



<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>I. FOIA/PRIVACY ACT</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  <i>*(If pro se, select this deck)*</i>	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

**V. ORIGIN**

- 1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE).**  
 5 U.S.C. § 552: Office of Management and Budget has failed to produce records in response to plaintiff's FOIA request.

**VII. REQUESTED IN COMPLAINT**       CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      **DEMAND \$** [ ]      **JURY DEMAND:** YES  NO  Check YES only if demanded in complaint

**VIII. RELATED CASE(S) IF ANY**      (See instruction)      YES  NO       If yes, please complete related case form.

**DATE** 7 Mar 2012      **SIGNATURE OF ATTORNEY OF RECORD** 

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI.** CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION, )  
2100 M Street N.W., Suite 170-247 )  
Washington, D.C. 20037, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JEFFREY ZIENTS, AS ACTING DIRECTOR )  
OF THE OFFICE OF MANAGEMENT AND )  
BUDGET, AND THE U.S. OFFICE OF )  
MANAGEMENT AND BUDGET, )  
725 17<sup>th</sup> Street N.W. )  
Washington, D.C. 20503, )  
 )  
Defendants. )

**COMPLAINT**

Plaintiff Cause of Action brings this action against Defendants Jeffrey Zients (in his capacity as Acting Director of the United States Office of Management and Budget) and the United States Office of Management and Budget to compel compliance with the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* As grounds therefor, Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 552 (a)(4)(B), and 5 U.S.C. § 552(a)(6)(E)(iii).
2. This Court has the authority to grant declaratory relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
3. This court has the authority to award costs and attorney's fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).

4. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendants reside in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552 (a)(4)(B).

### **PARTIES**

5. Cause of Action (formerly “Freedom Through Justice Foundation”) is nonpartisan, nonprofit organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom. In furtherance of its public interest mission, Plaintiff regularly requests access to the public records of federal government agencies, entities, and offices, and disseminates its findings to the public.

6. Defendant Jeffrey Zients is the Acting Director of the Office of Management and Budget, and is sued solely in his official capacity.

7. Defendant United States Office of Management and Budget is an agency of the Executive Office of the President of the United States. The Office is located at 725 17th Street, N.W., Washington, D.C. 20503, and its statutory mission is set forth in 31 U.S.C. §§ 501, *et seq.* The Office of Management and Budget is responsible for setting policies and issuing directives regarding federal expenditures. Defendant Office of Management and Budget and Defendant Jeffrey Zients will be referred to collectively in this complaint as “OMB.” OMB is an agency of the United States as defined by 5 U.S.C. § 552(f)(1), and is charged with the duty to provide public access to documents in its possession consistent with the requirements of FOIA. OMB has possession, custody, and control of records to which Plaintiff seeks access.

## STATEMENT OF FACTS

8. The current U.S. House of Representatives, as well as the Senate, have embraced moratoriums on earmarks. Executive Order No. 13457 requires that communications from Members of Congress to the agencies regarding federal expenditures be made publicly available. This order affects use of administrative earmarks, where Members of Congress procure funds through direct or indirect influence on executive-branch agencies.

9. The allocation of taxpayer monies through opaque means, especially means violative of an Executive Order, is a current and continuing matter of public concern.

10. On September 9th, 2011, Plaintiff, as Freedom Through Justice Foundation, sent a Freedom of Information Act ("FOIA") request to OMB requesting that the following documents be provided:

1. All documents referring or relating to communications to or from Members, Officers or staff of the Congress which contain recommendations that funds should be committed, obligated, or expended on any earmark from January 2009 to the present.

2. Documents identifying which of the aforementioned communications to the agencies regarding federal expenditures have not been made publicly available.

3. All documents referring or relating to efforts taken by the Administration to ensure compliance with E.O. 13457 from January 2009 to the present, including, but not limited to:

- a. The names and titles of all officials within the Executive Office of the President and the Office of Management and Budget responsible for ensuring and monitoring federal agency compliance with E.O. 13457;

- b. All communications to federal agencies explaining the requirements of E.O. 13457; and,
- c. All steps taken to monitor compliance by federal agencies.

A true and accurate copy of Plaintiff's FOIA request is attached to this complaint as Exhibit 1.

11. Pursuant to 5 U.S.C. § 552(a)(6)(A), OMB was required to respond to Plaintiff's FOIA request within twenty (20) working days, or by October 7, 2011.

12. OMB issued a letter, dated September 13, 2011, acknowledging receipt of Plaintiff's FOIA request, assigning the request identification number 11-178, and stating that OMB received Plaintiff's FOIA request on September 9, 2011. A true and accurate copy of OMB's acknowledgment letter is attached to this complaint as Exhibit 2.

13. OMB sent a letter dated October 6, 2011 requesting an extension of "up to ten working days." A true and accurate copy of this letter is attached to this complaint as Exhibit 3.

14. On December 9, 2011, upon information and belief, Plaintiff followed up by telephone to request information on the status of the FOIA request. OMB provided no such information.

15. As of January 11, 2012, OMB has not provided a response to Plaintiff's FOIA request. It has now been well over the twenty (20) day statutory time limit for OMB to produce documents responsive to Plaintiff's FOIA request, even accounting for OMB's requested extension of time.

16. OMB has no legal basis for failing to provide Plaintiff with a full and complete response to its FOIA request.

17. OMB's conduct is arbitrary and capricious and amounts to a denial of Plaintiff's FOIA request. OMB's conduct frustrates Plaintiff's efforts to educate the public regarding ongoing activities at OMB and is a violation of the FOIA.

18. Plaintiff is unable to file an administrative appeal of its FOIA request, as OMB has not denied any specific material.

19. Plaintiff has thus fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) for its FOIA request, and now turns to this Court to enforce the remedies and public access to agency records guaranteed by FOIA.

20. Plaintiff seeks a court order requiring OMB to produce immediately the documents sought in the September 9, 2011 FOIA request to OMB, as well as other appropriate relief.

### **CAUSES OF ACTION**

#### Count I: Violation of the Freedom of Information Act

21. Plaintiff repeats the allegations in paragraphs 1 through 20.

22. The OMB's failure to disclose the requested documents is a violation of FOIA, 5 U.S.C. § 552, and the agency's own regulations promulgated thereunder.

23. Plaintiff is irreparably harmed by OMB's unlawful withholding of the requested records, and Plaintiff will continue to be irreparably harmed unless OMB is compelled to conform its conduct to the requirements of the law.

#### Count II: Violation of the Administrative Procedure Act

24. Plaintiff repeats the allegations in paragraphs 1 through 20.

25. The OMB's failure to disclose documents responsive to Plaintiff's request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 500 *et seq.* Their failure in this matter is arbitrary, capricious, an abuse of discretion, not in accordance with the law and without observance of procedure required by law, all in violation of the APA.

## RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests and prays that this court:

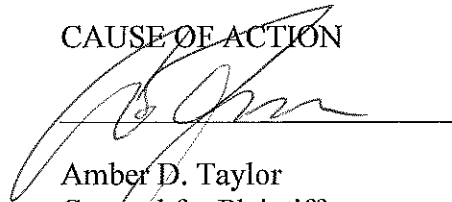
- i. Enter an Order:
  - a. declaring that OMB has wrongfully withheld the requested agency records;
  - b. directing OMB to conduct a search for any and all responsive records to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; and
  - c. directing OMB to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption;
- ii. Issue a permanent injunction directing OMB to disclose to the Plaintiff all wrongfully withheld documents;
- iii. Maintain jurisdiction over this action until both OMB is in compliance with FOIA, APA and every other order of this Court;
- iv. Enter an Order declaring that Plaintiff is entitled to a full fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii) for Plaintiff's FOIA request to the extent that OMB does not provide a full fee waiver for Plaintiff's request;
- v. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E); and
- vi. Grant such additional and further relief to which Plaintiff may be entitled.



Dated: March 7, 2012

Respectfully submitted,

CAUSE OF ACTION

A handwritten signature in black ink, appearing to read "Amber D. Taylor", is written over a horizontal line.

Amber D. Taylor  
Counsel for Plaintiff  
DC Bar No. 974286  
2100 M Street N.W., Suite 170-247  
Washington, D.C. 20037  
202-507-5880

UNITED STATES DISTRICT COURT  
for the  
District of Columbia

\_\_\_\_\_  
CAUSE OF ACTION )  
Plaintiff )  
v. ) Case No.  
\_\_\_\_\_  
JEFFREY ZIENTS, ET AL. )  
Defendant )

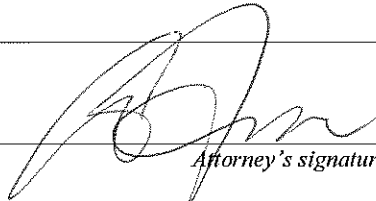
APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

Cause of Action \_\_\_\_\_

Date: 3/7/2012

  
\_\_\_\_\_  
Attorney's signature

Amber Taylor, D.C. Bar No. 974286  
\_\_\_\_\_  
Printed name and bar number

Cause of Action  
2100 M St NW, Suite 170-247  
Washington, DC 20037

\_\_\_\_\_  
Address

amber.taylor@causeofaction.org  
\_\_\_\_\_  
E-mail address

(202) 507-5880  
\_\_\_\_\_  
Telephone number

(202) 507-5881  
\_\_\_\_\_  
FAX number

# United States District Court For the District of Columbia

CAUSE OF ACTION )

vs Plaintiff )

Civil Action No. \_\_\_\_\_ )

JEFFREY ZIENTS, AS ACTING DIRECTOR OF THE )  
OFFICE OF MANAGEMENT AND BUDGET, AND )  
THE U.S. OFFICE OF MANAGEMENT AND BUDGET )

Defendant )

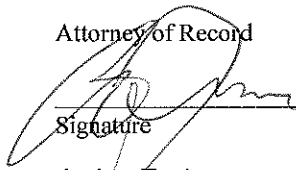
CERTIFICATE RULE LCvR 7.1

I, the undersigned, counsel of record for Cause of Action certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Cause of Action which have any outstanding securities in the hands of the public:

None

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record



Signature

Amber Taylor

Print Name

2100 M St. NW, Suite 170-247

Address

Washington, D.C. 20037

City

State

Zip Code

202-507-5880

Phone Number

D.C. Bar No. 974286

BAR IDENTIFICATION NO.

UNITED STATES DISTRICT COURT

for the

District of Columbia

CAUSE OF ACTION

Plaintiff

v.

JEFFREY ZIENTS, ET AL.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Civil Process Clerk
United States Attorney's Office
555 Fourth Street, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Amber D. Taylor
Cause of Action
2100 M Street, NW
Ste 170-247
Washington, D.C. 20037

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the
District of Columbia

CAUSE OF ACTION

Plaintiff

v.

JEFFREY ZIENTS, ET AL.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JEFFREY ZIENTS, AS ACTING DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET, 725 17th Street N.W. Washington, D.C. 20503

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Amber D. Taylor
Cause of Action
2100 M Street, NW
Ste 170-247
Washington, D.C. 20037

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the
District of Columbia

CAUSE OF ACTION

Plaintiff

v.

JEFFREY ZIENTS, ET AL.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Amber D. Taylor
Cause of Action
2100 M Street, NW
Ste 170-247
Washington, D.C. 20037

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT

for the
District of Columbia

CAUSE OF ACTION

Plaintiff

v.

JEFFREY ZIENTS, ET AL.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Attorney General
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Amber D. Taylor
Cause of Action
2100 M Street, NW
Ste 170-247
Washington, D.C. 20037

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

**Cause of Action Institute**  
 2100 M. Street N.W., STE #170-247  
 Washington, DC 20037-1233

Check Date: 1/26/2012  
 Check Number: 100029

To: Clerk, US District Court  
 333 Constitution Avenue, NW  
 Washington, DC 20001

Invoice Number	Date	Description	Amount	Discount	Net Amount
FilingFee002	1/23/2012	Filing fee for OMB-Lew Admin Earmarks FOIA Cc	\$350.00	\$0.00	\$350.00
		<b>Totals:</b>	<b>\$350.00</b>	<b>\$0.00</b>	<b>\$350.00</b>

**Cause of Action Institute**  
 2100 M. Street N.W., STE #170-247  
 Washington, DC 20037-1233

BB&T  
 2200 Wilson Blvd  
 Ste 200  
 Arlington, VA 22201

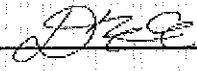
68-426/514

CHECK DATE	CHECK NO.
1/26/2012	100029
CHECK AMOUNT	

PAY **\*\*Three hundred fifty and 00/100 Dollars\*\***

**\*\* 350.00**

TO [ ]  
 THE [ ]  
 ORDER OF Clerk, US District Court  
 333 Constitution Avenue, NW  
 Washington, DC 20001

  
 \_\_\_\_\_

AUTHORIZED SIGNATURE