SAFEGUARDING AGAINST AND RESPONDING TO THE BREACH OF PERSONALLY IDENTIFIABLE INFORMATION (May 22, 2007), *available at* <http://www.whitehouse.gov/omb/memoranda/fy2007/m07-16.pdf>.

<sup>2</sup> Pub. L. No. 111-148, § 1311(a), 124 Stat. 173 (2010).

<sup>3</sup> Entities required to comply with these standards include navigators, assisters, agents, brokers and other individuals or entities that have access to Personally Identifiable Information submitted through an exchange or collect, use, or disclose such information gathered directly from applicants, qualified individuals, or enrollees while performing the functions outlined in an agreement with an exchange. *See* 45 C.F.R. §155.260(b).

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3. All records relating to incidents of the unauthorized disclosure of Personally Identifiable Information by: any health insurance exchange created under PPACA; any non-exchange entity required to comply with privacy and security standards established pursuant to 45 C.F.R. §155.260; and/or the Federal Data Services Hub. The time period for this request is March 23, 2010 to the present.
4. All records relating to HHS's authority to oversee and/or investigate the unauthorized disclosure of Personally Identifiable Information by: any health insurance exchange created under PPACA; any non-exchange entity required to comply with privacy and security standards established pursuant to 45 C.F.R. §155.260; and/or the Federal Data Services Hub. The time period for this request is March 23, 2010 to the present.

**Request for public-interest fee waiver**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. §552(a)(4)(A)(iii), which 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.” As discussed below, this request 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, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<sup>4</sup> Cause of Action is a non-profit, nonpartisan government accountability organization that uses investigative, legal and communications tools to educate the public on how government transparency and accountability protect economic opportunity for American taxpayers.

This request meets the four-factor test<sup>5</sup> to be applied by HHS in determining whether disclosure of the requested information is in the public interest: (1) the requested records “pertain to the operations or activities” of the federal government;<sup>6</sup> (2) disclosure of the requested records will reveal meaningful, nonpublic information “about government operations or activities”;<sup>7</sup> (3) disclosure “will advance the understanding of the general public as distinguished from a narrow

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<sup>4</sup> *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.”).

<sup>5</sup> *See* 45 C.F.R. §5.45(b) (HHS FOIA regulation setting forth the four-factor “public interest” test).

<sup>6</sup> *Id.* at §5.45(b)(1).

<sup>7</sup> *Id.* at §5.45(b)(2).

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segment of interested persons”;<sup>8</sup> (4) disclosure will significantly contribute “to public understanding” of government operations.<sup>9</sup>

First, the requested records “pertain to the operations or activities” of the federal government, namely, records HHS has compiled or reviewed in the course of protecting and securing Personally Identifiable Information. HHS regulations prohibit the unauthorized disclosure of Personally Identifiable Information<sup>10</sup> by health insurance exchanges, and provide that adherence to privacy and security standards will be implemented through “appropriate monitoring and other means and methods . . . to report and mitigate non-adherence and breaches.”<sup>11</sup> Current HHS regulations specify that HHS will oversee and monitor federally-facilitated and state exchanges for compliance with privacy and security standards, and may conduct audits and investigations into compliance with privacy and security standards.<sup>12</sup>

Second, disclosure of the requested records will reveal meaningful, nonpublic information about HHS operations by educating citizens as to the measures HHS has taken to secure personally identifiable information relating to PPACA implementation. This information is not already in the public domain and the public is largely unaware of the subject matter.

Third, disclosure “will advance the understanding of the general public as distinguished from a narrow segment of interested persons” of HHS operations. Cause of Action has both the intent and ability to make the results of this request available to the public in various media. Cause of Action’s staff has a wealth of 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 Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. For example, Cause of Action has recently published reports on its website which reached a broad segment of the public via Twitter and e-mail.<sup>13</sup>

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<sup>8</sup> *Id.* at §5.45(b)(3).

<sup>9</sup> *Id.* at §5.45(b)(4).

<sup>10</sup> *See* 45 C.F.R. §155.260(a)(2).

<sup>11</sup> *Id.* at §155.260(a)(3)(vii).

<sup>12</sup> *Id.* at §155.280(a)-(b).

<sup>13</sup> *See, e.g.*, CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), <http://causeofaction.org/assets/uploads/2013/12/131209-Forest-City-Report-III.pdf>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART II (Nov. 7, 2013), <http://causeofaction.org/political-profitteering-forest-city-enterprises-makes-private-profits-expense-americas-taxpayers-part-ii/>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-chronyism-2/>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICA’S TAXPAYERS PART I (Aug. 2, 2013), <http://causeofaction.org/2013/08/02/political-profitteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>; CAUSE OF ACTION, INVESTIGATION OF DHS DEPUTY IG CHARLES EDWARDS (July 9, 2013), <http://causeofaction.org/2013/07/09/foia-request-and-complaint-regarding-dhs-oig-charles-edwards/>; CAUSE OF ACTION, THE COLLAPSE OF MF GLOBAL: SUMMARY & ANALYSIS (June 25, 2013), <http://causeofaction.org/2013/06/25/the-collapse-of-mf-global-summary-analysis/>; CAUSE OF ACTION, CONPROFIT: HOW THE IRS’S FAILED OVERSIGHT ALLOWS NONPROFIT MONEY LAUNDERING (June 17, 2013), <http://causeofaction.org/2013/06/17/conprofit-how-the-irss-failed->



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Fourth, disclosure will significantly contribute “to public understanding” of HHS operations. The requested records are not readily available to the public from other sources, and public understanding of HHS efforts to protect and secure Personally Identifiable Information will be substantially greater as a result of disclosure.<sup>14</sup>

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

Cause of Action does not seek this information to benefit commercially.<sup>15</sup> Cause of Action is a nonprofit organization as defined under §501(c)(3) of the Internal Revenue Code, committed to advancing public awareness 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 profit from this request. Rather, the requested records will be used to further the knowledge and interests of the general public regarding HHS efforts to protect personally identifiable information. For the foregoing reasons, Cause of Action is not a commercial requester.

**Request for news media status**

For fee purposes, Cause of Action also 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, among other things, 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 uses the information that it gleans from a wide variety of sources, including whistleblowers/insiders, government agencies, universities, scholarly works, FOIA requests and other investigative efforts, to publish original content on its website, including reports, newsletters, memoranda, press releases, and other news-like materials. Since the beginning of 2013, for example, Cause of Action has published eight reports that incorporated information obtained from diverse sources.<sup>16</sup> During that same period, Cause of Action produced seven blog posts specifically related to its FOIA activity which editorialized on responsive documents or the failure of agencies to reply satisfactorily,<sup>17</sup> as well as numerous other posts on a

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oversight-allows-nonprofit-money-laundering/; CAUSE OF ACTION, ETHICAL VIOLATIONS AND INAPPROPRIATE INFLUENCE AT BUREAU OF INDIAN AFFAIRS (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-inappropriate-influence-at-bureau-of-indian-affairs/>; CAUSE OF ACTION, REPORT ON CPPW: PUTTING POLITICS TO WORK (Apr. 1, 2013), [http://causeofaction.org/2013/04/16/Cause of Action-report-on-cppw-putting-politics-to-work-2/](http://causeofaction.org/2013/04/16/Cause%20of%20Action-report-on-cppw-putting-politics-to-work-2/).

<sup>14</sup> See 45 C.F.R. §5.45(b)(4).

<sup>15</sup> See *id.* at §5.45(c) (setting forth the requirement that the request be “[n]ot primarily in the requester’s commercial interest”).

<sup>16</sup> See *supra* note 13.

<sup>17</sup> See, e.g., *FOIA Follies: HUD Flags Sensitive Freedom of Information Act Requests for Extra Scrutiny; Political Appointees Involved*, CAUSE OF ACTION (July 31, 2013), <http://causeofaction.org/2013/07/31/hud-flags-sensitive-freedom-of-information-act-requests-for-extra-scrutiny-political-appointees-involved/>; *FOIA Requesters Misled by Military to Waive Appeal Rights*, CAUSE OF ACTION (July 18, 2013), <http://causeofaction.org/2013/07/18/foia-requesters-misled-by-military-to-waive-appeal-rights/>; *Secret Pentagon Policy May Delay Responses to Freedom of Information Act Requests*, CAUSE OF ACTION (July 9, 2013), <http://causeofaction.org/2013/07/09/secret-pentagon-policy-may-delay-responses-to-freedom-of-information-act-requests/>; *White House and Treasury Department Politicize FOIA*, CAUSE OF ACTION (June 24, 2013), <http://causeofaction.org/2013/06/24/white-house-and-treasury-department-politicize-foia/>; *CFPB Advises Employees to FOIA-proof their Work Calendars*, CAUSE OF ACTION (June 18, 2013), <http://causeofaction.org/2013/06/18/cfpb-advises-employees-to-foia-proof-their-work-calendars/>; *FOIA Freak-Out: IRS Wrongly Denies FOIA Request, Comes Unglued Over Media Response*, CAUSE OF ACTION (May 13, 2013),

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wide-range of subjects.<sup>18</sup> All of these activities required the extensive research and writing skills of Cause of Action's analysts, lawyers, and communications experts.

Cause of Action routinely and systematically disseminates information acquired from its investigative efforts to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed over 100,000 times in the past year alone, including by visitors from other media organizations (e.g., *Fox News*, *Associated Press*, *New York Times*, *Bloomberg*, *Congressional Quarterly*, and *NBC*).<sup>19</sup> Cause of Action also disseminates news to the public via television and radio interviews, as well as Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>20</sup>

### **Record production and contact information**

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<http://causeofaction.org/2013/05/13/foia-freak-out-irs-wrongly-denies-foia-request-comes-unglued-over-media-response/>; *FOIA Freak-Out: DOJ Scrambles to Avoid Fallout Over Swag Purchases*, CAUSE OF ACTION (Apr. 25, 2013), <http://causeofaction.org/2013/04/25/foia-freak-out-doj-scrambles-to-avoid-fallout-over-swag-purchases/>.

<sup>18</sup> See, e.g., *What to Do about Data Security? A Discussion of the FTC's LabMD & Wyndham Cases*, CAUSE OF ACTION (Sept. 4, 2013), <http://causeofaction.org/2013/09/04/what-to-do-about-data-security-a-discussion-of-the-ftcs-labmd-wyndham-cases/>; *Ethical Violations and Retaliation: How to Get Promoted at the Bureau of Indian Affairs*, CAUSE OF ACTION (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-retaliation-how-to-get-promoted-at-the-bureau-of-indian-affairs/>; *How HHS Secretary Sebelius Broke Federal Law and Avoided Punishment*, CAUSE OF ACTION (June 4, 2013), <http://causeofaction.org/2013/06/04/how-hhs-secretary-sebelius-broke-federal-law-and-avoided-punishment/>; *GAO on CPPW: Nothing to See Here*, CAUSE OF ACTION (June 3, 2013), <http://causeofaction.org/2013/06/03/gao-on-cppw-nothing-to-see-here/>; *Jon Corzine: The Rogue Trader that is Too Big to Jail*, CAUSE OF ACTION (May 30, 2013), <http://causeofaction.org/2013/05/30/jon-corzine-the-rogue-trader-that-is-too-big-to-jail/>; *Cronies Putting Politics to Work*, CAUSE OF ACTION (Apr. 16, 2013), <http://causeofaction.org/2013/04/16/cronies-putting-politics-to-work/>; *Leading the Way in Scientific Misconduct*, CAUSE OF ACTION (Apr. 5, 2013), <http://causeofaction.org/2013/04/05/leading-the-way-in-scientific-misconduct/>; *Senator Unveils "Victims of Government"*, CAUSE OF ACTION (Apr. 3, 2013), <http://causeofaction.org/2013/04/03/senator-unveils-victims-of-government/>; *Most Transparent Administration in History?*, CAUSE OF ACTION (Feb. 19, 2013), <http://causeofaction.org/2013/02/19/most-transparent-administration-in-history/>; *After The State of the Union: One Look at Energy and Jobs*, CAUSE OF ACTION (Feb. 13, 2013), <http://causeofaction.org/2013/02/13/after-the-state-of-the-union-one-look-at-energy-and-jobs/>; *What's a CEO to Do?*, CAUSE OF ACTION (Jan. 29, 2013), <http://causeofaction.org/2013/01/29/whats-a-ceo-to-do/>; *Dispelling the Myths about the Drakes Bay Oyster Company Conflict*, CAUSE OF ACTION (Jan. 23, 2013), <http://causeofaction.org/2013/01/23/5-myths-about-dbo/>; *The Future may not hold the "Sunshine" we Government Accountability Advocates Long to See*, CAUSE OF ACTION (Jan. 21, 2013), <http://causeofaction.org/2013/01/21/the-future-may-not-hold-the-sunshine-we-government-accountability-advocates-long-to-see/>; *White House Opens New Year with Open Data Mandate*, CAUSE OF ACTION (Jan. 11, 2013), <http://causeofaction.org/2013/01/11/white-house-opens-new-year-with-open-data-mandate/>; *When Cronyism Takes the Place of Merit at the DOE, Everyone Loses*, CAUSE OF ACTION (Jan. 10, 2013), <http://causeofaction.org/2013/01/10/when-cronyism-takes-the-place-of-merit-everyone-loses/>; *A New Year's Resolution for the Federal Government*, CAUSE OF ACTION (Jan. 4, 2013), <http://causeofaction.org/2013/01/04/a-new-years-resolution-for-the-federal-government/>.

<sup>19</sup> Google Analytics for [www.causeofaction.org](http://www.causeofaction.org) (Jan. 1, 2013 – Dec. 2, 2013) (on file with Cause of Action).

<sup>20</sup> See, e.g., FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2014-010F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request CFPB-2014-002-F, Consumer Fin. Prot. Bureau (Oct. 2, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 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 No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

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Please provide the responsive records in electronic format (*e.g.*, e-mail, PDF). If certain records can be produced more readily, Cause of Action requests that those records are produced first and the remaining records be timely produced thereafter. If Cause of Action's fee waiver request is denied, we respectfully ask that you contact us before responding to this request.

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

  
\_\_\_\_\_  
LORINDA HARRIS MS  
SENIOR COUNSEL

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop N2-20-16  
Baltimore, Maryland 21244-1850



**Office of Strategic Operations and Regulatory Affairs/Openness, Transparency & Accountability Group**  
Refer to: Control Number 122720137031 and PIN C78D

01/03/2014

Lorinda Harris  
Cause of Action  
1919 Pennsylvania Ave., NW  
Suite 650  
Washington, DC 20006

Dear Ms. Harris:

I am acknowledging receipt of your Freedom of Information Act (FOIA) request dated December 24, 2013. Because we receive a very heavy volume of FOIA requests, we have had to establish a policy of "first in, first out" case processing. This policy is consistent with court decisions regarding FOIA's time limits. Please be assured that a search has been initiated for records falling within the scope of your request. If any such records are located, they will be reviewed as soon as possible, and you will be notified of our decision regarding release or non release of those documents.

You have asked for a waiver or reduction of the fees that we would customarily charge for furnishing agency records. I have reviewed your request for a fee waiver and have determined that disclosure to you of the information meets two basic requirements necessary for the granting of the fee waiver, i.e., (1) disclosure of information "is in the public interest because it is likely to contribute significantly to the public understanding of the operation or activities of the government" and (2) disclosure of the information "is not primarily in the commercial interest of the requester"

Therefore, I grant your request for fee waiver.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Michael S. Marquis".

Michael S. Marquis  
Director  
Division of Freedom of Information



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## Check the Status of Your FOIA Request

Please enter the Control Number and Personal Identification Number (PIN) that you received in your acknowledgement letter.

### Search Criteria

An asterisk (\*) indicates a required field

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### Your FOIA Request Status

Control Number: 122720137031

Date Received: 12/27/2013

Subject: HIGH PRIORITY/NON-PROFITS: Personally Identifiable Information

Status of the Request: FOIA request referred to program office(s) for responsive records search and fee estimate

Projected Date of Response: Undetermined

Date of Response: No data is available at this time

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# EXHIBIT 41



March 9, 2015

**VIA CERTIFIED MAIL & ONLINE PORTAL**

John F. Hackett  
Acting Director, Office of Information Programs and Services  
A/GIS/IPS/RL, SA-2, Room 5021  
U. S. Department of State  
Washington, D.C. 20522-8100  
Email: hackettjf@state.gov

**Re: Freedom of Information Act Request**

Dear Acting Director John F. Hackett:

I write on behalf of Cause of Action, a 501(c)(3) nonpartisan strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. In this regard, Cause of Action is concerned that there are potential violations of the law in connection with the lack of maintenance of former Secretary of State Hillary Clinton's emails while conducting business on behalf of the Government. Accordingly, Cause of Action requests certain documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

**Former Secretary Clinton Conducted Government Business on Private Email.**

On March 2, 2015, the *New York Times* reported that Mrs. Clinton

[E]xclusively used a personal email account to conduct government business as secretary of state. . . . Mrs. Clinton did not have a government email address during her four-year tenure at the State Department. Her aides took no actions to have her personal emails preserved on department servers at the time, as required by the Federal Records Act.<sup>2</sup>

<sup>1</sup> CAUSE OF ACTION, *available at* [www.causeofaction.org](http://www.causeofaction.org).

<sup>2</sup> Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, N.Y. TIMES (Mar. 2, 2015), <http://goo.gl/wdQatR>.



Acting Director John F. Hackett

March 9, 2015

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The *Associated Press* added that Mrs. Clinton's emails were stored on "a personal email server traced back to the Chappaqua, New York," where she keeps her home.<sup>3</sup> Although press reports indicate that the White House was aware of Mrs. Clinton's potential breach of protocol at least by August 2014 (but "defer[red] to Clinton's aides"), Mrs. Clinton did not reveal the existence of the account until the *New York Times* article, in March 2015.<sup>4</sup>

**Agencies (and Agency Heads) are Obligated to Preserve Records.**

The Federal Records Act ("FRA") requires every federal agency, including the State Department, to preserve its electronic records in accordance with applicable statutes, regulations, and agency policies. In turn, National Archives and Records Administration ("NARA") interpretive regulations define "record" as all papers or "documentary materials, regardless of physical form or characteristics, made or received by an agency . . . in connection with the transaction of public business and preserved or appropriate for preservation by that agency . . . as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government."<sup>5</sup>

When agency records are unlawfully or accidentally removed, defaced, altered, or destroyed, the agency must "promptly" notify NARA and produce a comprehensive report.<sup>6</sup> The agency head also must collaborate with the Archivist of the United States to "initiate action through the Attorney General for the recovery of records he knows or has reason to believe have been unlawfully removed."<sup>7</sup> If an agency does not contact the Attorney General within a reasonable period of time, the Archivist is required to do so on his own, while simultaneously notifying Congress that such a request has been made.

The FRA further establishes the framework for records management throughout the federal government and requires the head of every agency, such as then-Secretary Clinton, to "establish safeguards against the removal or loss of records."<sup>8</sup> Agency heads also must "make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency."<sup>9</sup> Moreover, the State Department's Foreign Affairs Manual ("FAM") provides direction "with respect to the creation, maintenance, use, and disposition of records, including electronic . . . and Internet" records.<sup>10</sup> FAM tasks the Secretary with the primary responsibility to ensure the agency is

<sup>3</sup> Jack Gillum and Ted Bridis, *House committee subpoenas Clinton emails in Benghazi probe*, ASSOCIATED PRESS (Mar. 5, 2015), <http://goo.gl/25yWBb>; see also J.K. Trotter, *Source: Top Clinton Aides Used Secret Email Accounts at State Dept.*, GAWKER.COM (Mar. 3, 2015), <http://goo.gl/ctOQfh> (noting that other State Department employees also used private email accounts to conduct government business).

<sup>4</sup> Edward-Isaac Dove, *White House alerted to potential Clinton email problem in August*, POLITICO.COM (Mar. 6, 2015), <http://goo.gl/Dx50B8>.

<sup>5</sup> 36 C.F.R. § 1220.18.

<sup>6</sup> *Id.* § 1230.14.

<sup>7</sup> 44 U.S.C. § 3106.

<sup>8</sup> *Id.* § 3105.

<sup>9</sup> *Id.* § 3101.

<sup>10</sup> Dep't of State, 5 Foreign Affairs Manual, at § 411(2), available at <http://goo.gl/CISv1R>.



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preserving its records “in accordance with the Federal Records Act.”<sup>11</sup> FAM adopts NARA’s broad definition of “record” as all papers or “documentary materials, regardless of physical form or characteristics, made or received by an agency . . . in connection with the transaction of public business and preserved or appropriate for preservation by that agency . . . as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government.”<sup>12</sup> FAM directs that emails in particular “must be preserved [because] such messages are considered Federal records under the law.”<sup>13</sup>

With regard to classified material, the current FAM provides that employees “must never remove classified materials from government custody.”<sup>14</sup> The previous version of the FAM section on transfers, which was in place during much of Mrs. Clinton’s tenure at the State Department, provides that “when seeking to transfer records to state or private organizations . . . employees must obtain [Record Management Branch] and NARA approval.”<sup>15</sup>

### **The Evidence Indicates Non-Compliance with the Law.**

As set forth above, news reports reflect that Mrs. Clinton had control over her own server hosting official agency emails, including relevant documents responsive to congressional investigations into the terror attacks in Benghazi, Libya. The FRA, in addition to binding regulations issued by NARA and the State Department (through its FAM) required then-Secretary Clinton to preserve her official communications on federal government servers or electronic records systems approved by NARA.

Moreover, former-Secretary Clinton took no action during her tenure as Secretary of State to preserve her personal emails on department servers, as required by the FRA. Based upon her position as a federal agency head, in addition to numerous inspector general reports finding inappropriate use of personal emails (as discussed below) Mrs. Clinton knew or should have known that the failure to preserve her personal emails and the storage of those emails on a personal server, without specific authorization from the Archivist, constituted a removal of documents or materials without authority and with the intent to retain such documents or materials at an unauthorized location. Finally, even if Mrs. Clinton’s use of a personal email and server during her tenure as Secretary of State does not constitute removal, the possession of the only copies of official agency records as a departing employee on February 1, 2013 would constitute unlawful removal under the FRA and its interpreting regulations.

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<sup>11</sup> *Id.* § 414.1.

<sup>12</sup> *Id.* § 415.1.

<sup>13</sup> *Id.* § 443.1(c).

<sup>14</sup> *Id.* § 432.1(c).

<sup>15</sup> *Id.* § 430. The State Department has been unable to confirm whether Mrs. Clinton transferred classified materials to her personal email system, calling such inquiries not “a pertinent question.” Statement of Marie Harf, Deputy Spokesperson, Dep’t of State (Mar. 4, 2015), *available at* <http://goo.gl/qcsXnA>. However, if Mrs. Clinton had emails regarding, for example, the attacks in Benghazi, Libya, then either the Record Management Branch or NARA likely needed to be consulted.

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With respect to Mrs. Clinton, there is no doubt that she had actual knowledge of the illegality of removing official records from the federal government. First, NARA has clearly stated that “agency officials may create Federal records if they conduct agency business on their personal email accounts.”<sup>16</sup> And the Archivist’s own comments suggest that Mrs. Clinton did not abide by the regulations in place during her tenure.<sup>17</sup> Second, during 1995 hearings (regarding Whitewater), a Secret Service agent testified that then-First Lady Clinton directed the unlawful removal of records from the office of Deputy White House Counsel Vincent Foster, who had committed suicide.<sup>18</sup>

Moreover, on March 27, 2012, the State Department, under Mrs. Clinton’s stewardship, reported that it “is considered a leading agency in the Executive Branch in records management and received a score of 92 in the most recent records management program evaluation conducted by” NARA.<sup>19</sup> The report detailed that the State Department had replaced its outdated cable communication system with the State Messaging and Archive Retrieval Toolset (“SMART”), which “contains an email management component for capturing record email.”<sup>20</sup>

The evidence shows that Mrs. Clinton had access to and did use the official State Department SMART system, which logged her communications.<sup>21</sup> However, because Mrs. Clinton could access official emails via her personal system, we know that she had access to classified material on her personal computer, such as an agency communication discussing WikiLeaks (which contains portions that are classified).<sup>22</sup> And an email from Paul Elliott, a government relations employee at TransCanada, to Nora Toiv in the Secretary’s Office, shows that the office was able to circumvent the SMART system when needed.<sup>23</sup>

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<sup>16</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT & ARCHIVIST OF THE U.S., NAT’L ARCHIVES & RECORDS ADMIN., M-14-16, GUIDANCE ON MANAGING EMAIL (2014), available at <http://goo.gl/oDOIBS>.

<sup>17</sup> David Corn, *How Hillary May Have Violated Government Rules on Emails*, MOTHER JONES (Mar. 3, 2015), available at <http://goo.gl/0LakhW>.

<sup>18</sup> Angie Cannon, *Probe Turning More to Hillary Clinton D’amato Refused To Call Her to Testify. The Whitewater Committee Has Questions For Her Top Aides*, PHILLY.COM (June 26, 1995), <http://goo.gl/pWKnJd>.

<sup>19</sup> DEP’T OF STATE, SUMMARY CURRENT STATE OF RECORDS MANAGEMENT AT THE STATE DEPARTMENT at 1 (Mar. 27, 2012), available at <http://goo.gl/jXCvlu>.

<sup>20</sup> *Id.* at 2. SMART operates such that when “Department personnel send cables and record emails, a copy of the message is automatically sent to the Department’s official archive, which is an enterprise-wide electronic repository.” *Id.* at 5.

<sup>21</sup> Memorandum from USDEL SECRETARY on Secretary Clinton’s September 26, 2009, Meeting with Mexican Foreign Secretary Espinosa (Oct. 20, 2009), available at <http://goo.gl/pEy3Jm>; Memorandum from SECSTATE WASH DC to AMEMBASSY CAIRO on Secretary Clinton’s May 28, 2009 Meeting with Egyptian Democracy Activists (June 2009), available at <http://goo.gl/kgcu7m>; Memorandum from SECSTATE WASH DC to AMEMBASSY BAGHDAD on Secretary Clinton’s December 12, 2011 Meeting with Iraqi Foreign Minister Zebari (Dec. 2011), available at <http://goo.gl/15NTGy>.

<sup>22</sup> See Memorandum from SECSTATE WASH DC to ALL DIPLOMATIC AND CONSULAR POSTS on WikiLeaks Working Group Situation Report No. 14 (Dec. 2010), available at <http://goo.gl/ZeJIN2>.

<sup>23</sup> Email from Nora Toiv, Office of the Secretary, Dep’t of State to Paul Elliott, TransCanada, Corp. (Nov. 22, 2010), available at <http://goo.gl/6MGAZI>.

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Indeed, despite the agency's claims and its use of the SMART system, the Department of State Office of Inspector General ("DOS-OIG") has issued myriad reports exposing the agency's deficiencies in record keeping:

- In 2014, DOS-OIG concluded that the Bureau of Conflict and Stabilization Operations "does not have a uniform process for the storage and organization of files. Files and records are stored in several locations, including the bureau's network shared drive, SharePoint document libraries, *personal emails*, and hard drives."<sup>24</sup> The Bureau also permitted "[c]ontracting officer's representatives [to] keep emails and other materials on their *personal computers* instead of using shared drives or paper files."<sup>25</sup>
- In 2013, DOS-OIG concluded that in the Bureau of East Asian and Pacific Affairs, the "staff members store official records variously on *personal drives*, *email folders*, shared drives, and SharePoint. Bureau shared drive folders are not organized in accordance with Department guidance."<sup>26</sup>
- In 2012, DOS-OIG concluded that in the Bureau of Administration, Global Information Services, Office of Information Programs and Services, "SMART captured 61,156 of an estimated 15 million record emails in the system that should [have been] captured. The OIG team noted that confusion among Department employees and, in some cases, inadequate performance have resulted in an underuse of SMART's record email function."<sup>27</sup>

These illustrative examples show that far from being an exemplar of proper records management in the Executive Branch, the State Department has a persistent and dangerous pattern of failing to comply with federal records laws.

Pursuant to FOIA, Cause of Action hereby requests access to the following records, from the time period of January 21, 2009 to the present:

1. All records referring or relating to training regarding the Federal Records Act, Records Management Handbook, and/or the Foreign Affairs Manual, which Secretary Clinton attended or completed, or for which her attendance or completion was required.
2. All records referring or relating to all electronic devices (including but not limited to a computer, mobile communications device, or email server) used by Secretary Clinton, but in the control and possession of the U.S. Department of State.

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<sup>24</sup> DEP'T OF STATE, OFFICE INSPECTOR GEN., INSPECTION OF THE BUREAU OF CONFLICT AND STABILIZATION OPERATIONS at 20 (Mar. 2014), *available at* <http://goo.gl/pgWsYi> (emphasis added).

<sup>25</sup> *Id.* at 25 (emphasis added).

<sup>26</sup> DEP'T OF STATE, OFFICE INSPECTOR GEN., INSPECTION OF THE BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS at 26 (Sept. 2013), *available at* <http://goo.gl/JWrMNp> (emphasis added).

<sup>27</sup> DEP'T OF STATE, OFFICE INSPECTOR GEN., INSPECTION OF THE BUREAU OF ADMINISTRATION, GLOBAL INFORMATION SERVICES, OFFICE OF INFORMATION PROGRAMS AND SERVICES at 13 (Sept. 2012), *available at* <http://goo.gl/5BGRyT>

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3. All records referring or relating to the existence, installation, or removal of the SMART system on an electronic device (including but not limited to a computer, mobile communications device, or email server) used by, controlled by or in the exclusive possession of Secretary Clinton.
4. All documents relating to any waiver granted to Secretary Clinton regarding compliance with the SMART system.
5. All documents relating to any waiver granted to Secretary Clinton regarding compliance with the Federal Records Act.
6. All communications between Secretary Clinton (including her personal or professional delegates), or anyone in the Office of the Secretary and/or NARA concerning the use, transfer, disposition or preservation of Mrs. Clinton's electronic records on a server controlled or held by Secretary Clinton.
7. All communications between Secretary Clinton (including her personal or professional delegates), or anyone in the Office of the Secretary and/or NARA concerning the use, transfer, disposition or preservation of Mrs. Clinton's electronic records on a server controlled or held by the agency.

#### **Request for Expedited Processing**

Pursuant to FOIA and State Department regulations, Cause of Action hereby requests expedited processing of this request.<sup>28</sup> One of the bases that qualifies a request for expedited processing is when the "information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity."<sup>29</sup> A requester urgently needs information when the information relates to "a breaking news story of general public interest."<sup>30</sup>

Former-Secretary Hillary Clinton exclusively using a private email account to conduct her official State Department activities is "a breaking news story of general public interest."<sup>31</sup> This issue also relates to federal government activity, *i.e.*, the State Department's and/or Mrs. Clinton's potential failures to comply with the records management laws. Further, there are concerns that Mrs. Clinton may have failed to appropriately segregate classified national security information in her personal control from other information. Therefore, this request meets the test for expedited processing.

#### **Request for Public Interest Fee Waiver**

Cause of Action requests a public interest waiver of all applicable fees.<sup>32</sup> This provision provides that agencies shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public

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<sup>28</sup> See 5 U.S.C. § 552(a)(6)(E); 22 C.F.R. § 171.12(b).

<sup>29</sup> 22 C.F.R. § 171.12(b)(2).

<sup>30</sup> *Id.*, § 171.12(b)(2)(i).

<sup>31</sup> See generally articles cited herein.

<sup>32</sup> 5 U.S.C. § 552(a)(4)(A)(iii).



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understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>33</sup>

The requested records would unquestionably shed light on the “operations or activities of the government,” namely the steps the State Department did or did not take that resulted in Mrs. Clinton using her private email account for official government business in potential contravention of federal statutory law and agency manuals. This information is likely to contribute significantly to public understanding because, to date, the State Department’s role in allowing Mrs. Clinton’s behavior to go unchecked is not fully known.

Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Cause of Action’s staff has a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation.<sup>34</sup> 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. Further, Cause of Action, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used to educate the general public about the State Department’s treatment of private email accounts.

### **Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>35</sup> Specifically, Cause of Action 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.<sup>36</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.<sup>37</sup> These distinct works are distributed to the public through various media, including

<sup>33</sup> *Id.*; see also 22 C.F.R. § 171.17(a).

<sup>34</sup> See 22 C.F.R. § 171.17(a)(1)(iii) (providing that one factor is “whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public”).

<sup>35</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.15(c).

<sup>36</sup> Cause of Action notes that the agency’s definition of “representative of the news media” at 22 C.F.R. § 171.11(o) is out of date and in conflict with the current statutory definition.

<sup>37</sup> See, e.g., *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *Legal and Political Issues Raised by the Loss of Emails at the IRS*, CAUSE OF ACTION (July 8, 2014), available at <http://goo.gl/PaoEyi>; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; see also 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/GpPlwR>.

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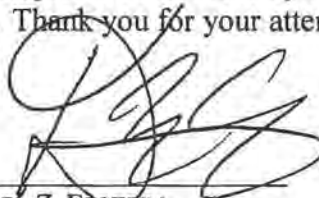
Cause of Action's website, which has been viewed just under 100,000 times in the past year alone.<sup>38</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email.

The statutory definition of a "representative of the news media" unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."<sup>39</sup> In light of the foregoing, numerous federal agencies – including the State Department as recently as December 2014 – have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.<sup>40</sup>

### **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 readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action requests 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 telephone at (202) 499-4232 or at [daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org). Thank you for your attention to this matter.



DANIEL Z. EPSTEIN  
EXECUTIVE DIRECTOR

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<sup>38</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>39</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>40</sup> *See, e.g.*, FOIA Request F-2015-106, Fed. Comm'n Comm'n (Dec. 12, 2014); Dep't of State, F-2014-21360 (Dec. 3, 2014); Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).



United States Department of State

Washington, D.C. 20520

APR 14 2015

Dear Requester,

APR 17 2015

Received  
CoA

RE: Use of Dos devices and SMART system by Secretary of State Clinton, and all communications regarding use, transfer or storage of her records on a server

This is in response to your request dated March 9th. We have assigned Case Control Number F-2015-04785 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

After consideration of your request for expedited processing under the Department's rules governing Freedom of Information Act requests, we have determined that your request does warrant expedited processing.

We have considered your request for a fee waiver. Based upon the information provided in your letter, your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you want to contact us, you may call our FOIA Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

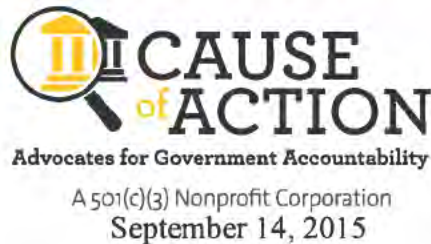
Requester Communications Branch  
Office of Information Programs & Services

Office of Information Programs and Services  
U.S. Department of State, SA-2  
Washington, DC 20522-8100  
Website: [www.foia.state.gov](http://www.foia.state.gov)

Inquiries:  
Phone: 1-202-261-8484  
FAX: 1-202-261-8579  
E-mail: FOIAStatus@state.gov

# EXHIBIT 42





**VIA EMAIL**

Terri Garner and/or FOIA Coordinator  
Clinton Presidential Library  
1200 President Clinton Avenue  
Little Rock, AR 72201  
clinton.library@nara.gov

**Re: Freedom of Information Act Request**

Dear Ms. Garner:

I write on behalf of Cause of Action, a strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. Pursuant to the Freedom of Information Act ("FOIA"), Cause of Action hereby requests access to the following records from the time period of January 1, 2012 until March 1, 2013:

1. All records, including but not limited to email communications, from Terri Garner (or the current Clinton Library Director) to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney (*e.g.*, David Kendall), any employee or contractor of an entity for which Mrs. Clinton serves on the board (*e.g.*, Clinton Foundation employee Huma Abedin), or any employee or contractor of the United States Department of State ("State Department") during Mrs. Clinton's tenure (*e.g.*, Cheryl Mills).
2. All records, including but not limited to email communications, from Terri Garner (or the current Clinton Library Director) to any employee of the National Archives and Records Administration ("NARA") referring or relating to the records of Hillary Clinton.

**Request for Expedited Processing**

Pursuant to FOIA and applicable regulations, Cause of Action hereby requests expedited processing of this request.<sup>1</sup> One of the bases that qualifies a request for expedited processing is when the "matter [is] of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity."<sup>2</sup> The exclusive use by former Secretary Clinton of a private email system to conduct her official State Department activities and the question of whether and to what extent she maintained possession, custody, or

<sup>1</sup> See 5 U.S.C. § 552(a)(6)(E); 36 C.F.R. § 1250.28.

<sup>2</sup> 36 C.F.R. § 1250.28(a)(4).

control of federal records during and after her tenure as Secretary of State is “a breaking news story of general public interest.”<sup>3</sup> In addition, this issue and the documents requested herein relate to the question of federal government integrity since they are of relevance to whether NARA, the State Department, and Mrs. Clinton’s properly complied with federal records management laws.

This request therefore meets the test for expedited processing. Appropriately, Cause of Action has been granted expedited processing for previous FOIA requests related to this subject.<sup>4</sup>

### **Request for Public Interest Fee Waiver**

Cause of Action requests a public interest waiver of all applicable fees.<sup>5</sup> Regulations provide that agencies shall furnish requested records 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.”<sup>6</sup>

The requested records would unquestionably shed light on the “operations or activities of the government,” namely the steps NARA, the State Department, and Mrs. Clinton did or did not take to preserve and handle Mrs. Clinton’s records as required by law upon her departure from the State Department. In addition, Cause of Action, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request and 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 a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation.<sup>7</sup> 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.<sup>8</sup>

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<sup>3</sup> See, e.g., Catherine Herridge & Pamela Browne, *Source: FBI ‘A-team’ leading ‘serious’ Clinton server probe, focusing on defense info*, FOXNEWS.COM (Aug. 28, 2015), <http://goo.gl/Cv5xEk>; Josh Gerstein, *Hillary Clinton email certification released*, POLITICO.COM (Aug. 10, 2015), <http://goo.gl/FHWxEn>; Massimo Calabresi, *The Legal Question Over Hillary Clinton’s Secret Emails*, TIME.COM (July 29, 2015), <http://goo.gl/Qqdcbl>; Josh Gerstein, *New lawsuit tests Hillary Clinton’s claim private email system was legal*, POLITICO.COM (July 8, 2015), <http://goo.gl/ATgHgB>.

<sup>4</sup> See Email from Joseph A. Scanlon, FOIA & Privacy Officer, Nat’l Archives & Records Admin. to Cause of Action (Mar. 30, 2015) (granting expedited processing on Request No. NGC15-159) (on file with Cause of Action); Letter from Requester Commc’ns Branch, Office of Info. Programs & Servs., Dep’t of State to Cause of Action (Apr. 14, 2015) (granting expedited processing on Request No. F-2015-4785) (on file with Cause of Action).

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>6</sup> *Id.*; 36 C.F.R. § 1250.56. See also *Cause of Action v. Fed. Trade Comm’n*, No. 13-5335, 2015 U.S. App. LEXIS 14934, at \*15-24 (D.C. Cir. Aug. 25, 2015) (discussing proper application of public-interest fee waiver test).

<sup>7</sup> See 36 C.F.R. § 1250.56(b)(4) (providing that one factor is the requestor’s “expertise or understanding of the requested records”).

<sup>8</sup> See *Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*15-24 (holding public interest advocacy organizations may partner with others to disseminate their works).

### **Request To Be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>9</sup> 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.<sup>10</sup> Cause of Action 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.<sup>11</sup> Although it is not required by the statute, Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.<sup>12</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed just under 100,000 times in the past year alone.<sup>13</sup> Cause of Action also disseminates news both directly to the public via Twitter, Facebook, news updates to subscribers via email, and indirectly through partnerships with other members of the news media.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>14</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>15</sup>

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<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 36 C.F.R. § 1250.54(b); 36 C.F.R. § 1250.3(q). *See also Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*24-44 (discussing proper application of “representative of the news media” test). Cause of Action notes that NARA’s definition of “representative of the news media” (36 C.F.R. § 1250.3(q)) is in conflict with the statutory definition and controlling case law. NARA 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. *Id.* at \*30 (“Congress, however, omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007.”).

<sup>10</sup> *Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*31.

<sup>11</sup> Cause of Action notes that the agency’s definition of “representative of the news media” at 36 C.F.R. § 1250.3(q) is out of date, and in conflict with both the statutory definition and controlling court precedent. *See Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*43 (“[T]here is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”).

<sup>12</sup> *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>.

<sup>13</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>14</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>15</sup> *See, e.g.,* 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 2015-0SEC-04996-F, Dep’t of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, U.S. Dep’t of Interior (Aug. 3, 2015); FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 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.

### **Record Preservation Requirement**

Cause of Action requests the disclosure officer responsible for the processing of this request issue an immediate hold on any and 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 Cause of Action's request and any possible administrative remedies for appeal have been exhausted.<sup>16</sup>

### **Litigation Hold**

To the extent that the Clinton Library disagrees with the Record Preservation Requirement above, Cause of Action requests that the disclosure officer issue an immediate hold on any and all records responsive to or potentially responsive to this request, as Cause of Action anticipates litigation in this matter arising under FOIA, the Administrative Procedure Act, or the Federal Records Act.<sup>17</sup>

### **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 readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action requests that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

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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); Dep't of State, F-2014-21360 (Dec. 3, 2014); Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 20150009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

<sup>16</sup> 36 C.F.R. § 1250.14 ("Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA."); *id.* § 1230.3(b) (stating "*Unlawful or accidental destruction (also called unauthorized destruction)* means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and 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."); *see also Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

<sup>17</sup> *See, e.g.*, 44 U.S.C. § 2911; 36 C.F.R. pt. 1236 (Electronic Records Management); *see generally* 44 U.S.C. §§ 2904, 3101, 3102, & 3105; OMB Circular A-130 (Management of Federal Information Resources).

If you have any questions about this request, please contact us by telephone at (202) 499-4232 or at [james.valvo@causeofaction.org](mailto:james.valvo@causeofaction.org). Thank you for your attention to this matter.

  
R. JAMES VALVO, III  
COUNSEL & SENIOR POLICY ADVISOR

**Ryan Mulvey**

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**From:** foia@nara.gov  
**Sent:** Wednesday, September 16, 2015 8:28 AM  
**To:** James Valvo  
**Subject:** FOIA Request NARA-NGC-2015-000613 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: NARA-NGC-2015-000613
- Requester Name: R. James Valvo, III
- Date Submitted: 09/14/2015
- Request Status: Submitted
- Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.



**Ryan Mulvey**

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**From:** foia@nara.gov  
**Sent:** Wednesday, September 23, 2015 11:56 AM  
**To:** James Valvo  
**Subject:** FOIA Expedited Processing Disposition Reached for NARA-NGC-2015-000613

Your request for Expedited Processing for the FOIA request NARA-NGC-2015-000613 has been granted. Additional details for this request are as follows:

- Request Created on: 09/14/2015
- Expedited Disposition Reason: N/A
- Request Long Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.

**Ryan Mulvey**

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**From:** foia@nara.gov  
**Sent:** Wednesday, September 23, 2015 11:57 AM  
**To:** James Valvo  
**Subject:** FOIA Fee Waiver Disposition Reached for NARA-NGC-2015-000613

Your request for Fee Waiver for the FOIA request NARA-NGC-2015-000613 has been fully granted. Additional details for this request are as follows:

- Request Created on: 09/14/2015
- Request Long Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.





October 15, 2015

**VIA E-MAIL**

Terri Garner and/or FOIA Coordinator  
Clinton Presidential Library  
1200 President Clinton Avenue  
Little Rock, AR 72201  
clinton.library@nara.gov

The Honorable David S. Ferriero  
Archivist of the United States  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001  
foia@nara.gov

**Re: Freedom of Information Act Request: NARA-NGC-2015-613**

Dear Ms. Garner and Mr. Ferriero:

On September 14, 2015, Cause of Action sent a Freedom of Information Act ("FOIA") request to the Clinton Presidential Library ("the Library") seeking, *inter alia*, communications between the Library and former Secretary of State Hillary Clinton during her tenure.<sup>1</sup> On September 16, 2015, the National Archives and Records Administration ("NARA") acknowledged receipt of the request and assigned it control number NARA-NGC-2015-613.<sup>2</sup> On September 23, 2015, NARA granted Cause of Action's request for expedited processing and a public interest fee waiver.<sup>3</sup> Cause of Action has not received any other communication or any production of documents from NARA or the Library.

Under FOIA, an agency is required to make a final determination within twenty business days of receipt of a FOIA request.<sup>4</sup> As of today, twenty business days have elapsed since NARA acknowledged Cause of Action's request and yet neither NARA nor the Library has made a final determination or produced any responsive documents.

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<sup>1</sup> Letter from Cause of Action to Terri Garner, Dir., Clinton Presidential Library (Sept. 14, 2015).

<sup>2</sup> Email from Nat'l Archives & Records Admin. to Cause of Action (Sept. 16, 2015).

<sup>3</sup> Email from Nat'l Archives & Records Admin. to Cause of Action (Sept. 23, 2015) (11:56 AM email granting expedited processing); Email from Nat'l Archives & Records Admin. to Cause of Action (Sept. 23, 2015) (11:57 AM email granting fee waiver).

<sup>4</sup> 5 U.S.C. § 552(a)(6)(A)(i).

October 15, 2015

Page 2

Further, NARA granted Cause of Action expedited processing but has failed to provide it. According to NARA's regulations, one of the bases that qualifies a request for expedited processing is when the "matter [is] of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity."<sup>5</sup> Cause of Action's FOIA request meets that standard and NARA appropriately granted the requested expedited processing.

Once an agency grants expedited processing it must move the request "to the front of the agency's processing queue"<sup>6</sup> and process it "as soon as practicable."<sup>7</sup> Agencies do not have "unfettered discretion to determine when to process expedited requests[.]"<sup>8</sup> An agency that "violates the twenty-day deadline applicable to standard FOIA requests presumptively also fails to process an expedited request 'as soon as practicable.' That is, a *prima facie* showing of agency delay exists when an agency fails to process an expedited FOIA request within the time limit applicable to standard FOIA requests."<sup>9</sup> This presumption is rebuttable by an agency showing of "credible evidence that disclosure within such time period is truly not practicable."<sup>10</sup> In none of NARA's communications with Cause of Action, however, has it invoked any of the "unusual circumstances" under which the statute allows for a delayed response,<sup>11</sup> nor has it or the Library justified the failure to make a final determination within the presumptive twenty-day period applicable to the expedited processing of FOIA requests. Therefore, NARA and the Library have failed to provide expedited processing and otherwise are in violation of their statutory obligations to make a final determination within twenty business days.

Please contact me as soon as possible to arrange for a final determination on this request and for the production of responsive records. My email address is james.valvo@causeofaction.org and my telephone number is (202) 417-3576. Thank you for your attention to this matter.



R. JAMES VALVO, III  
COUNSEL & SENIOR POLICY ADVISOR

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<sup>5</sup> 36 C.F.R. § 1250.28(a)(4).

<sup>6</sup> *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 259 (D.D.C. 2005).

<sup>7</sup> 5 U.S.C. § 552(a)(6)(E)(iii).

<sup>8</sup> *Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 38 (D.D.C. 2006).

<sup>9</sup> *Id.* at 39; *see also Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence*, 542 F. Supp. 2d 1181, 1186 (N.D. Cal. 2008); *Gerstein v. Cent. Intelligence Agency*, No. 06-4643, 2006 U.S. Dist. LEXIS 89883, \*9 (N.D. Cal. Nov. 29, 2006).

<sup>10</sup> *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 39.

<sup>11</sup> *See* 5 U.S.C. § 552(a)(6)(B)(iii)(III).



October 16, 2015

R. James Valvo, III  
Counsel & Senior Policy Advisor  
Cause of Action  
1919 Pennsylvania Ave., NW  
Suite 650  
Washington, DC

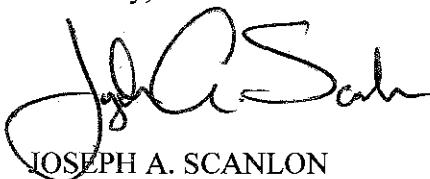
Re: NARA Case No. NGC15-364

Dear Mr. Valvo:

We have received your letter dated October 15, 2015, in connection with the above-referenced Freedom of Information (FOIA) request. Your September 14, 2015 request has been assigned the above internal FOIA case number in addition to the *FOIAonline* case number NARA-NGC-2015-000613.

As you are aware, we have granted your request for expedition. As a result, we do plan to give your request priority for processing more quickly than would otherwise occur in the absence of expedition. However, please be advised that your request has been placed behind two older FOIA requests for which we have previously granted expedited processing. We will process your request as soon as practicable when it rises to the top of our expedited request queue.

Sincerely,



JOSEPH A. SCANLON  
FOIA Officer  
Office of General Counsel  
(301) 837-0583  
[joseph.scanlon@nara.gov](mailto:joseph.scanlon@nara.gov)

NATIONAL ARCHIVES *and*  
RECORDS ADMINISTRATION

8601 ADELPHI ROAD  
COLLEGE PARK, MD 20740-6001

[www.archives.gov](http://www.archives.gov)

# EXHIBIT 43



September 22, 2015

**VIA EMAIL**

Honorable David S. Ferriero  
Archivist of the United States  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001  
foia@nara.gov

**Re: Freedom of Information Act Request**

Dear Hon. David S. Ferriero:

I write on behalf of Cause of Action, a strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.

On March 3, 2015, in response to news reports that former Secretary of State Hillary Clinton exclusively used a private email account and server to conduct official government business, the National Archives and Records Administration (“NARA”) sent a letter to the State Department requesting, *inter alia*, “a report as required and described in 36 CFR 1230.14” so that it could determine whether and to what degree federal records had been alienated.<sup>1</sup> On April 2, 2015, the State Department responded to NARA’s request with a letter and several attachments outlining the agency’s regulations on records management and how it handled senior officials’ emails.<sup>2</sup>

Pursuant to the Freedom of Information Act (“FOIA”), Cause of Action hereby requests access to the following records from the time period of December 1, 2014 until the present:

1. All records, including but not limited to email communications and letters, concerning NARA’s internal response to the State Department’s April 2 letter, and any further communications to or from the State Department relating to the subject matter of NARA’s March 3 letter and/or the State Department’s April 2 letter.

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<sup>1</sup> Letter from Paul M. Wester, Jr., Chief Records Officer for the U.S. Gov’t, Nat’l Archives & Records Admin. to Margaret P. Grafeld, Deputy Assistant Sec. for Global Info. Servs., Bureau of Admin., Dep’t of State (Mar. 3, 2015).

<sup>2</sup> Letter from Margaret P. Grafeld, Deputy Assistant Sec. for Global Info. Servs., Bureau of Admin., Dep’t of State to Paul M. Wester, Jr., Chief Records Officer for the U.S. Gov’t, Nat’l Archives & Records Admin. (Apr. 2, 2015).

2. All records reflecting NARA's efforts to secure the native electronic versions, with associated metadata, of the approximately 55,000 hard copy pages of emails that Mrs. Clinton provided to the State Department on December 5, 2014. This includes any efforts NARA made to have the State Department recover said electronic versions and any records reflecting the results of either NARA or the State Department's efforts to do so.
3. All records reflecting any information or update the State Department provided to NARA relating to whether the collection of documents Mrs. Clinton provided to the State Department is or may be incomplete. This item includes any emails, interim reports, or final reports of investigations, or State Department plans for corrective action.

### **Request for Expedited Processing**

Pursuant to FOIA and applicable regulations, Cause of Action hereby requests expedited processing of this request.<sup>3</sup> One of the bases that qualifies a request for expedited processing is when the "matter [is] of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity."<sup>4</sup> The exclusive use by former Secretary Clinton of a private email system to conduct her official State Department activities and the question of whether and to what extent she maintained possession, custody, or control of federal records during and after her tenure as Secretary of State is "a breaking news story of general public interest."<sup>5</sup> In addition, this issue and the documents requested herein relate to the question of federal government integrity since they are of relevance to whether NARA, the State Department, and Mrs. Clinton properly complied with federal records management laws and the steps taken after learning of the story to bring the State Department into compliance with the Federal Records Act and other applicable laws.

This request therefore meets the test for expedited processing. Appropriately, Cause of Action has been granted expedited processing for previous FOIA requests related to this subject.<sup>6</sup>

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<sup>3</sup> See 5 U.S.C. § 552(a)(6)(E); 36 C.F.R. § 1250.28.

<sup>4</sup> 36 C.F.R. § 1250.28(a)(4).

<sup>5</sup> See, e.g., Catherine Herridge & Pamela Browne, *Source: FBI 'A-team' leading 'serious' Clinton server probe, focusing on defense info*, FOXNEWS.COM (Aug. 28, 2015), <http://goo.gl/Cv5xEk>; Josh Gerstein, *Hillary Clinton email certification released*, POLITICO.COM (Aug. 10, 2015), <http://goo.gl/FHWxEn>; Massimo Calabresi, *The Legal Question Over Hillary Clinton's Secret Emails*, TIME.COM (July 29, 2015), <http://goo.gl/Qqdcbl>; Josh Gerstein, *New lawsuit tests Hillary Clinton's claim private email system was legal*, POLITICO.COM (July 8, 2015), <http://goo.gl/ATgHgB>.

<sup>6</sup> See Email from Joseph A. Scanlon, FOIA & Privacy Officer, Nat'l Archives & Records Admin. to Cause of Action (Mar. 30, 2015) (granting expedited processing on Request No. NGC15-159) (on file with Cause of Action); Letter from Requester Commc'ns Branch, Office of Info. Programs & Servs., Dep't of State to Cause of Action (Apr. 14, 2015) (granting expedited processing on Request No. F-2015-4785) (on file with Cause of Action).

### **Request for Public Interest Fee Waiver**

Cause of Action requests a public interest waiver of all applicable fees.<sup>7</sup> Regulations provide that agencies shall furnish requested records 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.”<sup>8</sup>

The requested records would unquestionably shed light on the “operations or activities of the government,” namely the steps NARA, the State Department, and Mrs. Clinton did or did not take to preserve and handle Mrs. Clinton’s records as required by law upon her departure from the State Department, and the steps taken after the story broke to bring the State Department into compliance with its statutory obligations. In addition, Cause of Action, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request and has both the intent and ability to make the results of this request available to a “reasonably broad public audience interested in the subject” through various media.<sup>9</sup> Its staff has a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation.<sup>10</sup> 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, social media platforms, memoranda, reports, or press releases.<sup>11</sup>

### **Request To Be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>12</sup> 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.<sup>13</sup> Cause of Action satisfies this test because it gathers information of potential interest to a segment of the public,

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<sup>7</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>8</sup> *Id.*; 36 C.F.R. § 1250.56. See also *Cause of Action v. Fed. Trade Comm’n*, No. 13-5335, 2015 U.S. App. LEXIS 14934, at \*14-24 (D.C. Cir. Aug. 25, 2015) (discussing proper application of public-interest fee waiver test).

<sup>9</sup> See *Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*18 (citing *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994)).

<sup>10</sup> See 36 C.F.R. § 1250.56(b)(4) (providing that one factor is the requestor’s “expertise or understanding of the requested records”).

<sup>11</sup> See *Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*43-44 (holding public interest advocacy organizations may partner with others to disseminate their works).

<sup>12</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 36 C.F.R. §§ 1250.54(b), 1250.3(q). See also *Cause of Action*, 2015 U.S. App. LEXIS 14934, at \*24-44 (discussing proper application of “representative of the news media” test). Cause of Action notes that NARA’s definition of “representative of the news media” (36 C.F.R. § 1250.3(q)) is in conflict with the statutory definition and controlling case law. NARA 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. *Id.* at \*42-43 (“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.”).

<sup>13</sup> *Id.* at \*30.

uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.<sup>14</sup> Although it is not required by the statute, Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.<sup>15</sup> These distinct works are distributed to the public through various media, including Cause of Action's website, which has been viewed just under 100,000 times in the past year alone.<sup>16</sup> Cause of Action also disseminates news both directly to the public via Twitter, Facebook, news updates to subscribers via email, and indirectly through partnerships with other members of the news media.

The statutory definition of a "representative of the news media" unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."<sup>17</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.<sup>18</sup>

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<sup>15</sup> 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>.

<sup>16</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>17</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>18</sup> See, e.g., FOIA Request 2015-HQFO-691, 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, U.S. Dep't of Interior (Aug. 3, 2015); FOIA Request No. 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request No. 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); Dep't of State, F-2014-21360 (Dec. 3, 2014); Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).



### **Record Preservation Requirement**

Cause of Action requests 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 Cause of Action's request and any administrative remedies for appeal have been exhausted.<sup>19</sup>


### **Litigation Hold**

To the extent that NARA disagrees with the Record Preservation Requirement above, Cause of Action requests the disclosure officer issue an immediate hold on all records responsive to or potentially responsive to this request, as Cause of Action anticipates litigation in this matter arising under FOIA, the Administrative Procedure Act, or the Federal Records Act.<sup>20</sup>

### **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 readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of records can be produced more readily, Cause of Action requests 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 us by telephone at (202) 499-4232 or by email at james.valvo@causeofaction.org. Thank you for your attention to this matter.

  
\_\_\_\_\_  
R. JAMES VALVO, III  
COUNSEL & SENIOR POLICY ADVISOR

<sup>19</sup> 36 C.F.R. § 1250.14 (“Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); *id.* § 1230.3(b) (stating “*Unlawful or accidental destruction (also called unauthorized destruction)* means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and 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.”); *see also Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

<sup>20</sup> *See, e.g.*, 44 U.S.C. § 2911; 36 C.F.R. pt. 1236 (Electronic Records Management); *see generally* 44 U.S.C. §§ 2904, 3101, 3102, & 3105; OMB Circular A-130 (Management of Federal Information Resources).

**Ryan Mulvey**

---

**From:** Joseph Scanlon <joseph.scanlon@nara.gov>  
**Sent:** Monday, October 05, 2015 11:03 AM  
**To:** James Valvo  
**Cc:** foia@nara.gov; Lee Steven  
**Subject:** Re: Freedom of Information Act Request

Dear Mr. Valvo,

I apologize for the delay in acknowledging your recent FOIA request of September 22, 2015. I have logged your request into the internal tracking system (NGC16-001) and FOIAonline (NARA-NGC-2015-000649). I am granting your request for expedited review and fee waiver.

Kind regards,

Joe Scanlon

On Thu, Oct 1, 2015 at 5:15 PM, James Valvo <[james.valvo@causeofaction.org](mailto:james.valvo@causeofaction.org)> wrote:

NARA,

Will you please confirm receipt of this FOIA request. On September 22, 2015, Cause of Action requested expedited processing for the attached request. As you know, NARA is required to make a determination within ten calendar days whether it will grant expedited processing. Those ten days will expire tomorrow.

Thank you in advance for the update,

James Valvo

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**From:** James Valvo  
**Sent:** Tuesday, September 22, 2015 4:15 PM  
**To:** '[foia@nara.gov](mailto:foia@nara.gov)'  
**Cc:** Lee Steven  
**Subject:** Freedom of Information Act Request

NARA,

Please see attached a request for access to documents under the Freedom of Information Act.

Thank you,

James Valvo | Counsel & Senior Policy Advisor | Cause of Action  
1919 Pennsylvania Ave NW, Suite 650  
Washington, D.C. 20006  
[james.valvo@causeofaction.org](mailto:james.valvo@causeofaction.org)  
[202-417-3576](tel:202-417-3576)

Click [here](#) to subscribe to our alerts!



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You received this message because you are subscribed to the Google Groups "FOIA" group.

To unsubscribe from this group and stop receiving emails from it, send an email to

[FOIA+unsubscribe@nara.gov](mailto:FOIA+unsubscribe@nara.gov).

For more options, visit <https://groups.google.com/a/nara.gov/d/optout>.

--

Joseph A. Scanlon  
FOIA & Privacy Act Officer  
National Archives and Records Administration  
Office of General Counsel  
(301) 837-0583

**Ryan Mulvey**

---

**From:** Wanda Williams <wanda.williams@nara.gov>  
**Sent:** Thursday, October 29, 2015 5:29 PM  
**To:** James Valvo  
**Cc:** Scanlon, Joseph; Alina Semo  
**Subject:** NARA FOIA September 22,2015 NGC16-001 and NARA-NGC-2015-000648

Dear Mr. Valvo:

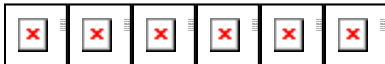
We are writing in response to your September 22, 2015 FOIA request. As we advised you previously, we have assigned tracking numbers NGC16-001 and NARA-NGC-2015-000648.

As as status update, we're still gathering information in response to your September 22, 2015 request. We apologize for the delay in our response, which was caused by the need to consult with several other National Archives and Records Administration departments.

Please don't hesitate to contact me if you have any questions or concerns regarding your FOIA request.

Thank you,

**Wanda T. Williams**  
**Deputy Freedom of Information Act Officer/Archivist**  
**National Archives and Records Administration**  
**Office of General Counsel**  
**College Park, Maryland**  
**301-837-0773 work**  
[wanda.williams@nara.gov](mailto:wanda.williams@nara.gov)



**Ryan Mulvey**

---

**From:** Joseph Scanlon <joseph.scanlon@nara.gov>  
**Sent:** Monday, October 05, 2015 11:16 AM  
**To:** James Valvo  
**Subject:** Re: FOIA Request NARA-NGC-2015-000649 Submitted

Dear Mr. Valvo:

It appears that your FOIA request of September 22, 2015 was already logged to FOIAonline in by the Deputy FOIA Officer and assigned the case number NARA-NGC-2015-000648. I will be removing the case from FOIAonline (NARA-NGC-2015-000649) as a duplicate. Part of that process requires me to nullify the requests for expedited review and fee waiver, and the only way to do that will be to consider them "removed by requester. Your fee waiver and expedited processing requests are still granted, and the internal case number for your request is still NGC16-001.

I am sorry for the confusion in this case.

Kind reagrds,

Joe Scanlon

On Mon, Oct 5, 2015 at 10:59 AM, James Valvo <[james.valvo@causeofaction.org](mailto:james.valvo@causeofaction.org)> wrote:

NARA,

This is now the third different confirmation email and different control number you have assigned to this request. You have assigned this request: NARA-NGC-2015-000647, 48, and 49. Additionally, you granted the request for expedited processing for number 48.

**From:** [foia@nara.gov](mailto:foia@nara.gov) [mailto:[foia@nara.gov](mailto:foia@nara.gov)]  
**Sent:** Monday, October 05, 2015 10:56 AM  
**To:** James Valvo  
**Subject:** FOIA Request NARA-NGC-2015-000649 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: NARA-NGC-2015-000649
- Requester Name: R. James Valvo, III
- Date Submitted: 09/22/2015
- Request Status: Submitted
- Description: 1. All records, including but not limited to email communications and letters, concerning NARA's internal response to the State Department's April 2 letter, and any further communications to or from the State Department relating to the subject matter of NARA's March 3 letter and/or the State Department's April 2 letter. 2. All records reflecting NARA's efforts to secure the native electronic versions, with associated metadata, of the approximately 55,000 hard copy pages of emails that Mrs. Clinton provided to the State Department on December 5, 2014. This includes any efforts NARA made to have the State Department recover said electronic versions and any records reflecting the results of either NARA or the State Department's efforts to do so. 3. All records reflecting any information or update the State Department provided to NARA relating to whether the collection of documents Mrs. Clinton provided to the State Department is or may be incomplete. This item includes any emails, interim reports, or final reports of investigations, or State Department plans for corrective action.

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You received this message because you are subscribed to the Google Groups "FOIA" group.  
To unsubscribe from this group and stop receiving emails from it, send an email to  
[FOIA+unsubscribe@nara.gov](mailto:FOIA+unsubscribe@nara.gov).

For more options, visit <https://groups.google.com/a/nara.gov/d/optout>.

--

Joseph A. Scanlon  
FOIA & Privacy Act Officer  
National Archives and Records Administration  
Office of General Counsel  
(301) 837-0583

# EXHIBIT

## 44



July 29, 2015

**VIA CERTIFIED MAIL**

Ms. Ingrid A. Kolb  
U.S. Department of Energy  
FOIA Requester Service Center  
1000 Independence Avenue, SW  
Mail Stop MA-90  
Washington, D.C. 20585

**Re: Freedom of Information Act Request**

Dear Director Kolb:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretary of Energy Ernest Moniz related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of Energy Ernest Moniz related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Congressional and Intergovernmental Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).



**Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 10 C.F.R. § 1004.2(m).

<sup>3</sup> Cause of Action notes that DOE’s definition of “representative of the news media” (10 C.F.R. § 1004.2(m)) is in conflict with the statutory definition. DOE 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

<sup>5</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

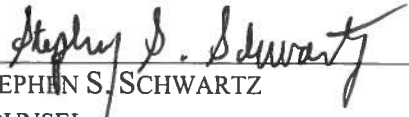
**Record Production and Contact Information**

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action 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 Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 45



July 29, 2015

**VIA E-MAIL**

Ms. Clarice Julka  
U.S. Department of the Interior  
Office of the Secretary  
MS-7328, MIB  
1849 C Street, NW  
Washington, D.C. 20240  
E-mail: os\_foia@ios.doi.gov

**Re: Freedom of Information Act Request**

Dear Ms. Julka:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretary of the Interior Sally Jewell related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of the Interior Sally Jewell related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Congressional and Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

### **Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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. Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>3</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>4</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>5</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>6</sup>

### **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 readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.3(r).

<sup>3</sup> 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>.

<sup>4</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

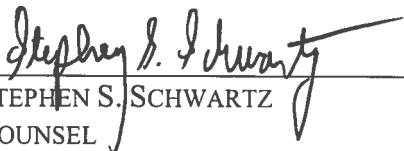
<sup>6</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015); FOIA Request HQ-2015-00248, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

records can be produced more readily, Cause of Action 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 Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
\_\_\_\_\_  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT

## 46



July 29, 2015

**VIA CERTIFIED MAIL**

Ms. Laurie Day  
U.S. Department of Justice  
Office of Information Policy  
1425 New York Avenue, NW, Suite 11050  
Washington, D.C. 20530-0001

**Re: Freedom of Information Act Request**

Dear Ms. Day:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Attorneys General Loretta Lynch and Eric Holder related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Attorneys General Loretta Lynch and Eric Holder related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Attorney General or the Office of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

[www.CauseOfAction.org](http://www.CauseOfAction.org)

Ph: 202.499.4232



**Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.11(b)(6).

<sup>3</sup> Cause of Action notes that DOJ’s definition of “representative of the news media” (28 C.F.R. § 16.11(b)(6)) is in conflict with the statutory definition. DOJ 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

<sup>5</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).


**Record Production and Contact Information**

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If you have any questions about this request, please contact Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 47



July 29, 2015

**VIA E-MAIL**

Ms. Kathy Ray  
U.S. Department of Transportation  
Office of the Secretary  
1200 New Jersey Avenue, SE, W94-122  
Washington, D.C. 20590  
E-mail: [ost.foia@dot.gov](mailto:ost.foia@dot.gov)

**Re: Freedom of Information Act Request**

Dear Ms. Ray:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretary of Transportation Anthony Foxx related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of Transportation Anthony Foxx related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Government Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

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The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>5</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>6</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 49 C.F.R. § 7.2.

<sup>3</sup> 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>.

<sup>4</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

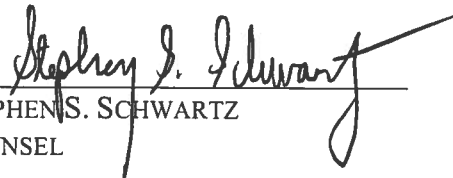
<sup>6</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015); FOIA Request HQ-2015-00248, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

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**CAUSE OF ACTION INSTITUTE**

BY:

  
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STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 48



July 29, 2015

**VIA CERTIFIED MAIL**

The Honorable Brodi Fontenot  
ATTN: FOIA Request  
U.S. Department of the Treasury  
Washington, D.C. 20220

**Re: Freedom of Information Act Request**

Dear Assistant Secretary Fontenot:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), Cause of Action requests access to the following:

1. All travel records of Secretary of the Treasury Jacob Lew related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of the Treasury Jacob Lew related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama’s congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden’s congressional staff, from January 3, 2005 to November 3, 2008.

**Request to be Classified as a Representative of the News Media**

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 31 C.F.R. § 1.5(b)(2)(iv).



the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action's website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

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<sup>3</sup> Cause of Action notes that the Department of the Treasury's definition of "representative of the news media" (31 C.F.R. § 1.5(b)(2)(iv)) is in conflict with the statutory definition. Treasury 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

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<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

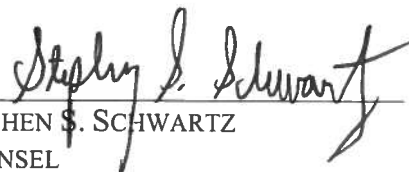
<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep't of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 8, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, 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); Dep't of State, F-2014-21360 (Dec. 3, 2014); Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

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**CAUSE OF ACTION INSTITUTE**

BY:

  
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STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 49



July 29, 2015

**VIA E-MAIL**

Mr. Michael Marquis  
U.S. Department of Health and Human Services  
Departmental FOIA Office  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, D.C. 20201  
E-mail: FOIARequest@hhs.gov

**Re: Freedom of Information Act Request**

Dear Mr. Marquis:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretaries of Health and Human Services Sylvia Burwell and Kathleen Sebelius related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretaries of Health and Human Services Sylvia Burwell and Kathleen Sebelius related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of the Assistant Secretary for Legislation (including the Congressional Liaison Office) from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 45 C.F.R. § 5.5.

<sup>3</sup> Cause of Action notes that HHS’s definition of “representative of the news media” (45 C.F.R. § 5.5) is in conflict with the statutory definition. HHS 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

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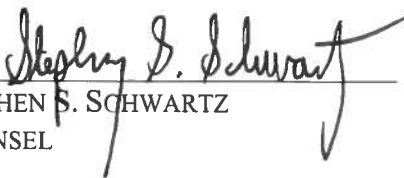
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If you have any questions about this request, please contact Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 50



July 29, 2015

**VIA CERTIFIED MAIL**

Mr. David Tillotson, III  
U.S. Department of Defense  
OSD/JS FOIA Requester Service Center  
Office of Freedom of Information  
1155 Defense Pentagon  
Washington, D.C. 20301-1155

**Re: Freedom of Information Act Request**

Dear Mr. Tillotson:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretaries of Defense Ashton Carter and Charles Hagel related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretaries of Defense Ashton Carter and Charles Hagel related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Assistant Secretary of Defense for Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).



**Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7)(i).

<sup>3</sup> Cause of Action notes that DOD’s definition of “representative of the news media” (32 C.F.R. § 286.28(e)(7)(i)) is in conflict with the statutory definition. DOD 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

<sup>5</sup> Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

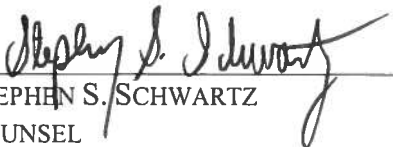
**Record Production and Contact Information**

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**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT

## 51



July 29, 2015

**VIA CERTIFIED MAIL**

Ms. Karen Neuman  
U.S. Department of Homeland Security  
The Privacy Office  
245 Murray Lane, SW  
STOP-0655  
Washington, D.C. 20528-0655

**Re: Freedom of Information Act Request**

Dear Ms. Neuman:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), Cause of Action requests access to the following:

1. All travel records of Secretary of Homeland Security Jeh Johnson related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary Homeland Security Jeh Johnson related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama’s congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden’s congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

**Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(b)(6).

<sup>3</sup> Cause of Action notes that DHS’s definition of “representative of the news media” (6 C.F.R. § 5.11(b)(6)) is in conflict with the statutory definition. DHS 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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/GpPlwR>.

<sup>5</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).


**Record Production and Contact Information**

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**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT

## 52



July 29, 2015

**VIA CERTIFIED MAIL**

The Honorable Joyce A. Barr  
Office of Information Programs and Services  
A/GIS/IPS/RL  
U.S. Department of State  
Washington, D.C. 20522-8100

**Re: Freedom of Information Act Request**

Dear Assistant Secretary Barr:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Secretary of State John Kerry related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of State John Kerry related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Bureau of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).



### Request to be Classified as a Representative of the News Media

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.11(o).

<sup>3</sup> Cause of Action notes that the Department of State’s definition of “representative of the news media” (22 C.F.R. § 171.11(o)) is in conflict with the statutory definition. The Department 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

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<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

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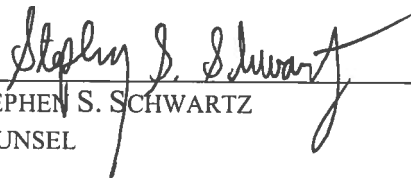
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**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT

## 53



July 29, 2015

**VIA E-MAIL**

Mr. Larry Gottesman  
U.S. Environmental Protection Agency  
National Freedom of Information Program  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, D.C. 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**Re: Freedom of Information Act Request**

Dear Director Gottesman:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Administrator Gina McCarthy related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Administrator Gina McCarthy related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Administrator or the Office of Congressional and Intergovernmental Relations from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 40 C.F.R. § 2.107(b)(6).

<sup>3</sup> Cause of Action notes that EPA’s definition of “representative of the news media” (40 C.F.R. § 2.107(b)(6)) is in conflict with the statutory definition. EPA 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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/GpPlwR>.

<sup>5</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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. Comm’n Comm’n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep’t of Energy (Dec. 4, 2014); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

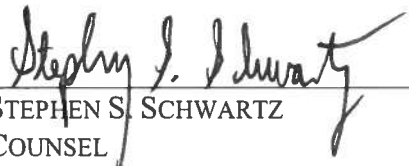
**Record Production and Contact Information**

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action 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 Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
\_\_\_\_\_  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT

## 54



July 29, 2015

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
IRS FOIA Request  
HQ FOIA  
Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

**Re: Freedom of Information Act Request**

Dear Ms. O'Reilly:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action requests access to the following:

1. All travel records of Commissioner John Koskinen related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Commissioner John Koskinen related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Commissioner or the Office of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).



### **Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>2</sup> Specifically, Cause of Action 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.<sup>3</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and Congressional testimony and statements for the record.<sup>4</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>5</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>6</sup> In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 26 C.F.R. § 601.702(f)(3)(ii)(B).

<sup>3</sup> Cause of Action notes that the IRS’s definition of “representative of the news media” (26 C.F.R. § 601.702(f)(3)(ii)(B)) is in conflict with the statutory definition. The IRS 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. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>4</sup> 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>.

<sup>5</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>6</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>7</sup> See, e.g., FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 145-FOI-13785, Dep’t of Justice (June 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 8, 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); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).

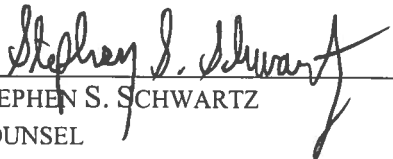
**Record Production and Contact Information**

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If you have any questions about this request, please contact Stephen Schwartz or Ryan Mulvey by telephone at (202) 499-4232, or by e-mail at [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org) or [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

**CAUSE OF ACTION INSTITUTE**

BY:

  
STEPHEN S. SCHWARTZ  
COUNSEL

# EXHIBIT 55



**Department of Energy**  
Washington, DC 20585

August 7, 2015

Mr. Stephen Schwartz  
Cause of Action  
1919 Pennsylvania Ave., NW  
Suite 650  
Washington, DC 20006

Re: HQ-2015-01689-F

Dear Mr. Bogardus:

This is an interim response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested the following:

1. All travel records of Secretary of Energy Ernest Moniz related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.
2. All work calendars of Secretary of Energy Ernest Moniz related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present.
3. All records of correspondence received by the Office of the Secretary or the Office of Congressional and Intergovernmental Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

I have assigned your request to DOE's Office of the Executive Secretariat (ES) and Office of Congressional & Intergovernmental Affairs (CI) to conduct a search of their files for responsive documents. Upon completion of the search and review of any records located, you will be provided a response.

For purposes of assessment of any fees, you have been categorized under the DOE regulation that implements the FOIA at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(3), as a "news media" requestor. Requestors in this category are charged fees for duplication only and are provided 100 pages at no cost. On August 6, 2015, you sent an e-mail to Ms. Yordanos Woldai, of this office, and agreed to pay duplication costs associated with the processing of your request.

Please refer to the above referenced number in any communications with the DOE about the



request. If you have questions about the processing of the request or this letter, please contact Ms. Yordanos Woldai in this office at MA-90/Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, or (202) 287-6686.

I appreciate the opportunity to assist you with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alex C. Morris', with a stylized flourish at the end.

Alexander C. Morris  
FOIA Officer  
Office of Information Resources

# EXHIBIT

## 56



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, DC 20240

IN REPLY REFER TO:  
7202.4-OS-2015-00419

August 3, 2015

Via email: [stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org)

Stephen S. Schwartz  
Cause of Action  
1919 Pennsylvania Ave NW, Ste. 650  
Washington, DC 20006

Dear Mr. Schwartz:

On July 29, 2015, you filed a Freedom of Information Act (FOIA) request seeking the following:

- 1) All travel records of Secretary of the Interior Sally Jewell related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to present.
- 2) All work calendars of Secretary of the Interior Sally Jewell related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to present.
- 3) All records of correspondence received by the Office of the Secretary or the Office of Congressional and Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

Your request was received in the Office of the Secretary FOIA office on July 29, 2015, and assigned control number **OS-2015-00419**. Please cite this number in any future communications with our office regarding your request.

We have classified your request as a "media use request." As a "media use requester" you will not be charged for our search or review costs and are entitled to up to 100 pages of photocopies (or an equivalent volume) for free. See 43 C.F.R. § 2.39. As a matter of policy, however, the Department of the Interior does not bill requesters for FOIA fees incurred in processing requests when their fees do not exceed \$50.00 because the cost of collection would be greater than the fee collected. See 43 C.F.R. § 2.49(a)(1).

You have asked for a waiver of all FOIA processing fees. Please be advised that we are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver.

Mr. Stephen Schwartz

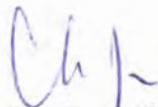
2

You have asked for copies of agency records. According to our regulations, you may choose the format of disclosure for such records. Unless you specify otherwise, the Office of the Secretary will provide copies of responsive records on a CD-ROM disk as scanned PDF images when the responsive records exceed 50 pages.

Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the "Complex" processing track. See 43 C.F.R. § 2.15.

In the interim, if you have any questions regarding the status of your request, or any of the issues discussed in this letter, you may contact Cindy Sweeney by phone at 202-513-0765, by fax at 202-219-2374, by e-mail at [os\\_foia@ios.doi.gov](mailto:os_foia@ios.doi.gov) or by mail at U.S. Department of the Interior, 1849 C St, N.W., MS-7328 MIB, Washington, D.C. 20240.

Sincerely,



Clarice Julka  
Office of the Secretary  
FOIA Officer



# EXHIBIT

## 57



**U.S. Department of Justice**  
**Office of Information Policy**  
Suite 11050  
1425 New York Avenue, NW  
Washington, DC 20530-0001

*Telephone: (202) 514-3642*

August 26, 2015

Mr. Stephen S. Schwartz  
Cause of Action  
Suite 650  
1919 Pennsylvania Avenue, NW  
Washington, DC 20006  
[stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org)

AG/15-01563 (F)  
Re: OLA/15-05164 (F)  
LAD:CJOK

Dear Mr. Schwartz:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated July 29, 2015, and received in this Office on August 3, 2015, in which you requested: (1) all records for Attorney Generals Eric Holder and Loretta Lynch dating from January 1, 2014 through the present, pertaining to travel on Air Force One, travel with the President or Vice President, and travel to or from meetings with the President or Vice President outside of Washington, DC; (2) all work calendars for Attorney Generals Eric Holder and Loretta Lynch dating from January 1, 2014 through the present, pertaining to meetings which occurred at the White House, or included representatives of the Executive Office of the President; (3) all correspondence received by the Offices of the Attorney General and Legislative Affairs, dating from January 3, 2005 through November 3, 2008, from Senator Barack Obama or any member of his congressional staff or Senator Joseph Biden or any members of his congressional staff.

This response is made on behalf of the Offices of the Attorney General and Legislative Affairs.

The records you seek require a search in other Offices, and so your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. The time needed to complete our processing of your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the complex track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

-2-

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

Sincerely,

A handwritten signature in black ink, appearing to read "C. O'Keefe". The signature is fluid and cursive, with the first letter of the last name being a large, stylized "K".

Courtney O'Keefe  
Law Clerk

# EXHIBIT 58



**U.S. Department  
of Transportation**

**General Counsel**

1200 New Jersey Ave., S.E.  
Washington, DC 20590

Office of the Secretary  
of Transportation

July 31, 2015

Stephen S. Schwartz  
Cause of Action  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, DC 20006

File Nos. 2015-328

Dear Mr. Schwartz:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of all travel records of Secretary Foxx related to travel on Air Force One with the President or to/or from meeting with the President or Vice President outside of DC from January 1, 2014 to the present. (See Request)

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

*Darlene A. Wallace*

Darlene A. Wallace  
Program Assistant  
FOIA Division

# EXHIBIT

## 59



**DEPARTMENT OF THE TREASURY**  
WASHINGTON, D.C. 20220

August 18, 2015

RE: 2015-08-042

Mr. Stephen S. Schwartz  
Cause of Action  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, DC 20006

Dear Mr. Schwartz:

This letter acknowledges the receipt of your Freedom of Information Act (FOIA) request to the U.S. Department of the Treasury, dated July 29, 2015. You have requested access to the following records: 1. Travel records of Secretary Lew to and from meetings with President or Vice President outside of Washington, DC from January 1, 2015 to the present. 2. Work calendars of Secretary Lew related to meetings that occurred in the Executive Office of the President during that same period of time. 3. Records of correspondence received by the Office of the Secretary or Legislative Affairs from Senator Barack Obama or any member of Obama's congressional staff or Senator Joseph Biden or any member of his congressional staff from January 3, 2005 to November 3, 2008.

I have initiated a search within the Departmental Offices (DO) for records that would be Responsive to your request. Every effort will be made in the Departmental Offices to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search for and review of the information requested due to the timeframe of the records stipulated in the request and the consultation required between two or more program offices. This will require an additional processing extension of ten (10) days.

If replying to this office, please make reference to the identification number at the top of this letter and either fax your response to 202-622-3895, or mail it to:

FOIA/PA Request  
FOIA and Transparency  
Department of the Treasury  
Washington, DC 20220

Sincerely,

Cawana Pearson for Ryan Law  
Director, FOIA and Transparency

gk

# EXHIBIT 60





DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs  
Washington, D.C. 20201

Refer to: Request Number **2015-00914-FOIA-OS**

**July 29, 2015**

Mr. Ryan Mulvey  
Cause of Action  
1919 Pennsylvania Avenue N.W.  
Suite 650  
Washington, DC 20006

Dear Mr. Mulvey:

This acknowledges receipt of your July 29, 2015 Freedom of Information Act (FOIA) request submitted to the Department of Health and Human Services FOI/Privacy Acts Division concerning **"all travel records of HHS Secretaries Sylvia Burwell and Kathleen Sebelius related to travel on Air Force One with the President or vice President to/from meetings outside of Washington, D.C. from January 1, 2014 to present; all work calendars HHS Secretaries Sylvia Burwell and Kathleen Sebelius related to meetings at White House/Representatives of the Executive Office of the President from January 1, 2014 to the present; all records of correspondence received by the Office of the Secretary or Assistant Secretary for Legislation from Senator Barack Obama and/or Joseph Biden and any member of their congressional staff from January 3, 2005 to November 3, 2008"**. We received your request on **July 29, 2015**.

We have initiated a search to locate records falling within the scope of your request. If our searching units advise us that you have requested a voluminous amount of records that require extensive search and examination, my staff will contact you shortly to discuss your willingness to modify your request.

The FOIA requires that we respond to your request within 20 working days of its receipt in this office. Please note the following unusual and exceptional circumstances that will impact our response time: (1) we will need to search for and collect records from components and/or field offices external to this office; and (2) because we receive a very heavy volume of FOIA requests, we will process your request in line with our established policy of "first in, first out" case processing. If either of these circumstances prevents our office from responding within the 20 working day timeframe, we will utilize a 10 working day extension to process your request, as permitted pursuant to the FOIA. This policy is consistent with court decisions regarding FOIA's time limits.

The law authorizes us to collect fees for responding to FOIA requests and assume that you are willing to pay any applicable fees for processing this request unless you have stated otherwise. If at any time the fee for processing your request is estimated to exceed \$250.00, we will send you an invoice for the estimated fee and suspend further processing until payment of the invoiced amount is received. If the estimated processing fee does not exceed \$250.00, we will send you an invoice for the actual fee with our response.

Please note the following:

If you believe that we should expedite the processing of your request because the requested records are needed in light of a compelling need; i.e., an imminent threat to the life and safety of an individual; an urgency to inform the public concerning government activity (provided you are a member of the media); a deadline in litigation; a deadline for commenting on proposed regulations; or other urgent matters, you must ask for expedited processing in writing and provide to this office as much relevant information as possible. In line with 5 U.S.C. § 552(a)(6)(E)(vi), you must demonstrate the compelling need in a statement certified to be true and correct to the best of your knowledge and belief. Attach any supporting documentation to your statement, including a court scheduling order if your request is based upon a litigation deadline. (Fax supporting documentation to the FOIA/PA Division at (202) 690-8320).

If your request seeks a waiver or reduction of the fees that we would customarily charge for furnishing agency records and your request does not contain sufficient information to enable us to determine whether a waiver or reduction of fees is warranted, you should provide such information to this office within 10 working days of receipt of this letter. In line with 45 C.F.R. § 5.45, such information must include a detailed explanation of how disclosure to you: (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. I especially need to know how you intend to disseminate the information to the public.

When submitting this additional information, please refer to the case number listed at the top left-hand corner of this letter, and send it to:

FOI/Privacy Acts Division  
U.S. Department of Health and Human Services  
Mary E. Switzer Building  
200 Independence Avenue S.W.  
Room 729H  
Washington, DC 20201

Any questions regarding the status of this request should be directed to our office at 202-690-7453.

Sincerely yours,

A handwritten signature in black ink, appearing to read "M. Marquis", with a stylized flourish at the end.

Michael S. Marquis  
Director  
FOI/Privacy Acts Division

# EXHIBIT 61



**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

**12 AUG 2015**

Ref: 15-F-1589

Mr. Stephen Schwartz  
1919 Pennsylvania Avenue, NW, Suite 650  
Washington, DC 20006

Dear Mr. Schwartz:

This responds to your Freedom of Information Act/Privacy Act request dated July 29, 2015, which was received in this Office on August 4, 2015. Your request was for “  
1. All travel records of Secretaries of Defense Ashton Carter and Charles Hagel related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present.  
2. All work calendars of Secretaries of Defense Ashton Carter and Charles Hagel related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present. 3. All records of correspondence received by the Office of the Secretary or the Office of Assistant Secretary of Defense for Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.” A copy of your request is enclosed. Your request has been assigned case number 15-F-1589 and we ask that you use that number when referring to your request.

Please note that part 3.(a) of your request can be found on our website at:  
[www.dod.mil/pubs/foi/Reading\\_Room/Congressional\\_Correspondence/08\\_F\\_0811SenatorBarackObama\\_correspondence\\_to\\_DoD\\_2005\\_to\\_2008.pdf](http://www.dod.mil/pubs/foi/Reading_Room/Congressional_Correspondence/08_F_0811SenatorBarackObama_correspondence_to_DoD_2005_to_2008.pdf) and  
[www.dod.mil/pubs/foi/Reading\\_Room/Congressional\\_Correspondence/08\\_F\\_0811SenatorBarackObama\\_DoDcorrespondence\\_sent\\_2005\\_to\\_2008.pdf](http://www.dod.mil/pubs/foi/Reading_Room/Congressional_Correspondence/08_F_0811SenatorBarackObama_DoDcorrespondence_sent_2005_to_2008.pdf)

The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. You have requested: (a) "Representative of the news media" fee status, 5 U.S.C. § 552(a)(4)(A)(ii), 32 C.F.R. § 286.28(e)(7)(i). According to your website, "Cause of Action is a non-profit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending and cronyism threaten it." Although Cause of Action may have the means to disseminate information to the public, your website does not support that Cause of Action's primary function is publishing or broadcasting news to the public. After carefully considering your letter in the context of the governing Departmental regulation found at 32 C.F.R. § 286 and reviewing information available concerning Cause of Action on your website, I do not find that Cause of Action would qualify as a representative of the news media.

I have determined that you should be placed in the "other" category for fee purposes as you have indicated that you do not seek access to these records for commercial purposes. The "other" fee category affords you two hours of search time and 100 pages of duplication free of charge. As you did not provide any willingness to pay, search will be halted after your two free hours have been expended. If you wish to add a willingness to pay, please contact the action officer assigned to your request no later than August 25, 2015.

We will be unable to respond to your request within the FOIA's 20 day statutory time period as there are unusual circumstances which impact on our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1,527 open requests.

If you would like to discuss how to limit your request in order to speed the processing time, we would be pleased to discuss how you might modify your request. The action officer assigned to your request is Charles Marye at (571) 372-0407. The toll free number for this Office is 866-574-4970. You may not be aware that we maintain a website and electronic reading room at: <http://www.dod.mil/pubs/foi/>.

If you are not satisfied with this action, you may petition the Appellate Authority, the Director of Administration, Office of the Secretary of Defense, by writing directly to the Freedom of Information Division, ATTN: Appeals Office, 1155 Defense Pentagon, Washington, D.C. 20301-1155; you may also submit your appeal electronically at the following link: <http://pal.whs.mil/palMain.aspx>. Your appeal should be postmarked within 60 calendar days of the date of this mail, should cite case number 15-F-1589, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

*for Charles C. Marye*  
Stephanie L. Carr  
Chief

Enclosure:  
As stated

# EXHIBIT

## 62



Homeland  
Security

August 25, 2015

**SENT VIA E-MAIL TO: STEPHEN.SCHWARTZ@CAUSEOFACTION.ORG**

Stephen S Schwartz  
Counsel  
Cause of Action  
Stephen.Schwartz@Causeofaction.Org

Re: **2015-HQFO-00631**

Dear Mr. Schwartz:

This letter acknowledges receipt of your July 29, 2015, Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received in this office on August 4, 2015, and seeking the following:

1. All travel records of Secretary of Homeland Security Jeh Johnson related to travel (a) on Air Force One, (b) with the President or Vice President, or (c) to or from meetings with the President or Vice President outside of Washington, D.C., from January 1, 2014 to the present;
2. All work calendars of Secretary Homeland Security Jeh Johnson related to meetings that (a) occurred at the White House or (b) included representatives of the Executive Office of the President, from January 1, 2014 to the present; and
3. All records of correspondence received by the Office of the Secretary or the Office of Legislative Affairs from (a) Senator Barack Obama, or any member of Senator Obama's congressional staff, or (b) Senator Joseph Biden, or any member of Senator Biden's congressional staff, from January 3, 2005 to November 3, 2008.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances.

As it relates to Item 3 of your request, please note that Congressional correspondence logs are posted in our FOIA Library which list correspondence workflows by year with short descriptions. These logs are located at <http://www.dhs.gov/congressional-correspondence-logs>; accessed August 17, 2015. Please identify the workflows that interest you and submit them to us while we search for records responsive to Items 1 and 2 of your request.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester, you will be charged 10 cents per page for duplication; the first 100 pages are free, as are the first two hours of search time, after which you will pay the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher.

We have queried the appropriate component(s) of DHS for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2015-HQFO-00631**. Please refer to this identifier in any future correspondence. To check the status of your FOIA request, you may contact this office at 1-866-431-0486 or 202-343-1743, or you may check the status of your request online at <http://www.dhs.gov/foia-status>.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ayanna Carr', is positioned above the printed name.

Ayanna Carr  
FOIA Program Specialist



# EXHIBIT

## 63



United States Department of State

Washington, D.C. 20520

SEP 1 2015

Dear Requester,

RE: Travel, work calendars and correspondence records for the Office of Secretary of State John Kerry

This is in response to your request dated July 29, 2015. We have assigned Case Control Number F-2015-12930 and will begin the processing of your request based upon the information provided in your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you have any questions, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch  
Office of Information Programs & Services

A handwritten signature in blue ink, appearing to be 'KDP'.

**Fee Waiver**

Your request for a fee waiver has been granted; therefore, your request will be processed at no charge to you.

# EXHIBIT 64

## Ryan Mulvey

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**From:** Stephen Schwartz  
**Sent:** Thursday, July 30, 2015 8:58 AM  
**To:** Ryan Mulvey; Shannon Thrash; Catherine Chae  
**Subject:** Fwd: FOIA Request EPA-HQ-2015-009428 Submitted

Stephen S. Schwartz  
Counsel | Cause of Action  
Admitted in Virginia and the District of Columbia

### Confidentiality:

The information contained in, and attached to, this communication may be confidential or privileged, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

Begin forwarded message:

**From:** "[foia\\_hq@epa.gov](mailto:foia_hq@epa.gov)" <[foia\\_hq@epa.gov](mailto:foia_hq@epa.gov)>  
**Date:** July 30, 2015 at 8:29:48 AM EDT  
**To:** Stephen Schwartz <[stephen.schwartz@causeofaction.org](mailto:stephen.schwartz@causeofaction.org)>  
**Subject:** FOIA Request EPA-HQ-2015-009428 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-HQ-2015-009428
- Requester Name: Stephen S. Schwartz
- Date Submitted: 07/30/2015
- Request Status: Submitted
- Description: All travel records of Administrator Gina McCarthy related to travel on Air Force One, with the President or Vice President or to or from meetings with the President or Vice President outside of Washington, D.C. from January 1, 2014 to the present; all work calendars of Administrator Gina McCarthy related to meetings at the White House or representatives of the Executive Office of the President from January 1, 2014 to present; and all records of correspondence received by the Office of the Administrator or the Office of Congressional and Intergovernmental relations from Senator Barack Obama or staff and the same for Senator Biden's or his staff, from January 3, 2005 to November 3, 2008.

# EXHIBIT 65



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

August 31, 2015

Cause of Action  
Stephen S. Schwartz  
1919 Pennsylvania Avenue, NW  
Suite 650  
Washington, DC 20006

Dear Stephen S. Schwartz:

I am responding to your Freedom of Information Act (FOIA) request dated July 29, 2015 that we received on August 7, 2015.

I am unable to send the information you requested by September 4, 2015, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

**STATUTORY EXTENSION OF TIME FOR RESPONSE**

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to September 21, 2015, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

**REQUEST FOR ADDITIONAL EXTENSION OF TIME**

Unfortunately, we will still be unable to locate and consider release of the requested records by September 21, 2015. We have extended the response date to October 30, 2015 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or

- In the District of Columbia

You may file suit after September 21, 2015. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please contact me at 202-317-3470 or write to: Internal Revenue Service, HQ Disclosure – Stop 211, PO Box 621506, Atlanta, GA 30362. Please refer to case number F15219-0103.

Sincerely,

***Corrina Smith***

Corrina Smith  
Tax Law Specialist  
ID#1000219939  
Disclosure Office 1