



December 24, 2013

**VIA CERTIFIED MAIL**

Mr. Bertrand Tzeng  
IRS FOIA Request  
HQ FOIA  
Stop 211  
290 Brandywine Road  
Chamblee, GA 30341

**Re: Freedom of Information Act Request**

Dear Mr. Tzeng:

On November 29, 2013, the Internal Revenue Service (IRS) issued a Notice of Proposed Rulemaking revising the qualification requirements for the tax-exemption of social welfare organizations under 26 U.S.C. § 501(c)(4).<sup>1</sup> Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests the following records:

1. Copies of the “unsolicited public comments” that the IRS “drew upon” in defining “candidate-related political activity” in the aforementioned Notice of Proposed Rule Making, as well as any agency correspondence with the commenters.<sup>2</sup>
2. All records of correspondence between IRS employees within the Tax Exempt and Government Entities (TEGE) Division, and all records of correspondence between those same IRS employees and the public, concerning revisions to the qualification requirements for tax-exempt status under Section 501(c)(4), including the redefinition of “candidate-related political activity.” This request includes, but is not limited to, communications between: (a) the IRS and employees or representatives of Citizens for Responsibility and Ethics in Washington; (b) the IRS and employees or representatives of Democracy 21; (c) the IRS and employees or representatives of the Campaign Legal Center; and (d) the IRS and U.S. Representative Chris Van Hollen (D-MD) or his staff.
3. Any and all records of correspondence to and from Amy F. Giuliano, Office of Associate Chief Counsel, TEGE, pertaining to the aforementioned Notice of Proposed Rule Making, including her communications with the public and other administrative agencies.

<sup>1</sup> Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (proposed Nov. 29, 2013) (to be codified at 26 C.F.R. pt. 1).

<sup>2</sup> Press Release, Internal Revenue Service, Treasury, IRS Will Issue Proposed Guidance for Tax-Exempt Social Welfare Organizations (IRS-2013-92) (Nov. 26, 2013), *available at* <http://www.irs.gov/uac/Newsroom/Treasury,-IRS-Will-Issue-Proposed-Guidance-for-Tax-Exempt-Social-Welfare-Organizations>.

4. All records of communications between the IRS and any employee of the Office of Management and Budget (OMB) and/or the Office of White House Counsel regarding the redefinition of “candidate-related political activity.”

The time period for the request is January 2013 to the present.

**Cause of Action Is Entitled to a Public Interest Fee Waiver.**

Cause of Action also requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>3</sup> As discussed below, Cause of Action satisfies the statutory standard for a public interest fee waiver.

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

As an initial matter, we note that “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<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 about how government transparency and accountability protect economic opportunity for American taxpayers. It is in pursuit of these educational goals that Cause of Action seeks disclosure of the requested records.

In this instance, Cause of Action meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.<sup>5</sup> First, the requested records concern identifiable “operations or activities of the government,” specifically, the administration and revision of the Internal Revenue Code.<sup>6</sup> Second, the requested information is “likely to contribute”<sup>7</sup> to the understanding of the IRS’s operations because the information is not already in the public domain and consists largely of substantive material, as opposed to routine administrative information. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>8</sup> Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. 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

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<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

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

<sup>6</sup> *Id.* § 601.702(f)(2)(A).

<sup>7</sup> *Id.* § 601.702(f)(2)(B).

<sup>8</sup> *Id.* § 601.702(f)(2)(C).

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>9</sup> Fourth, and finally, disclosure is likely to contribute "significantly" to the public understanding of the IRS's activities, as these records are not readily available from other sources and public understanding of the IRS's operations will be substantially greater as a result of disclosure.<sup>10</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. Cause of Action is a nonprofit organization, as defined under Section 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 make a profit from the disclosure of this information. Rather, this information will be used to further the knowledge and interests of the general public regarding how the IRS intends to evaluate applicants for 501(c)(4) tax-exempt status. In the event the disclosure of this information does create a profit motive, however, that is not dispositive for the commercial interest test; media requesters like Cause of Action can have a profit motive, so long as the dissemination of the information requested is in their professional capacity and would further the public interest.<sup>11</sup> For the foregoing reasons, this request is not primarily in the commercial interest of Cause of Action.<sup>12</sup>

**Request for News Media Status**

For fee purposes, Cause of Action qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, *inter alia*, to research, generate, 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>13</sup> Cause of Action also disseminates news to the public via social media platforms, such

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<sup>9</sup> See CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), *available at* <http://causeofaction.org/report-unfair-enrichment-forest-city-enterprises-acts-law/>; *see also* 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/>.

<sup>10</sup> 26 C.F.R. § 601.702(f)(2)(D).

<sup>11</sup> See *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>12</sup> See 26 C.F.R. § 601.702(f)(2)(D)-(E).

<sup>13</sup> Google Analytics for <http://www.causeofaction.org> (Jan. 1, 2013 – Dec. 16, 2013) (on file with Cause of Action).

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as Twitter and Facebook, and 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>14</sup>

**Record Production and Contact Information**

In an effort to facilitate record production, Cause of Action requests that responsive records be produced in electronic format (*e.g.*, PDF, email). If a certain set of responsive records can be produced more readily, Cause of Action respectfully 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 email at [REDACTED], or by telephone at [REDACTED]. Thank you for your attention to this matter.

Sincerely,

[REDACTED]

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