



May 14, 2013

**VIA CERTIFIED MAIL & E-MAIL**

Pamela Weaver  
Office of the Mississippi Secretary of State  
P.O. Box 136  
Jackson, MS 39205  
pamela.weaver@sls.ms.gov

**RE: Public Records Act Request**

Dear Ms. Weaver:

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that educates the public on government accountability.

On December 1, 2012, Terence McAuliffe (McAuliffe), a candidate for Governor of the Commonwealth of Virginia,<sup>1</sup> resigned from his post as Chairman of GreenTech Automotive (GTA), an automobile manufacturing company registered in the State of Mississippi. McAuliffe's resignation followed numerous reports concerning GTA – a company McAuliffe had invested in – negotiating with the Virginia Economic Development Partnership (VEDP) in 2009 regarding locating a GTA manufacturing plant within the Commonwealth of Virginia.<sup>2</sup> Questions have since been raised about the nature of these negotiations, including whether GTA had already committed to locate the facility in the State of Mississippi before GTA even commenced negotiations with VEDP.

We seek to understand how GTA has pursued negotiations with government entities. The public interest will best be served by the release of any records that shed light on the business practices of GTA, which has received millions of dollars of benefits from Mississippi taxpayers, and particularly in how companies with foreign ownership and control do business within the United States. Therefore, and pursuant to the provisions of the Mississippi Public Records Act (PRA),<sup>3</sup> we hereby request that the Office of the Mississippi Secretary of State produce, within

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<sup>1</sup> Wesley P. Hester, *McAuliffe Running for Governor -- Unless Warner Runs*, RICHMOND TIMES DISPATCH, May 12, 2012, available at [http://www.timesdispatch.com/news/mcauliffe-running-for-governor----unless-warner-runs/article\\_5fbabf71-fa80-554f-9871-de419924b926.html](http://www.timesdispatch.com/news/mcauliffe-running-for-governor----unless-warner-runs/article_5fbabf71-fa80-554f-9871-de419924b926.html).

<sup>2</sup> Lisa Lerer & Liza Lin, *Terry McAuliffe Pursues a New Shade of Green With MyCar Project*, BLOOMBERG (Oct. 7, 2010), <http://www.bloomberg.com/news/2010-10-07/terry-mcauliffe-pursues-a-new-shade-of-green-with-mycar-project.html>.

<sup>3</sup> MISS. CODE ANN. § 25-61-5.

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the next seven (7) business days, the following documents from the time period of August 14, 2009 to the present:

1. Any and all documents related to loans, grants, tax incentives or other financial support from the Mississippi Development Authority, Tunica County or the State of Mississippi made to or for the benefit of GTA, including but not limited to records of contracts, conditional commitments and term sheets;
2. Any and all documents related to the incorporation and corporate status of GTA within the State of Mississippi, including the names of directors, officers and agents, records of GTA bylaws, the disclosure of any foreign officers and assets and any nonpayment of fees or taxes; and
3. Any and all correspondence between the Office of the Mississippi Secretary of State and GTA employees, agents or contractors referring or relating to "Greentech," "GTA," "loan," "EB-5," "China," "myCar," "Terry," "McAuliffe," "Gulf Coast Funds Management," "GCFM," "Tony," "Clinton" or "Rodham."

Please notify us if the actual costs of processing this request will exceed \$100.<sup>4</sup> However, we respectfully request a waiver of any and all fees associated with this request both because Cause of Action is a representative of the news media and because the disclosure of the requested records would be in the public interest.

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](http://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."<sup>5</sup>

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

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<sup>4</sup> To mitigate duplication costs, we are requesting that the documents be produced in electronic format.

<sup>5</sup> Newsletters, Cause of Action, *available at* <http://causeofaction.org/newsletters/>.

agencies have recognized Cause of Action as a representative of the media in connection with its information requests.<sup>6</sup>

Further, a waiver of fees is also appropriate because disclosure of the requested information is likely to contribute significantly to the public's understanding of GTA's business relationship with the Mississippi Development Authority and the State of Mississippi. This information is of current interest to the public at large, as demonstrated by recent national and local press reports about GTA that have appeared in *The Washington Post*,<sup>7</sup> *The Virginian-Pilot*<sup>8</sup> and *Human Events*,<sup>9</sup> to name a few.

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.

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. Lastly, after the production of the requested information, Cause of Action intends to produce a report on GTA. 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.<sup>10</sup>

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 public officials and to ensuring that taxpayer funds are used ethically and appropriately. This request

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<sup>6</sup> 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).

<sup>7</sup> Editorial, *Will the Second Time Be the Charm for Terry McAuliffe?*, WASH. POST, Apr. 6, 2013, available at [http://www.washingtonpost.com/opinions/will-the-second-time-be-the-charm-for-terry-mcauliffe/2013/04/06/7ec83aa2-9e31-11e2-a941-a19bce7af755\\_story.html](http://www.washingtonpost.com/opinions/will-the-second-time-be-the-charm-for-terry-mcauliffe/2013/04/06/7ec83aa2-9e31-11e2-a941-a19bce7af755_story.html).

<sup>8</sup> *McAuliffe Job Claims Questioned in Cuccinelli Web Ad*, VIRGINIAN-PILOT, Apr. 9, 2013, available at <http://hamptonroads.com/2013/04/mcauliffe-job-claims-questioned-cuccinelli-web-ad>

<sup>9</sup> Kenric Ward, *McAuliffe Feels Heat over Greentech Resignation*, HUMAN EVENTS, Apr. 9, 2013, available at <http://www.humanevents.com/2013/04/09/mcauliffe-feels-heat-over-greentech-resignation/>

<sup>10</sup> See *Fed. CURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

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covers GTA's negotiations with the State of Mississippi and arose out of the aforementioned media investigations into GTA's activities. Cause of Action will not make a profit from the disclosure of this information. This information will be used to further the knowledge and interests of the general public.

**Production of Information and Contact Information.**

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.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonably segregable, non-exempt portions of the requested record. 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), as noted above. Cause of Action will also accept the "rolling production" of information and/or documents, but requests that you provide 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. Should the Office of the Mississippi Secretary of State deny Cause of Action's request for a public-interest fee waiver, please contact me before proceeding with this records request.

Finally, 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

## **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 August 14, 2009 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.