



July 2, 2013

VIA EMAIL AND FACSIMILE

Larry Gottesman
National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Fax: (202) 566-2147
Email: hq.foia@epa.gov

RE: Freedom of Information Act Request

Dear Mr. Gottesman:

Cause of Action, a nonprofit, nonpartisan government accountability organization, hereby requests that the Environmental Protection Agency (EPA) produce the following records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552:

All records reflecting communications between EPA FOIA personnel or EPA's Office of General Counsel and the White House Counsel's office wherein EPA sought White House review of documents requested by Congress, the U.S. Government Accountability Office, or FOIA requesters. The time period for this request is January 2009 to the present. Please note that we do not seek access to the actual documents forwarded by EPA to the White House for review, but only to the records which demonstrate that such referrals occurred (for example, cover e-mails).

Cause of Action Is Entitled to 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 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, FOIA requests, government agencies, universities, and scholarly works.

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, where it distribute its articles, blog posts, published reports, and newsletters, all of which address current events that are of interest to the general public. Since September 2011, Cause of Action has published an e-mail newsletter that provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action produces another newsletter titled "Agency

Check,” which informs interested persons about actions of federal agencies, and another periodical, “Cause of Action News.”¹ Finally, Cause of Action also disseminates its information via Twitter and Facebook. These activities are hallmarks of publishing, news and journalism. As a result, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.²

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), 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 the government is a well-recognized public interest in the FOIA.”³ 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 EPA to determine whether disclosure of the requested information is in the public interest.⁴ First, the requested records concern identifiable “operations or activities of the government,”⁵ namely EPA’s practice of referring certain documents to the White House for review prior to release. Second, the requested information is “likely to contribute”⁶ to the understanding of EPA’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.⁷ 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 medium forms. Our 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. Fourth and lastly, disclosure is likely to contribute “significantly” to the public

¹ Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

² See, e.g., FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request HQ-2013-00940-F, Dep’t of Energy (Apr. 26, 2013); FOIA Request 2013-073, Dep’t of Homeland Sec. (Apr. 5, 2013); FOIA Request 20 12-RMA-02563F, Dep’t of Agric. (May 3, 20 12); FOIA Request 2012-00270, Dep’t of Interior (Feb. 17, 2012); Dep’t of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep’t of Educ. (Jan. 20, 2012).

³ *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. 2d, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁴ See 40 C.F.R. § 2.107(l)(2)(i)-(iv) (EPA FOIA regulation setting forth the four-factor “public interest” test).

⁵ § 2.107(l)(2)(i).

⁶ § 2.107(l)(2)(ii).

⁷ § 2.107(l)(2)(iii).

understanding of EPA's document processing practices, as the requested records are not readily available from other sources.⁸

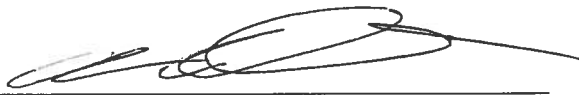
B. Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.

Cause of Action EPAs 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. 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 EPA's information disclosure procedures. In the event the 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.⁹ Therefore, Cause of Action satisfies this element.¹⁰

Production of Information and Contact Information

In an effort to facilitate record production and to mitigate the cost of duplication (if applicable), Cause of Action requests records be produced in electronic format (*e.g.*, e-mail, pdf). If a certain set of responsive records can be produced more readily, we respectfully request 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 allan.blutstein@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ALLAN BLUTSTEIN
SENIOR COUNSEL

⁸ § 2.107(l)(2)(iv).

⁹ *See Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

¹⁰ *See* 40 C.F.R. § 2.107(l)(3).