



March 27, 2013

VIA ELECTRONIC SUBMISSION AND CERTIFIED MAIL

Ms. Kirsten Teal
FOIA/PA Disclosure Specialist
Department of Homeland Security, Office of Inspector General
Office of Counsel
245 Murray Drive, Bldg. 410
Mail Stop - 2600
Washington, D.C. 20528-0001

RE: Freedom of Information Act Request

Dear Ms. Teal:

We write on behalf of Cause of Action, a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending and cronyism threaten it.

Consistent with that mission, we are concerned about wasteful spending and allegations of misconduct at the Office of Inspector General (OIG) for the Department of Homeland Security (DHS). The DHS OIG has been without a Senate-confirmed Inspector General for over two years.¹ Because the Acting and Deputy Inspector General, Charles Edwards (Edwards), may be nominated for the permanent DHS Inspector General position, Cause of Action intends to evaluate and inform the public about how effectively Mr. Edwards has managed the DHS OIG while he has served as the Acting and Deputy Inspector General. Therefore, pursuant to the provisions of the Freedom of Information Act (FOIA),² Cause of Action hereby requests that the DHS OIG produce, within the next twenty (20) business days, the following documents:

1. All documents produced, compiled or released for DHS OIG FOIA case number 2013-11.
2. All documents produced, compiled or released for DHS OIG FOIA case number 2013-29.
3. All documents produced, compiled or released for DHS OIG FOIA case number 2012-175.

¹ See DEP'T OF HOMELAND SEC., *Deputy Inspector General: Charles K. Edwards*, http://www.oig.dhs.gov/index.php?option=com_content&view=article&id=1%3Ainspector-general&catid=7&Itemid=64.

² 5 U.S.C. § 552 (2006 & Supp. II 2008).

4. All documents regarding Mr. Edwards's official travels (in his capacity as Deputy Inspector General, Acting Inspector General or any other DHS position), for site checks or any other purpose, including the names of any individuals (including DHS employees) who accompanied Mr. Edwards, as well as travel vouchers, receipts or any other travel records, from February 27, 2011 to the present.
5. All documents, including reports, investigations, emails and hotline complaints, regarding any complaints against Mr. Edwards received by DHS OIG and the subsequent handling of such complaints by the Office of Investigations from February 27, 2011 to the present. Please note: a *Glomar* response or a 7(C) response letter is not appropriate for these records because there is a significant public interest in these records because the public has a right to know how the DHS OIG treats allegations of serious of misconduct against senior officials. For example, the DHS OIG has released all complaints received, in narrative format, regarding the Secret Service and former Director Mark J. Sullivan.³
6. All documents disclosed to Andrew Becker, journalist at the Center for Investigative Reporting, from February 27, 2011 to the present.

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

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

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

First and foremost, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA context.”⁴ It is for this reason that Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity, seeks disclosure of the requested documents.

Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the federal government as the documents requested concern actions undertaken by Mr. Edwards, Acting and Deputy Inspector General at DHS OIG and *de facto* head of that office.

³ FOIA Response, Narratives for Complaints Received by the DHS OIG Relating to U.S. Secret Service, *available at* http://www.oig.dhs.gov/assets/PDFs/OIG_FOIA_Response.pdf.

⁴ *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729-30 (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.”).

During Mr. Edwards's tenure, the House Committee on Oversight and Government Reform conducted a hearing regarding management issues at DHS OIG,⁵ while the Senate Homeland Security and Government Affairs Committee wrote a letter to President Obama citing the "allegations of misconduct" facing the office.⁶ The public at large therefore has a substantial interest in how Mr. Edwards has conducted oversight of the federal government's third-largest department. Therefore, the information requested will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons. Thus, this element is met.

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

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under § 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public's right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. This request seeks records about how effectively Mr. Edwards has performed as Acting and Deputy Inspector General. 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 in order to openly evaluate Mr. Edwards's actions and management of DHS OIG. In the event the disclosure of this information creates a profit motive, it is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.⁷ Therefore, Cause of Action satisfies this element.

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

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy and regularly disseminated publications to advance its mission. Our staff has a combined forty-five (45) years of expertise in government oversight, investigative reporting and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its frequently visited website, www.causeofaction.org, which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action's litigation and agency complaints. Lastly, after the production of the requested

⁵ U.S. HOUSE OF REPRESENTATIVES COMM. ON GOV'T OVERSIGHT AND REFORM, *Unresolved Internal Investigations at DHS: Oversight of Investigations Management in the Office of the DHS IG*, <http://oversight.house.gov/hearing/unresolved-internal-investigations-at-dhs-oversight-of-investigation-management-in-the-office-of-the-dhs-ig/>.

⁶ U.S. SENATE COMM. ON HOMELAND SEC. AND GOVERNMENTAL AFFAIRS, *Homeland Security and Governmental Affairs Committee Senators Urge President to Fill IG Vacancies*.

⁷ See *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 35-36 (D.C. Cir. 1998).

information, Cause of Action intends to produce a report on the matter of any misconduct by Mr. Edwards or senior management at DHS OIG. This report may be published, distributed to the news media and sent to interested persons through our regular periodicals, including "Agency Check" and "Cause of Action News." An ability to show the presence of a website with occasional, consistent traffic is enough to show that a requester has an ability to disseminate information.⁸ As with the other two (2) outlined above, Cause of Action has also met this element, thus justifying a fee waiver.

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

Cause of Action also asks that it not be charged search or review fees for this request because it qualifies as a "representative of the news media, or news media requester," under 5 U.S.C. § 552(a)(4)(A)(ii)(II).⁹ In *National Security Archive v. U.S. Dep't of Defense*, the U.S. Court of Appeals for the District of Columbia Circuit noted that FOIA's legislative history demonstrates that "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*"¹⁰

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, www.causeofaction.org. Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."¹¹

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the

⁸ See *Fed. CURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

⁹ Other agencies of the federal government have granted Cause of Action "representative of the news media" category status. See, e.g., FOIA Request HQ-2012-00752-F, Dep't of Energy (Feb. 15, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012); FOIA Request 12-267, Fed. Emergency Mgmt. Agency (Feb. 9, 2012); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-078, Dep't of Homeland Sec. (Feb. 15, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request, Dep't of Labor (Apr. 20, 2012); FOIA Request CRRIF 2012-00077, Dep't of Commerce (Mar. 1, 2012). As the U.S. Court of Appeals for the District of Columbia noted in *Oglesby v. U.S. Dep't of the Army*, agencies should grant news media requestor status when other agencies have done so because of "the need for uniformity among the agencies in their application of FOIA." 920 F.2d 57, 66 n.11 (D.C. Cir. 1990).

¹⁰ 880 F.2d 1381, 1386 (D.C. Cir. 1989) (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)) (omissions in original).

¹¹ Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news and journalism. Based on these extensive publication activities, Cause of Action qualifies for a fee waiver as a “representative of the news media, or news media requester,” under FOIA and agency regulations.¹²

Cause of Action’s activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines “representative[s] of the news media” broadly to include organizations that disseminate news through electronic communications, including “publishers of

¹² See, e.g., Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, Oct. 24, 2011; Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*, POLITICO (Nov. 10, 2011), <http://www.politico.com/morningenergy/1111/morningenergy374.html>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASH. EXAMINER, Nov. 27, 2011, available at <http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASH. TIMES, Nov. 28, 2011, available at <http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>; Perry Chiaramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS (Nov. 30, 2011), <http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>; *Acorn lives: Meet AHCOA*, PITTSBURGH TRIBUNE-REVIEW, Dec. 5, 2011, available at http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html; Benjamin Wallace, *The Virgin Father*, N.Y. MAGAZINE, Feb. 5, 2012, available at <http://nymag.com/news/features/trent-arsenault-2012-2/>; Charles C. W. Cooke, *ACORN Is Up to Its Old Tricks*, NAT’L REVIEW ONLINE (Feb. 6, 2012), <http://www.nationalreview.com/articles/289948/acorn-its-old-tricks-charles-c-w-cooke>; John Hayward, *Justice Department asked to investigate abuse of stimulus funds for lobbying*, HUMAN EVENTS (Mar. 3, 2012), <http://www.humanevents.com/article.php?id=50328>; Pete Kasperowicz, *GSA fallout: Watchdog group probes 28 federal agencies for wasteful spending*, THE HILL, Apr. 5, 2012, available at <http://thehill.com/blogs/floor-action/house/220119-gsa-fallout-watchdog-group-probes-28-federal-agencies-for-wasteful-spending>; Timothy R. Smith, *How much are other agencies spending on award coins? A nonpartisan group wants to know*, WASH. POST, Apr. 6, 2012, available at http://www.washingtonpost.com/blogs/federal-eye/post/how-much-are-other-agencies-spending-on-award-coins-a-nonpartisan-group-wants-to-know/2012/04/05/gIQLpGPYs_blog.html; Andy Medici, *Scrutiny widens over GSA spending*, FED. TIMES (Apr. 6, 2012), <http://www.federaltimes.com/article/20120406/DEPARTMENTS07/204060303/>; Mickey Meece, *Durbin Calls GSA Spending ‘Outrageous’; Vows Congressional Hearings*, FORBES.COM (Apr. 8, 2012), <http://www.forbes.com/sites/mickeymeece/2012/04/08/durbin-calls-gsa-spending-outrageous-vows-congressional-hearings/>; Christopher Matthews, *High Tide: From a Wal-Mart Feeding Frenzy to Indian Firms’ Continued Shipping of Iranian Crude*, WALL ST. J., Apr. 24, 2012, available at <http://blogs.wsj.com/corruption-currents/2012/04/24/high-tide-from-a-wal-mart-feeding-frenzy-to-indian-firms-continued-shipping-of-iranian-crude/>; Lauren Fox, *Federal Budget Office Asks All Agencies to Cut Conference, Travel Costs*, US NEWS (May 12, 2012), <http://www.usnews.com/news/blogs/washington-whispers/2012/05/14/federal-budget-office-asks-all-agencies-to-cut-conference-travel-costs>; Stephanie Lee, *Woman sues FDA for right to use donor’s free sperm*, S. F. CHRON., July 9, 2012, available at <http://www.sfgate.com/bayarea/article/Woman-sues-FDA-for-right-to-use-donor-s-free-sperm-3692207.php>; Alexis Shaw, *Woman Anonymously Sues FDA for Right to Free Sperm*, ABC NEWS (July 12, 2012), <http://abcnews.go.com/US/woman-sues-fda-free-sperm/story?id=16755422>; Perry Chiaramonte, *Taxpayer watchdog calls on IRS to probe re-branded Texas ACORN branch*, FOX NEWS (July 19, 2012), <http://www.foxnews.com/politics/2012/07/19/taxpayer-watchdog-calls-on-irs-to-probe-re-branded-texas-acorn-branch/#ixzz21qTFmosA>; Nick Baumann, *National Archives Sued Over Financial Crisis Documents*, MOTHER JONES, Aug. 15, 2012, available at <http://www.motherjones.com/mojo/2012/08/watchdog-group-sues-national-archives-over-financial-crisis-documents>; Jon Hilkevitch, *Report: CTA reaped millions by over-reporting bus mileage*, CHI. TRIB., Oct. 17, 2012, available at http://articles.chicagotribune.com/2012-10-18/news/ct-met-cta-mileage-report-1018-20121018_1_cta-spokesman-cta-officials-action-report.

*periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.”*¹³ Moreover, the FOIA statute itself, as amended in 2007, explicitly defines “representative of the news media”—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.¹⁴ The statutory definition unequivocally commands that organizations that electronically disseminate information and publications via “alternative media *shall* be considered to be news-media entities.”¹⁵ As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a “representative of the news media” under FOIA.

In *Electronic Privacy Information Center v. Dep’t of Defense*, the court broadly construed a Department of Defense regulation defining “representative of the news media” to include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter.¹⁶ Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a “representative of the news media,” where *Electronic Privacy Information Center* provides that “publishers of periodicals” qualify as representatives of the news media.¹⁷

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

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

¹⁴ The FOIA statute, as amended in 2007, defines “representative of the news media” as follows:

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

Id. (emphasis added).

¹⁵ *Id.* (emphasis added). See generally *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word “shall” is generally imperative or mandatory).

¹⁶ 241 F.Supp.2d 5, 12-15 (D.D.C. 2003). The court pointedly noted that “a ‘periodical,’ unlike a daily newspaper, has been defined simply as ‘a publication issued at regular intervals of more than one day.’” *Id.* at 13 n.4 (quoting AMERICAN HERITAGE DICTIONARY, SECOND COLLEGE EDITION, at 923 (2000)).

¹⁷ *Id.*

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

Production of Information and Contact Information.

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

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA . . . The presumption of disclosure should be applied to all decisions involving FOIA.¹⁸

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

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.¹⁹

After the President's remarks, Attorney General Eric Holder issued a Memorandum that broadened the executive branch's FOIA disclosure policy, and he therefore urged heads of executive departments and agencies to make discretionary disclosures of information:

[A]n agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.²⁰

¹⁸ Memorandum from President Barack Obama for the Heads of Exec. Dep'ts and Agencies, *Freedom of Information Act* (Jan. 21, 2009) available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

¹⁹ President Barack Obama, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House* (Jan. 21, 2009) available at <http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>.

²⁰ Memorandum from Attorney Gen. Eric Holder for Heads of Exec. Dep'ts and Agencies, *The Freedom of Information Act (FOIA)* (Mar. 19, 2009), available at <http://www.justice.gov/ag/foia-memo-march2009.pdf>.

If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

Please note that the invocation of exemption 7(c) or a Glomar response would not be appropriate in this circumstance due to the vital importance of this information to the public. As the current and long-standing head of DHS OIG, Mr. Edwards is likely to be nominated as the permanent Inspector General in the near future. The public therefore has an overriding interest in knowing whether Mr. Edwards violated the law or otherwise acted improperly. This is particularly true regarding documents produced, compiled or released for DHS OIG FOIA case number 2013-11, which requests all records of complaints against Mr. Edwards and a third party.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record.²¹ If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

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

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me (Adam.Butschek@causeofaction.org) immediately at (202) 499-4232. Please note that, for the purposes of responding to this request, the attached Definition of Terms should be interpreted consistently. Thank you for your attention to this matter.



ADAM BUTSCHEK
DEPUTY DIRECTOR OF INVESTIGATIONS AND RESEARCH

Encl. Responding to Document Requests, Definitions

²¹ See 5 U.S.C. § 552(b).

Responding to Document Requests

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

11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from February 27, 2011 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

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

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities and all subsidiaries, affiliates, divisions, departments, branches or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual’s business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.