

Exhibit 1

THE WHITE HOUSE

April 15, 2009

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENT AND AGENCY GENERAL
COUNSELS

FROM: GREGORY CRAIG, COUNSEL TO THE PRESIDENT

SUBJECT: Reminder Regarding Document Requests

This is a reminder that executive agencies should consult with the White House Counsel's Office on all document requests that may involve documents with White House equities. We ask that such consultation take place well in advance of the deadline for responding.

This need to consult with the White House arises with respect to all types of document requests, including Congressional committee requests, GAO requests, judicial subpoenas, and FOIA requests. And it applies to all documents and records, whether in oral, paper, or electronic form, that relate to communications to and from the White House, including preparations for such communications.

Please be in touch with your points of contact in the White House Counsel's Office or, if you are uncertain whom to contact, please call Chris Weideman (202-456-3096) or Blake Roberts (202-456-2948). We will respond to your requests promptly.

Cause of Action v. Internal Revenue Service, et al.

Exhibit 2



May 29, 2013

VIA CERTIFIED MAIL

Bertrand Tzeng
IRS FOIA Request
HQ FOIA
Stop 211
2980 Brandywine Road
Chamblee, GA 30341

RE: Freedom of Information Act Request

Dear Mr. Tzeng:

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

All records, including but not limited to e-mails, letters, meeting records, and phone records, reflecting communications between IRS FOIA staff or IRS Chief Counsel's office and the White House Counsel's office concerning records forwarded by the IRS for White House review in connection with document requests by Congress, the U.S. Government Accountability Office, or FOIA requesters. The time period for this request is January 2009 to the present.

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" 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 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."¹

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

Mr. Bertram Tzeng
 May 29, 2013
 Page 2

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, federal government 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 Complete Waiver of Fees (Public-Interest Purpose)

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.”³ 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.”⁴ 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 the IRS to determine whether disclosure of the requested information is in the public interest.⁵ First, the requested records concern identifiable “operations or activities of the government,”⁶ specifically the IRS’s practice of referring certain documents to the White House for review prior to release. Second, the requested information is “likely to contribute”⁷ to the understanding of the IRS’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.⁸ 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 combined

² See, e.g., FOIA Request HQ-2013-00940-F, Dep’t of Energy (Apr. 26, 2013); FOIA Request 2013-034F, Consumer Fin. Prot. Bureau (Dec. 7, 2012); FOIA Request 2012-RMA-02563F, Dep’t of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep’t of Interior (Feb. 17, 2012); Dep’t of Commerce (Mar. 1, 2012); FOIA Request 2012-078, Dep’t of Homeland Sec. (Feb. 15, 2012); FOIA Request No. 12-00455-F, Dep’t of Educ. (Jan. 20, 2012).

³ *Id.*

⁴ *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.”).

⁵ See, e.g., 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of IRS’s fee waiver regulation).

⁶ § 601.702(f)(2)(A).

⁷ § 601.702(f)(2)(B).

⁸ § 601.702(f)(2)(C).

Mr. Bertram Tzeng
May 29, 2013
Page 3

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. Fourth, and lastly, disclosure is likely to contribute "significantly" to the public understanding of the IRS's activities, as the requested records are not readily available from other sources.⁹

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 § 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 how the Internal Revenue Service evaluates applicants for nonprofit, 501(c)(4) status. In the event the disclosure of this information creates a profit motive, that is not dispositive for the commercial interest test; media or scholars may have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.¹⁰ Therefore, Cause of Action satisfies this element.¹¹

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

⁹ § 601.702(f)(2)(D).

¹⁰ See *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

¹¹ See 26 C.F.R. § 601.702(f)(2)(D)-(E).

Cause of Action v. Internal Revenue Service, et al.

Exhibit 3



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 25, 2013

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

I am unable to send the information you requested by July 3, 2013, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to July 18, 2013, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by July 18, 2013. We have extended the response date to August 16, 2013, when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or
- In the District of Columbia

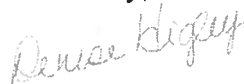
You may file suit after July 18, 2013. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group

Cause of Action v. Internal Revenue Service, et al.

Exhibit 4



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 13, 2013

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On June 25, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by September 27, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

We are granting your request to waive fees associated with this response.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 23, 2013

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On August 13, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by December 20, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 10, 2013

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On September 23, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by March 20, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224**

March 18, 2014

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On December 10, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by June 20, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 17, 2014

Allan Blutstein
Cause of Action
1919 Pennsylvania Ave NW, Ste 650
Washington, DC 20006

Dear Allan Blutstein:

I am responding to your Freedom of Information Act (FOIA) request dated May 29, 2013 that we received on June 5, 2013.

On March 18, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to process your request. I will contact you by September 19, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13156-0087.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office

Cause of Action v. Internal Revenue Service, et al.

Exhibit 5



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

May 7, 2014

VIA EMAIL

Ms. Dionne Hardy
 FOIA Officer
 725 17th Street, NW, Room 9026
 Washington, D.C. 20503
 Email: OMBFOIA@omb.eop.gov

RE: Freedom of Information Act Request

Dear Ms. Hardy:

This letter is in response to your recent determination on Cause of Action's Freedom of Information (FOIA) request concerning the White House's review of agency records -- an opaque vetting process that has hindered public access to records across numerous federal agencies.¹ As discussed below, the Office of Management and Budget (OMB) demonstrably failed to locate a key document concerning this policy, thus necessitating a follow-up request.

In November 1993, the Department of Justice (DOJ) issued a memorandum advising federal agencies to consult with the Office of White House Counsel whenever White House-originated records were located in agency files in response to a FOIA request.² In an attempt to shed further light on this obscure policy, Cause of Action asked OMB on June 3, 2013, to produce all records since 1993 authored by the White House or DOJ concerning "the referral of agency documents to the White House in response to any document request, including but not limited to requests made pursuant to FOIA (e.g., subpoena, Congress, etc.)."³

¹ See CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://causeofaction.org/grading-government-white-house-targets-document-requesters/>; see also C.J. Ciaramella, Report: *White House Review Hindering FOIA Releases*, FREE BEACON (Mar. 21, 2014), <http://freebeacon.com/report-white-house-review-hindering-foia-releases/> (discussing Cause of Action's March 18, 2014 report); Aaron Stern, Report: *Obama Administration Skirted FOIA from the Start*, NEWSMAX (Mar. 20, 2014), <http://www.newsmax.com/newsfront/obama-foia-white-house-2009-memo/2014/03/20/id/560781/> (same); Mark Tapscott, 'Most Transparent' White House Ever Rewrote the FOIA to Suppress Politically Sensitive Docs, WASH. EXAMINER (Mar. 18, 2014), <http://washingtonexaminer.com/most-transparent-white-house-ever-rewrote-the-foia-to-suppress-politically-sensitive-docs/article/2545824> (same).

² Memorandum from Associate Attorney General Webster L. Hubbell to all Agency General Counsels (Nov. 3, 1993), available at http://www.justice.gov/oip/foiaupaatesNoLXIV:_3/page4.htm. This policy appears to have commenced in 1988, according to documents obtained by Cause of Action through a FOIA request to DOJ. See Memorandum from Assistant Attorney General Stephen J. Markman to Freedom of Information Act/Privacy Act Legal and Administrative Contacts (Sept. 1, 1988) (attached as Exhibit 1).

³ Letter from Cause of Action to Dionne Hardy, FOIA Officer, OMB (June 3, 2013) (attached as Exhibit 2).

Ms. Dionne Hardy
May 7, 2014
Page 2

More than nine months later, on March 14, 2014, OMB released twenty-one pages of publicly available records originating from DOJ.⁴ However, OMB inexplicably failed to produce an April 15, 2009 memorandum drafted by the Counsel to the President, Gregory Craig, which advised the General Counsels of all executive agencies to “consult with the White House Counsel’s Office on *all document requests* that may involve documents with White House equities” (Craig Memo).⁵ This omission is especially puzzling given that OMB’s then-General Counsel, Preeta Bansal, expressly reminded agency General Counsels of the Craig Memo in August 2009.⁶

Fortunately, Cause of Action has obtained a copy of the Craig Memo through a separate FOIA request to DOJ. Therefore, it is not necessary to formally appeal OMB’s response. However, Cause of Action remains concerned about OMB’s implementation of the Craig Memo. Thus, Cause of Action hereby requests the following records under the FOIA, 5 U.S.C. § 552:

- (1) All correspondence, including but not limited to email, sent to or from Ms. Bansal concerning the Craig Memo between April 15, 2009 and July 31, 2011; and
- (2) All records reflecting communications between: (a) The Office of White House Counsel and OMB employees who process FOIA requests; and (b) The Office of White House Counsel and OMB’s Office of General Counsel, concerning the Office of White House Counsel’s review of agency records. The time period for this request is May 1, 2012 to May 7, 2014. Please note that Cause of Action does not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover emails).

Request for a public interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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.”⁷ The requested records would shed light on the “operations or activities of the government,”⁸ namely OMB’s implementation of the White House’s guidance concerning the processing of OMB’s records. Moreover, disclosure would “contribute significantly” to the public’s understanding of OMB’s operations.⁹ To date, OMB has not disclosed to the public—either through its regulations or policy memoranda—how it has implemented the Craig Memo.

⁴ Letter from Dionne Hardy, FOIA Officer, OMB, to Cause of Action (Mar. 14, 2014) (attached as Exhibit 3).

⁵ See Memorandum from Gregory Craig, Counsel to the President, to All Executive Department and Agency General Counsels (Apr. 15, 2009) (emphasis added) (enclosed as Exhibit 4).

⁶ See, e.g., Email from Preeta Bansal, General Counsel, OMB, to James Dinneen *et al.* (Aug. 6, 2009) (attached as Exhibit 5).

⁷ 5 U.S.C. § 552(a)(4)(A)(iii).

⁸ *Id.*

⁹ *Id.*

Ms. Dionne Hardy
May 7, 2014
Page 3

Further, Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Cause of Action's staff members have 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.¹⁰ Indeed, Cause of Action has previously published a distinct work pertaining to the White House's review of agency records.¹¹

Lastly, please note that Cause of Action is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding OMB's implementation of the Craig Memo.

Request for news media status

For fee purposes, Cause of Action also qualifies as a "representative of the news media" as defined by the statute. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, Cause of Action 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. *See id.*

Cause of Action gathers news that it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.¹² These distinct works are distributed to the through various media, including Cause of Action's website, which has been viewed just under 120,000 times in the past year alone.¹³ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email.

The statutory definition of a "representative of the news media" unequivocally commands that organizations such as Cause of Action that electronically disseminate information and publications via "alternative media shall be considered to be news-media entities." 5 U.S.C. § 552(a)(4)(A)(ii)(II). In light of the foregoing, federal agencies have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.¹⁴

¹⁰ See <http://www.causeofaction.org>.

¹¹ See GRADING THE GOVERNMENT, *supra* note 1.

¹² See, e.g., GRADING THE GOVERNMENT, *supra* note 1; 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/>; see also CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>.

¹³ Google Analytics for <http://www.causeofaction.org> (on file with Cause of Action).

¹⁴ See, e.g., FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA

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Record production and contact information

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, email, .pdf). 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 Allan.Blutstein@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ALLAN BLUTSTEIN
MANAGING COUNSEL

Exhibit 1



U.S. Department of Justice

Office of Legal Policy

Assistant Attorney General

Washington, D.C. 20530

September 1, 1988

MEMORANDUM

TO: Freedom of Information Act/Privacy Act
Legal and Administrative Contacts

FROM: Stephen J. Markman **STM**
Assistant Attorney General
Office of Legal Policy

SUBJECT: White House Records in Agency Files:
Referrals and Consultations

In processing requests under the Freedom of Information Act or the Privacy Act of 1974, the search for responsive records occasionally turns up White House records located in agency files which are responsive to the requests. Such White House records raise special issues because of the unique status of the White House under the FOIA. After consultation with the Office of the Counsel to the President with regard to such records, we have agreed that agencies should implement the following procedures:

1. Records originating with or involving the "White House Office"¹ should be forwarded to the Office of the Counsel to the President for any recommendations or comments it may wish to make prior to your final response to the requester. Please be certain to advise the Counsel's Office of any sensitivity that these records have for your agency and whether any FOIA exemptions apply. It is not necessary to follow this consultation procedure, however, if the record is going to be withheld on other grounds relating to the interests of your agency, for example, under Exemption 7(A).

¹ The "White House Office" consists of all offices over which the Office of Chief of Staff directly presides, including the Offices of Deputy Chief of Staff, Communications, Speechwriting, Research, Public Affairs, Media and Broadcast Relations, Press Secretary, Political and Intergovernmental Affairs, Counsel to the President, Presidential Advance Office, Domestic Affairs, Policy Development, Cabinet Secretary, Legislative Affairs, First Lady, Appointments and Scheduling, Private Sector Initiatives, Presidential Personnel, and Operations.

- 2 -

All inquiries to the White House on records whose origins cannot be discerned should be referred to the White House Counsel's Office at the following address:

Mr. Arthur B. Culvahouse, Jr.
Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Please note that many documents originating with the White House Press Office, such as "Press Briefings" and "White House Talking Points" (unless they are marked as drafts), are in the public domain and thus may be disclosed without consultation. Questions concerning documents likely in the public domain should also be referred to the White House Counsel's Office.

2. All records originating with other offices within the Executive Office of the President (EOP) must be referred to the proper EOP officer for consultation purposes only. Individual agencies should respond directly to the requester when these consultations have been completed. For your convenience, I am attaching a list of names and addresses of all other EOP components.

3. Classified White House records, or "sensitive" ones involving foreign relations matters, should be coordinated with Ms. Nancy V. Menan of the National Security Council at the following address:

Ms. Nancy V. Menan
Acting Director, FOIA Unit
National Security Council
Old Executive Office Building
Room 395
Washington, D.C. 20506

If you have any questions with regard to these procedures, please do not hesitate to contact Miriam Nisbet, Deputy Director of the Office of Information and Privacy, Department of Justice, at 633-4233.

Attachment

Executive Office of the President

Council of Economic Advisers
Special Assistant to the Chairman
Old Executive Office Building, Room 315
Washington, D.C. 20500

Council on Environmental Quality
Deputy General Counsel
722 Jackson Place, N.W., Room 31
Washington, D.C. 20006

Office of Administration
Director, Administrative Services Division
Old Executive Office Building, Room 350
Washington, D.C. 20500

Office of Management and Budget
General Counsel
Executive Office of the President
Washington, D.C. 20503

Office of Science and Technology Policy
Executive Director
726 Jackson Place, N.W., Room 5013
Washington, D.C. 20500

Office of the U.S. Trade Representative
FOIA Officer
600 17th Street, N.W.
Washington, D.C. 20506

Exhibit 2



VIA E-MAIL & FACSIMILE

June 3, 2013

Dionne Hardy
FOIA Officer
Room 9026
725 17th Street, NW
Washington, DC 20503
E-mail: OMBFOIA@omb.eop.gov
Facsimile: (202) 395-3504

RE: Freedom of Information Act Request

Dear Ms. Hardy:

On November 3, 1993, the Department of Justice (DOJ) sent a memorandum to the principal Freedom of Information Act (FOIA) contacts at all federal agencies regarding the FOIA consultation procedures to be followed when White House-originated records were located in agency files.¹ Pursuant to the FOIA, please produce all subsequent memoranda authored by DOJ or the White House addressing the referral of agency documents to the White House in response to any document request, including but not limited to requests made pursuant to FOIA (e.g., subpoena, Congress, etc.).

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 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

¹ Memorandum from Associate Attorney General Webster L. Hubbell to all Agency General Counsels (Nov. 3, 1993), *available at* http://www.justice.gov/oip/foia_updates/Vol_XIV_3/page4.htm.

Ms. Dionne Hardy

June 3, 2013

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interested persons about actions of federal agencies, and another periodical, "Cause of Action News."²

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, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.³

If you have any questions about this request, please contact me by e-mail at allan.blutstein@causeofaction.org or by telephone at (202) 499-4232. Thank you for your attention to this matter.



Allan Blutstein
Senior Counsel

² Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

³ 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 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); 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).

Exhibit 3



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D. C. 20503

March 14, 2014

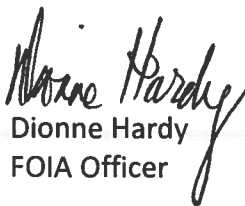
Mr. Allan Blutstein
Senior Counsel
Cause of Action
1919 Pennsylvania Avenue NW
Suite 650
Washington, DC 20006

Dear Mr. Blutstein:

This responds to your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated June 3, 2013, which was received in this office on June 5, 2013, and assigned tracking number 2013-161. Your request seeks “. . . all subsequent memoranda authored by DOJ or the White House addressing the referral of agency documents to the White House in response to any document request, including but not limited to requests made pursuant to FOIA (e.g., subpoena, Congress, etc.).”

In response to your FOIA request, OMB conducted a search of its files for documents that are responsive to the request. We found 3 documents totaling 21 pages that are responsive. Those documents are enclosed.

Sincerely,


Dionne Hardy
FOIA Officer

Enclosures

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FOIA GUIDANCE

Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them

In the course of processing records responsive to FOIA requests, it is not uncommon for agencies to locate records which either originated with another agency, or another component within their agency, or which contain information that is of interest to another agency or component. The long-standing practice in such situations is to either *refer* the requested record to the originating agency or component for it to process, or to *consult* with the other agency or component that has equity in the document to get its views on the sensitivity of the document's content prior to making a disclosure determination. Typically, agencies *refer* records for direct handling to another agency when the records originated with that other agency. By contrast, when records originated with the agency processing the request, but contain within them information of interest to another agency, the agency processing the request will typically *consult* with that other agency prior to making a release determination.

There are several benefits to these procedures. They foster efficiency and ensure consistency of responses. They also help ensure that agencies making release determinations are fully informed about any sensitivities of the content of the documents. While referrals and consultations are widely utilized and accepted, *see, e.g., Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1118 (D.C. Cir. 2007), it is important that agencies remain cognizant of the importance of keeping requesters informed so that they understand what has happened to the documents that are responsive to their requests, that they are not disadvantaged by the referral and consultation process, and that they have a point of contact at the relevant agency where they can make inquiries about the status of their requests, including the status of any records that have been referred.

The updated procedures for referrals and consultations that are outlined below are designed to address all these important interests. They set forth the general rules agencies should follow both in making referrals and consultations and in handling any such referrals and consultations sent to them. They also address the exceptional cases where there is a need to protect personal privacy or national security interests and so coordination, as described below, rather than the standard referral procedures, should be used. Lastly, the procedures are designed to maximize efficiency and ensure agency accountability for the overall benefit of FOIA administration.

Threshold Considerations

There are a few threshold considerations that must be taken into account prior to making a referral or consultation. First, while the typical practice should be to refer records when they originated with another agency, if the agencies jointly agree that the records can be handled as a consultation, that is permissible. Ultimately, the agency in the best position to respond regarding the records should do so. Typically that is the originator of the records, but that is not necessarily always the case.

Second, before making a referral of records to another agency or component for handling and direct response to the requester, agencies must be sure that the entity that will receive the referral is itself subject to the FOIA. It is not appropriate to refer records for direct response to the FOIA requester if the entity that originated the records is not itself subject to the FOIA. *See EPIC v. NSA*, No. 10-0196, 2011 WL 2650206, at *5 (D.D.C. July 7, 2011) (holding that while "[i]t is true that agencies that receive FOIA requests and discover responsive documents that were created by another agency [they] may forward, or 'refer' those documents to the originating agency, if the originating entity is not an agency subject to the FOIA, it 'cannot unilaterally be made subject to the statute by any action of an agency, including referral'"). Thus, a referral should not be made to Congress, the courts, state governmental entities, private businesses, or individuals. As discussed below, an agency may consult with such entities as necessary, but the agency must then make a disclosure determination and respond itself concerning those documents.

Third, when agencies find that they routinely locate the same or similar types of documents or information that originated with another agency, or when agencies find that they routinely receive for consultation or referral the same type of record or information from another agency, they should look for ways to collaborate to see if they can adopt standard processing procedures with regard to the documents or information that might reduce the number of referrals or consultations that need to be made. This, in turn, will improve overall processing times both for the agency which otherwise would have made the referral or consultation and the agency that otherwise would have received the referral or consultation.

Updated Standard Procedures for Making a Referral

In the absence of a processing agreement, when an agency locates records which originated with another agency or component, the records should ordinarily be referred to the originating agency for processing and direct response to the requester. The following steps should be taken when making a referral of documents to another agency or component, subject to the exceptions described below regarding coordinating a response.

- Identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
- Prior to making the referral, review the records for any equity your agency may have and include your agency's disclosure recommendations in the referral memorandum. That will facilitate the processing of the referral by the receiving agency.
- Send the documents, with the accompanying memorandum containing your agency's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of your processing.
- Include in the referral package the FOIA request number assigned by your agency. That original FOIA request number should always accompany any communication concerning the referred documents. Also include a copy of the FOIA request.
- Provide the date the request giving rise to the referral was received by your agency. That will allow the agency receiving the referral to place the records in any queue according to that request receipt date.
- Advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.
- Maintain a copy of the records being referred and the cover memorandum accompanying the referral.

These steps serve several overlapping purposes. They make the referral process transparent; they maximize administrative efficiency; and they facilitate tracking of the referred documents. By identifying the agencies to which referrals were directed and by maintaining the original FOIA request number on any communication concerning the referred documents, the requester will be able to readily match the documents released as a result of the referral with the original request.

Standard Procedures Upon Receipt of a Referral

When an agency receives a referral of documents from another agency or another component, the following steps should be taken to ensure efficiency and accountability.

- Assign your own agency's tracking number to the referral so that you can readily track it.
- Send the FOIA requester an acknowledgment of receipt of the referral and identify the agency that made the referral, subject to the exceptions described below for coordinating a response.
- Include in the acknowledgement both your agency's tracking number and the original FOIA request tracking number assigned by the agency making the referral so that the requester can readily link the referred records to his or her original request.
- Provide the FOIA requester with a telephone line or internet service that can be used to obtain information about the status of the referred records.
- Track the referral just as you would an incoming request and include it in your Annual FOIA Report.
- Place the documents that make up the referral in the appropriate processing track at your agency according to the date the FOIA request was first received by the agency making the referral, and not according to the date the referral was received by your agency. In that way, the FOIA requester does not incur any timing disadvantage by virtue of the fact that a referral was made.

- Always include the original request number from the referring agency as well as your own referral number in any correspondence with the requester regarding the referred documents.

If your agency can provide a final response to the requester on the referred documents in ten days or less, a separate acknowledgement letter is not necessary. In that case, you should provide the required information about the agency that made the referral, as well as the original FOIA request number, in the final response itself.

Exceptions to Standard Procedures for Making Referrals – Coordinating the Response

There have always been occasions where an agency may locate in its files law enforcement records originating with a law enforcement agency or classified records originating with an agency that is a member of the Intelligence Community. When responding to requests that encompass those records, it has occasionally been necessary to use modified procedures in order to avoid inadvertently revealing a sensitive fact that could invade someone's personal privacy or damage national security interests. Under such modified procedures, which should be invoked only when necessary to avoid such inadvertent disclosures, the agency that originally received the request will typically respond to the requester itself, after coordinating with the law enforcement or Intelligence Community agency that originated the records.

The use of these modified procedures has arisen most typically in the context of a request for records on a living third party, made without consent, to a non-law enforcement agency. If such a non-law enforcement agency located within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. *See, e.g., SafeCard Servs. v. SEC*, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (recognizing categorical protection for identities of individuals mentioned in law enforcement files). It is well established that individuals have a strong privacy interest in not being publicly associated with a law enforcement investigation. *See, e.g., Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (finding that connection with law enforcement file "carries a stigmatizing connotation" (quoting *Branch v. FBI*, 658 F. Supp. 204, 209 (D.D.C. 1987))). Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter, is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency potentially could cause national security harms. *See Exec. Order No. 13,526, § 3.6(b), 3 C.F.R. 298 (2009)*. In both these situations, where the involvement of the originating agency is not publicly acknowledged, the standard referral procedures are not appropriate, and the agency in receipt of the request should instead coordinate with the agency which originated the documents and then make the response itself. In these instances, both agencies will need to take extra steps in order to ensure that requests receive the most efficient and transparent handling possible, consistent with the privacy and national security interests involved.

Procedures for Coordinating a Response

These steps, which are referred to as "coordinating a request," are designed to ensure that the records are processed efficiently, with greater accountability, and improved customer service in their handling. In order to ensure that coordination across agencies does not create a risk of any drop in the quality of customer service, agencies must work proactively and conscientiously to ensure that they all work to fulfill the FOIA's purposes. This updated guidance identifies important steps in a process that, while not new, can be complicated.

To avoid inadvertently invading an individual's personal privacy or inadvertently revealing protected national security information, the agency in receipt of a request involving unacknowledged law enforcement or national security records that originated with another agency or another component should not automatically follow the standard referral procedures. Instead, the agency in receipt of the request should coordinate with the originating agency before itself making a response to the requester according to the following steps. For documents involving Intelligence Community agencies, because the agency in receipt of the request might be unaware of the sensitivity of the documents at issue, it is important that no referral be made without first coordinating with the Intelligence Community agency involved.

- Upon identification of unacknowledged law enforcement or Intelligence Community records, contact the agency or component originating such records to inquire whether that agency's or component's involvement in the matter can be publicly acknowledged without invading personal privacy or causing national security harms. Provide copies of the request and the requested records as necessary to facilitate this process.
- The agency that originated the records shall promptly respond to the inquiry from the agency in receipt of the request.

- If the agency that originated the records advises that there are no privacy or national security harms at risk by virtue of their involvement, then the standard referral procedures outlined above can be followed. In those cases, the agency receiving the referral will respond directly to the requester according to the standard referral process.
- Otherwise, the agency originally in receipt of the request should coordinate with the agency that originated the records to determine how the records should be handled under the FOIA.
- The agency that originated the records and whose views are being sought through the coordination should assign a tracking number to the documents that are the subject of the coordination and should account for their handling in its Annual FOIA Report.
- During the time the agency originally in receipt of the request is coordinating with the other agency, the agency originally in receipt of the request shall respond to status inquiries made by the requester.
- The agency that originated the documents and whose views are being sought is responsible, upon request, for promptly providing updated status information to the agency originally in receipt of the request. That agency shall work proactively with the receiving agency to ensure that the processing of the request is conducted efficiently and that the requester is not disadvantaged as a result of the coordination process. Moreover, to preserve the privacy and law enforcement interests at stake, the originating agency should promptly provide its views on the records so that they can be readily incorporated into the receiving agency's response letter.
- The release determination for the records that are the subject of the coordination should be conveyed to the requester by the agency originally in receipt of the request.

As with standard referrals, these procedures for coordinating a response serve several overlapping purposes. They ensure that an individual's privacy is not inadvertently invaded or a national security interest in a topic is not inadvertently compromised through the mechanics of the referral process. At the same time, they facilitate the handling of, and promote accountability for, the records that are the subject of the coordination. Lastly, they ensure that the FOIA requester retains a point of contact for the documents subject to the coordination who can provide information regarding the status of the request.

Consultations

There are several situations where it is appropriate for agencies to consult with another agency or entity which holds an interest in the documents that are the subject of a FOIA request. This most commonly arises when an agency locates records in response to a request that originated with the agency, but which contain within them information of interest to another agency or another component. In those situations, the agency processing the request should consult with that other agency, or equity holder, to obtain its views prior to disclosure of the records.

Consultations, rather than referrals, are also appropriate when an agency locates records in its files that originated with an entity that is not itself subject to the FOIA. The agency may consult with that outside entity as part of its process of making a disclosure determination. Such consultations are required by Executive Order 12,600 whenever an agency is processing a request for records that arguably contain material exempt from release under Exemption 4 of the FOIA. See 3 C.F.R. 235 (1988). Pursuant to Executive Order 12,600, agencies are required, with certain limited exceptions, to establish procedures to consult with the submitter of such records in order to obtain the submitter's views prior to making a disclosure determination. See Exec. Order No. 12,600, § 1. As part of those procedures, Executive Order 12,600 specifically requires that agencies notify requesters to advise them that they are seeking the views of the submitter on documents sought by the requester. See *id.* § 9.

As mentioned above, agencies are encouraged to establish agreements to eliminate the need for consultations on regularly occurring information in their files. Agencies should also set up mechanisms to facilitate prompt responses to consultations. These can range from establishment of dedicated points of contact for certain information to utilization of shared document platforms by agencies which frequently need to consult with one another.

Procedures for Making a Consultation

When consulting with another agency to obtain its views on disclosure, agencies should take the following steps.

- Utilize the most time-efficient mechanism in conducting the consultation. For example, in certain situations a phone call or e-mail to the agency whose views are being sought may be all that is required.
- For consultations requiring a more extensive review by the other agency, provide copies of the documents at issue, a copy of the request letter, and any other information that may assist the other agency in its analysis.
- Conduct consultations simultaneously, rather than sequentially, whenever possible, to ensure greater efficiency. When doing so, advise the receiving agencies of the other agencies that are also reviewing the documents.
- When providing updates to requesters on the status of their requests, include information concerning ongoing consultations. Ordinarily, with the same exceptions noted above in the section on coordinating responses, the identity of the entity which is being consulted can be provided to the requester.

Procedures Upon Receipt of a Consultation

Whenever an agency receives a consultation from another agency, it should be mindful of the need to respond as promptly as practicable to the consultation to facilitate the other agency's ability to finalize its response to the request. To ensure greater accountability for the handling of consultations the Department of Justice created a requirement that agencies include data in their Annual FOIA Reports each year regarding any consultations that they receive. Agencies must report in Section XII of their Annual FOIA Reports the number of consultations received, the number processed, and the number of consultations remaining pending at the end of the fiscal year, including the dates the ten oldest pending consults were received and the number of days those ten oldest consultations have been pending.

Upon receipt of a consultation, agencies should take the following steps.

- Assign the consultation a tracking number to facilitate its handling and inclusion in your Annual FOIA Report.
- Promptly provide your agency's views on the disclosability of the contents of the records to the agency seeking the consultation. Utilize the most time-efficient method in doing so.
- Continuously assess the need and frequency of the consultations you receive so that you can identify ways to streamline or eliminate the need for certain consultations.

Conclusion

When processing records in response to FOIA requests, agencies often locate records or information that originated outside their agencies. By utilizing the referral, coordination, and consultation procedures outlined above, agencies can make certain that they are appropriately handling the records. These procedures ensure that agencies are making fully informed and consistent disclosure determinations, in a manner that maximizes efficiency. They also ensure that FOIA requesters understand how their requests are being handled and always have a point of contact to obtain information about the status of any of the records subject to their requests.

Updated: August 2012



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FOIA GUIDANCE

Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them

In the course of processing records responsive to FOIA requests, it is not uncommon for agencies to locate records which either originated with another agency, or another component within their agency, or which contain information that is of interest to another agency or component. The long-standing practice in such situations is to either refer the requested record to the originating agency or component for it to process, or to consult with the other agency or component that has equity in the document to get its views on the sensitivity of the document's content prior to making a disclosure determination. Typically, agencies refer records for direct handling to another agency when the records originated with that other agency. By contrast, when records originated with the agency processing the request, but contain within them information of interest to another agency, the agency processing the request will typically consult with that other agency prior to making a release determination.

There are several benefits to these procedures. They foster efficiency and ensure consistency of responses. They also help ensure that agencies making release determinations are fully informed about any sensitivities of the content of the documents. While referrals and consultations are widely utilized and accepted, *see, e.g., Sussman v. U.S. Marshals Service*, 494 F.3d 1106, 1118 (D.C. Cir. 2007), it is important that agencies remain cognizant of the importance of keeping requesters informed so that they understand what has happened to the documents that are responsive to their requests, that they are not disadvantaged by the referral and consultation process, and that they have a point of contact at the relevant agency where they can make inquiries about the status of their requests, including the status of any records that have been referred.

The updated procedures for referrals and consultations that are outlined below are designed to address all these important interests. They set forth the general rules agencies should follow both in making referrals and consultations and in handling any such referrals and consultations sent to them. They also address the exceptional cases where there is a need to protect personal privacy or national security interests and so coordination, as described below, rather than the standard referral procedures, should be used. Lastly, the procedures are designed to maximize efficiency and ensure agency accountability for the overall benefit of FOIA administration.

Threshold Considerations

There are a few threshold considerations that must be taken into account prior to making a referral or consultation. First, while the typical practice should be to refer records when they originated with another agency, if the agencies jointly agree that the records can be handled as a consultation, that is permissible. Ultimately, the agency in the best position to respond regarding the records should do so. Typically that is the originator of the records, but that is not necessarily always the case.

Second, before making a referral of records to another agency or component for handling and direct response to the requester, agencies must be sure that the entity that will receive the referral is itself subject to the FOIA. It is not appropriate to refer records for direct response to the FOIA requester if the entity that originated the records is not itself subject to the FOIA. *See EPIC v. NSA*, No. 10-0196, 2011 WL 2650206, at *5 (D.D.C. July 7, 2011) (holding that while "[i]t is true that agencies that receive FOIA requests and discover responsive documents that were created by another agency [they] may forward, or 'refer' those documents to the originating agency, if the originating entity is not an agency subject to the FOIA, it 'cannot unilaterally be made subject to the statute by any action of an agency, including referral'). Thus, a referral should not be made to Congress, the courts, state governmental entities, private businesses, or individuals. As discussed below, an agency may consult with such entities as necessary, but the agency must then make a disclosure determination and respond itself concerning those documents.

Third, when agencies find that they routinely locate the same or similar types of documents or information that originated with another agency, or when agencies find that they routinely receive for consultation or referral the same type of record or information from another agency, they should look for ways to collaborate to see if they can adopt standard processing procedures with regard to the documents or information that might reduce the number of referrals or consultations that need to be made. This, in turn, will improve overall processing times both for the agency which otherwise would have made the referral or consultation and the agency that otherwise would have received the referral or consultation.

Updated Standard Procedures for Making a Referral

In the absence of a processing agreement, when an agency locates records which originated with another agency or component, the records should ordinarily be referred to the originating agency for processing and direct response to the requester. The following steps should be taken when making a referral of documents to another agency or component, subject to the exceptions described below regarding coordinating a response.

- Identify records appropriate for referral to other agencies or components as soon as practicable during the course of processing a request.
- Prior to making the referral, review the records for any equity your agency may have and include your agency's disclosure recommendations in the referral memorandum. That will facilitate the processing of the referral by the receiving agency.
- Send the documents, with the accompanying memorandum containing your agency's disclosure recommendations, to the originating agency or agencies as soon as practicable during the course of your processing.
- Include in the referral package the FOIA request number assigned by your agency. That original FOIA request number should always accompany any communication concerning the referred documents. Also include a copy of the FOIA request.
- Provide the date the request giving rise to the referral was received by your agency. That will allow the agency receiving the referral to place the records in any queue according to that request receipt date.
- Advise the FOIA requester that a referral of records has been made, provide the name of the agency to which the

referral was directed, and include that agency's FOIA contact information.

- Maintain a copy of the records being referred and the cover memorandum accompanying the referral.

These steps serve several overlapping purposes. They make the referral process transparent; they maximize administrative efficiency; and they facilitate tracking of the referred documents. By identifying the agencies to which referrals were directed and by maintaining the original FOIA request number on any communication concerning the referred documents, the requester will be able to readily match the documents released as a result of the referral with the original request.

Standard Procedures Upon Receipt of a Referral

When an agency receives a referral of documents from another agency or another component, the following steps should be taken to ensure efficiency and accountability.

- Assign your own agency's tracking number to the referral so that you can readily track it.
- Send the FOIA requester an acknowledgment of receipt of the referral and identify the agency that made the referral, subject to the exceptions described below for coordinating a response.
- Include in the acknowledgement both your agency's tracking number and the original FOIA request tracking number assigned by the agency making the referral so that the requester can readily link the referred records to his or her original request.
- Provide the FOIA requester with a telephone line or internet service that can be used to obtain information about the status of the referred records.
- Track the referral just as you would an incoming request and include it in your Annual FOIA Report.
- Place the documents that make up the referral in the appropriate processing track at your agency according to the date the FOIA request was first received by the agency making the referral, and not according to the date the referral was received by your agency. In that way, the FOIA requester does not incur any timing disadvantage by virtue of the fact that a referral was made.
- Always include the original request number from the referring agency as well as your own referral number in any correspondence with the requester regarding the referred documents.

If your agency can provide a final response to the requester on the referred documents in ten days or less, a separate acknowledgement letter is not necessary. In that case, you should provide the required information about the agency that made the referral, as well as the original FOIA request number, in the final response itself.

Exceptions to Standard Procedures for Making Referrals – Coordinating the Response

There have always been occasions where an agency may locate in its files law enforcement records originating with a law enforcement agency or classified records originating with an agency that is a member of the Intelligence Community. When responding to requests that encompass those records, it has occasionally been necessary to use modified procedures in order to avoid inadvertently revealing a sensitive fact that could invade someone's personal privacy or damage national security interests. Under such modified procedures, which should be invoked only when necessary to avoid such inadvertent disclosures, the agency that originally received the request will typically respond to the requester itself, after coordinating with the law enforcement or Intelligence Community agency that originated the records.

The use of these modified procedures has arisen most typically in the context of a request for records on a living third party, made without consent, to a non-law enforcement agency. If such a non-law enforcement agency located within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. See, e.g., *SafeCard Serus v. SEC*, 926 F.2d 1197, 1206 (D.C. Cir. 1991) (recognizing categorical protection for identities of individuals mentioned in law enforcement files). It is well established that individuals have a strong privacy interest in not being publicly associated with a law enforcement investigation. See, e.g., *Fitzgibbon v. CIA*, 911 F.2d 755, 767 (D.C. Cir. 1990) (finding that connection with law enforcement file "carries a stigmatizing connotation" (quoting *Branch v. FBI*, 658 F. Supp. 204, 209 (D.D.C. 1987))). Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter, is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency potentially could cause national security harms. See Exec. Order No. 13,526, § 3.6 (b), 3 C.F.R. 298 (2009). In both these situations, where the involvement of the originating agency is not publicly acknowledged, the standard referral procedures are not appropriate, and the agency in receipt of the request should instead coordinate with the agency which originated the documents and then make the response itself. In these instances, both agencies will need to take extra steps in order to ensure that requests receive the most efficient and transparent handling possible, consistent with the privacy and national security interests involved.

Procedures for Coordinating a Response

These steps, which are referred to as "coordinating a request," are designed to ensure that the records are processed efficiently, with greater accountability, and improved customer service in their handling. In order to ensure that coordination across agencies does not create a risk of any drop in the quality of customer service, agencies must work proactively and conscientiously to ensure that they all work to fulfill the FOIA's purposes. This updated guidance identifies important steps in a process that, while not new, can be complicated.

To avoid inadvertently invading an individual's personal privacy or inadvertently revealing protected national security information, the agency in receipt of a request involving unacknowledged law enforcement or national security records that originated with another agency or another component should not automatically follow the standard referral procedures. Instead, the agency in receipt of the request should coordinate with the originating agency before itself making a response to the requester according to the following steps. For documents involving Intelligence Community agencies, because the agency in receipt of the request might be unaware of the sensitivity of the documents at issue, it is important that no referral be made without first coordinating with the Intelligence Community agency involved.

- Upon identification of unacknowledged law enforcement or Intelligence Community records, contact the agency or component originating such records to inquire whether that agency's or component's involvement in the matter can be publicly acknowledged without invading personal privacy or causing national security harms. Provide copies of the request and the requested records as necessary to facilitate this process.
- The agency that originated the records shall promptly respond to the inquiry from the agency in receipt of the request.
- If the agency that originated the records advises that there are no privacy or national security harms at risk by virtue of their involvement, then the standard referral procedures outlined above can be followed. In those cases, the agency receiving the referral will respond directly to the requester according to the standard referral process.

- Otherwise, the agency originally in receipt of the request should coordinate with the agency that originated the records to determine how the records should be handled under the FOIA.
- The agency that originated the records and whose views are being sought through the coordination should assign a tracking number to the documents that are the subject of the coordination and should account for their handling in its Annual FOIA Report.
- During the time the agency originally in receipt of the request is coordinating with the other agency, the agency originally in receipt of the request shall respond to status inquiries made by the requester.
- The agency that originated the documents and whose views are being sought is responsible, upon request, for promptly providing updated status information to the agency originally in receipt of the request. That agency shall work proactively with the receiving agency to ensure that the processing of the request is conducted efficiently and that the requester is not disadvantaged as a result of the coordination process. Moreover, to preserve the privacy and law enforcement interests at stake, the originating agency should promptly provide its views on the records so that they can be readily incorporated into the receiving agency's response letter.
- The release determination for the records that are the subject of the coordination should be conveyed to the requester by the agency originally in receipt of the request.

As with standard referrals, these procedures for coordinating a response serve several overlapping purposes. They ensure that an individual's privacy is not inadvertently invaded or a national security interest in a topic is not inadvertently compromised through the mechanics of the referral process. At the same time, they facilitate the handling of, and promote accountability for, the records that are the subject of the coordination. Lastly, they ensure that the FOIA requester retains a point of contact for the documents subject to the coordination who can provide information regarding the status of the request.

Consultations

There are several situations where it is appropriate for agencies to consult with another agency or entity which holds an interest in the documents that are the subject of a FOIA request. This most commonly arises when an agency locates records in response to a request that originated with the agency, but which contain within them information of interest to another agency or another component. In those situations, the agency processing the request should consult with that other agency, or equity holder, to obtain its views prior to disclosure of the records.

Consultations, rather than referrals, are also appropriate when an agency locates records in its files that originated with an entity that is not itself subject to the FOIA. The agency may consult with that outside entity as part of its process of making a disclosure determination. Such consultations are required by Executive Order 12,600 whenever an agency is processing a request for records that arguably contain material exempt from release under Exemption 4 of the FOIA. See 3 C.F.R. 235 (1988). Pursuant to Executive Order 12,600, agencies are required, with certain limited exceptions, to establish procedures to consult with the submitter of such records in order to obtain the submitter's views prior to making a disclosure determination. See Exec. Order No. 12,600, § 1. As part of those procedures, Executive Order 12,600 specifically requires that agencies notify requesters to advise them that they are seeking the views of the submitter on documents sought by the requester. See *id.* § 9.

As mentioned above, agencies are encouraged to establish agreements to eliminate the need for consultations on regularly occurring information in their files. Agencies should also set up mechanisms to facilitate prompt responses to consultations. These can range from establishment of dedicated points of contact for certain information to utilization of shared document platforms by agencies which frequently need to consult with one another.

Procedures for Making a Consultation

When consulting with another agency to obtain its views on disclosure, agencies should take the following steps.

- Utilize the most time-efficient mechanism in conducting the consultation. For example, in certain situations a phone call or e-mail to the agency whose views are being sought may be all that is required.
- For consultations requiring a more extensive review by the other agency, provide copies of the documents at issue, a copy of the request letter, and any other information that may assist the other agency in its analysis.
- Conduct consultations simultaneously, rather than sequentially, whenever possible, to ensure greater efficiency. When doing so, advise the receiving agencies of the other agencies that are also reviewing the documents.
- When providing updates to requesters on the status of their requests, include information concerning ongoing consultations. Ordinarily, with the same exceptions noted above in the section on coordinating responses, the identity of the entity which is being consulted can be provided to the requester.

Procedures Upon Receipt of a Consultation

Whenever an agency receives a consultation from another agency, it should be mindful of the need to respond as promptly as practicable to the consultation to facilitate the other agency's ability to finalize its response to the request. To ensure greater accountability for the handling of consultations the Department of Justice created a requirement that agencies include data in their Annual FOIA Reports each year regarding any consultations that they receive. Agencies must report in Section XII of their Annual FOIA Reports the number of consultations received, the number processed, and the number of consultations remaining pending at the end of the fiscal year, including the dates the ten oldest pending consults were received and the number of days those ten oldest consultations have been pending.

Upon receipt of a consultation, agencies should take the following steps.

- Assign the consultation a tracking number to facilitate its handling and inclusion in your Annual FOIA Report.
- Promptly provide your agency's views on the disclosability of the contents of the records to the agency seeking the consultation. Utilize the most time-efficient method in doing so.
- Continuously assess the need and frequency of the consultations you receive so that you can identify ways to streamline or eliminate the need for certain consultations.

Conclusion

When processing records in response to FOIA requests, agencies often locate records or information that originated outside their agencies. By utilizing the referral, coordination, and consultation procedures outlined above, agencies can make certain that they are appropriately handling the records. These procedures ensure that agencies are making fully informed and consistent disclosure determinations, in a manner that maximizes efficiency. They also ensure that FOIA requesters understand how their requests are being handled and always have a point of contact to obtain information about the status of any of the records subject to their requests.

Updated: August 2012

U.S. DEPARTMENT OF JUSTICE

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FOIA Update, Summer/Fall 1993

http://www.usdoj.gov/oip/foia_updates/Vol_XIV_3/page1.htm

THE WHITE HOUSE

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

I am writing to call your attention to a subject that is of great importance to the American public and to all Federal departments and agencies – the administration of the Freedom of Information Act, as amended (the "Act"). The Act is a vital part of the participatory system of government. I am committed to enhancing its effectiveness in my Administration.

For more than a quarter century now, the Freedom of Information Act has played a unique role in strengthening our democratic form of government. The statute was enacted based upon the fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government the better they will be governed. Openness in government is essential to accountability and the Act has become an integral part of that process.

The Freedom of Information Act, moreover, has been one of the primary means by which members of the public inform themselves about their government. As Vice President Gore made clear in the National Performance Review, the American people are the Federal Government's customers. Federal departments and agencies should handle requests for information in a customer-friendly manner. The use of the Act by ordinary citizens is not complicated, nor should it be. The existence of unnecessary bureaucratic hurdles has no place in its implementation.

I therefore call upon all Federal departments and agencies to renew their commitment to the Freedom of Information Act, to its underlying principles of government openness, and to its sound administration. This is an appropriate time for all agencies to take a fresh look at their administration of the Act, to reduce backlogs of Freedom of Information Act requests, and to conform agency practice to the new litigation guidance issued by the Attorney General, which is attached.

Further, I remind agencies that our commitment to openness requires more than merely responding to requests from the public. Each agency has a responsibility to distribute information on its own initiative, and to enhance public access through the use of electronic information systems. Taking these steps will ensure compliance with both the letter and spirit of the Act.

Attorney General Reno's FOIA Memorandum

October 4, 1993

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

SUBJECT: The Freedom of Information Act

President Clinton has asked each Federal department and agency to take steps to ensure it is in compliance with both the letter and the spirit of the Freedom of Information Act (FOIA), 5 U.S.C. § 552. The Department of Justice is fully committed to this directive and stands ready to assist all agencies as we implement this new policy.

First and foremost, we must ensure that the principle of openness in government is applied in each and every disclosure and nondisclosure decision that is required under the Act. Therefore, I hereby rescind the Department of Justice's 1981 guidelines for the defense of agency action in Freedom of Information Act litigation. The Department will no longer defend an agency's withholding of information merely because there is a "substantial legal basis" for doing so. Rather, in determining whether or not to defend a nondisclosure decision, we will apply a presumption of disclosure.

To be sure, the Act accommodates, through its exemption structure, the countervailing interests that can exist in both disclosure and nondisclosure of government information. Yet while the Act's exemptions are designed to guard against harm to governmental and private interests, I firmly believe that these exemptions are best applied with specific reference to such harm, and only after consideration of the reasonably expected consequences of disclosure in each particular case.

In short, it shall be the policy of the Department of Justice to defend the assertion of a FOIA exemption only in those cases where the agency reasonably foresees that disclosure would be harmful to an interest protected by that exemption. Where an item of information might technically or arguably fall within an exemption, it ought not to be withheld from a FOIA requester unless it need be.

It is my belief that this change in policy serves the public interest by achieving the Act's primary objective — maximum responsible disclosure of government information — while preserving essential confidentiality. Accordingly, I strongly encourage your FOIA officers to make "discretionary disclosures" whenever possible under the Act. Such disclosures are possible under a number of FOIA exemptions, especially when only a governmental interest would be affected. The exemptions and opportunities for "discretionary disclosures" are discussed in the Discretionary Disclosure and Waiver section of the "Justice Department Guide to the Freedom of Information Act." As that discussion points out, agencies can make discretionary FOIA disclosures as a matter of good public policy without concern for future "waiver consequences" for similar information. Such disclosures can also readily satisfy an agency's "reasonable segregation" obligation under the Act in connection with marginally exempt information, see 5 U.S.C. § 552(b), and can lessen an agency's administrative burden at all levels of the administrative process and in litigation. I note that this policy is not intended to create any substantive or procedural rights enforceable at law.

In connection with the repeal of the 1981 guidelines, I am requesting that the Assistant Attorneys General for the Department's Civil and Tax Divisions, as well as the United States Attorneys, undertake a review of the merits of all pending FOIA cases handled by them, according to the standards set forth above. The Department's litigating attorneys will strive to work closely with your general counsels and their litigation staffs to implement this new policy on a case-by-case basis. The Department's Office of Information and Privacy can also be called upon for assistance in this process, as well as for policy guidance to agency FOIA officers.

In addition, at the Department of Justice we are undertaking a complete review and revision of our regulations implementing the FOIA, all related regulations pertaining to the Privacy Act of 1974, 5 U.S.C. § 552a, as well as the Department's disclosure policies generally. We are also planning to conduct a Department-wide "FOIA Form

Review." Envisioned is a comprehensive review of all standard FOIA forms and correspondence utilized by the Justice Department's various components. These items will be reviewed for their correctness, completeness, consistency, and particularly for their use of clear language. As we conduct this review, we will be especially mindful that FOIA requesters are users of a government service, participants in an administrative process, and constituents of our democratic society. I encourage you to do likewise at your departments and agencies.

Finally, I would like to take this opportunity to raise with you the longstanding problem of administrative backlogs under the Freedom of Information Act. Many Federal departments and agencies are often unable to meet the Act's ten-day time limit for processing FOIA requests, and some agencies -- especially those dealing with high-volume demands for particularly sensitive records -- maintain large FOIA backlogs greatly exceeding the mandated time period. The reasons for this may vary, but principally it appears to be a problem of too few resources in the face of too heavy a workload. This is a serious problem -- one of growing concern and frustration to both FOIA requesters and Congress, and to agency FOIA officers as well.

It is my hope that we can work constructively together, with Congress and the FOIA-requester community, to reduce backlogs during the coming year. To ensure that we have a clear and current understanding of the situation, I am requesting that each of you send to the Department's Office of Information and Privacy a copy of your agency's Annual FOIA Report to Congress for 1992. Please include with this report a letter describing the extent of any present FOIA backlog, FOIA staffing difficulties and any other observations in this regard that you believe would be helpful.

In closing, I want to reemphasize the importance of our cooperative efforts in this area. The American public's understanding of the workings of its government is a cornerstone of our democracy. The Department of Justice stands prepared to assist all Federal agencies as we make government throughout the executive branch more open, more responsive, and more accountable.

The following is the full text of a memorandum recently sent by Attorney General Janet Reno to the heads of all individual components of the Department of Justice, as a follow-up to the Attorney General's FOIA Memorandum, on the subject of FOIA backlog reduction within the Department:

Last month, President Clinton and I issued new Freedom of Information Act policy memoranda to the heads of all Federal departments and agencies (copies attached), as part of our Openness In Government initiative. Our policy calls for a strong presumption of disclosure under the FOIA, with information withheld only where it need be withheld in order to prevent foreseeable harm under an applicable FOIA exemption. This applies to law enforcement agencies such as the Department of Justice as well as to other Federal agencies. We are strongly encouraging all Federal agencies to make discretionary FOIA disclosures whenever this standard is not met, and we will decide whether to defend FOIA cases in litigation according to this higher standard as well. Additionally, we are committed to reducing FOIA backlogs as quickly as possible.

These backlog-reduction efforts are now actively underway within the Department, but they need your strong support as well. We all should recognize that there is no single solution to this longstanding problem. Obviously, the allocation of additional resources to FOIA administration and the reallocation of existing resources are among the choices to be considered. We also should redouble our efforts to employ practices and procedures of FOIA administration that make the most cost-effective use of all resources available.

Equally important, I believe, is the institutional attitude that is brought to matters of day-to-day FOIA administration. To implement the meaningful change in FOIA policy we announced last month, we must depend not only on those directly involved in that activity on a daily basis, but also the many Department employees on whom FOIA officers depend for timely assistance. In many instances, the Department's FOIA officers simply cannot function without the cooperation of the custodians of requested records and other interested program personnel within each component. They, too, must make timely FOIA compliance a greater priority in the future.

So, I ask that you join me in promoting a new institutional attitude toward FOIA administration, for purposes of backlog reduction as well as toward greater information disclosure. Please transmit these new FOIA policy memoranda as widely as necessary within your individual components to ensure that this new spirit of government openness and FOIA priority is communicated in all aspects of FOIA administration throughout the Department. It is my goal, and the President's as well, that this new spirit reach all Federal agency employees who are in any way involved in the administration of the Act. Attachments (2)

FOIA Memo on White House Records

The following is the full text of a memorandum sent by Associate Attorney General Webster L. Hubbell to the principal FOIA administrative and legal contacts at all federal agencies on November 3, 1993, regarding the FOIA consultation procedures required for any White House-originated record or information found in agency files:

The purpose of this memorandum is to set forth the procedures to be followed by all federal agencies for the handling of any White House-originated record or information that is found responsive to an access request made under the Freedom of Information Act, 5 U.S.C. § 552 (1988).⁽¹⁾

In processing FOIA requests, agencies searching for responsive records occasionally find White House-originated records (or records containing White House-originated information) that are located in their files. These records raise special concerns, including questions of executive privilege, and require special handling—particularly in light of the White House's unique status under the FOIA.

By its terms, the FOIA applies to "the Executive Office of the President," 5 U.S.C. § 552(f), but this term does not include either "the President's immediate personal staff" or any part of the Executive Office of the President "whose sole function is to advise and assist the President." Meyer v. Bush, 981 F.2d 1288, 1291 n.1 (D.C. Cir. 1993) (quoting H.R. Rep. No. 1380, 93d Cong., 2d Sess. 14 (1974)); see also, e.g., Soucie v. David, 448 F.2d 1067, 1075 (D.C. Cir. 1971). This means, among other things, that the parts of the Executive Office of the President that are known as the "White House Office" are not subject to the FOIA; certain other parts of the Executive Office of the President are.

In coordination with the Office of the Counsel to the President, the Department of Justice has determined that agencies should implement the following FOIA procedures regarding all White House-related records or information found in their files. Please note that these procedures prescribe "consultations," which do not involve a transfer of administrative responsibility for responding to a FOIA request, as distinct from complete record "referrals."⁽²⁾ In all instances involving White House records or information, your agency will be responsible for responding directly to the FOIA requester once the process of consultation is completed.

1. Records originating with any part of the "White House Office"⁽²⁾ should be forwarded to the Office of the Counsel to the President for any recommendation or comment it may wish to make, including any assertion of privilege, prior to your response to the FOIA requester. Please be sure to advise the White House Counsel's Office of any sensitivity that these records have from the perspective of your agency and whether you believe any FOIA exemption applies. If after considering the possibility of discretionary disclosure in accordance with the Attorney General's FOIA Memorandum of October 4, 1993 you believe that a FOIA exemption applies, you should mark each record accordingly to facilitate review by the Counsel's Office of your proposed response.

All such consultation communications should be forwarded to the White House Counsel's Office at the following address:

Office of the Counsel to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Please note that many records originating with the White House Press Office, such as "Press Briefings" and "White House Talking Points" (unless they are marked as, or appear to be, drafts), are in the public domain and thus may be disclosed without consultation. Questions concerning records likely to be in the public domain should be referred to the White House Counsel's Office as well.

It is possible that a record originating in the White House Office (or in the Office of the Vice President—see below) will be one over which the White House Office (or the Office of the Vice President) has retained control, in which case it will not be an "agency record" subject to the FOIA even though it is located by a federal agency in response to a FOIA request. Accord, e.g., Goland v. CIA, 607 F.2d 339, 345-48 (D.C. Cir. 1978) (honoring "retention of control" by non-FOIA entity), cert. denied, 445 U.S. 927 (1980); see also Paisley v. CIA, 712 F.2d 686, 692-95 (D.C. Cir. 1983); Holy Spirit Ass'n v. CIA, 636 F.2d 838, 840-42 (D.C. Cir. 1981). Any such records should be identified for special handling.

2. Any record originating with the Office of the Vice President or any of its component offices, offices which likewise are not subject to the FOIA, should be forwarded for consultation purposes to the Office of the Counsel to the Vice President, Old Executive Office Building, Room 269, Washington, D.C. 20501.
3. All records originating with other offices within the Executive Office of the President (EOP)—including the Office of Administration; the Office of Management and Budget; the Office of Science, Technology and Space Policy; the Office of the U.S. Trade Representative; the Council on Environmental Quality; and the Office of National Drug Control Policy—should be forwarded to the FOIA officers of the relevant individual EOP offices. This, again, is for consultation purposes only; agencies remain responsible for responding directly to the FOIA requester once these EOP consultations have been completed. For your convenience, a contact list for these EOP offices is attached.
4. Responses to FOIA requests for any classified White House records or records originating with the National Security Council should be coordinated with Ms. Nancy V. Menan of the National Security Council at the following address:

Director of Information Disclosure
Office of Information Disclosure
National Security Council
Old Executive Office Building, Room 392
Washington, D.C. 20506

Records originating with the Assistant to the President for National Security Affairs or his deputy should continue to be treated as records originating in the White House Office (see footnote 3 above).

If any question arises regarding these procedures, either generally or in any particular case, please do not hesitate to contact Margaret Ann Irving, Acting Deputy Director of the Justice Department's Office of Information and Privacy, at (202) 514-4251.

Attachment

cc: All Agency General Counsels

Notes

1. This memorandum supersedes the Department of Justice's January 28, 1992 memorandum on this subject.
2. See FOIA Update, Summer 1991, at 3-4 ("OIP Guidance: Referral and Consultation Procedures") (further discussing differences between these two procedures).
3. The "White House Office" includes, among other components, the Offices of the President, Cabinet Affairs, Chief of Staff, Communications, First Lady, Counsel to the President, Intergovernmental Affairs, Legislative

Affairs, Management and Administration, Operations, Political Affairs, Presidential Personnel, Public Liaison, Scheduling and Advance, Staff Secretary, Correspondence, Visitors, Policy Development, Domestic Policy Council, Environmental Policy, Council of Economic Advisors, National Economic Council, Assistant to the President for National Security Affairs and Deputy Assistant to the President for National Security Affairs, Assistant to the President for Science and Technology, and the President's Foreign Intelligence Advisory Board. The White House Office also includes task forces and working groups created by the President or an official in the White House Office, and reporting to the President or an official in the White House Office, including, for instance, the National Performance Review.

ATTACHMENT

Executive Office of the President—Agencies Subject to the FOIA

Council on Environmental Quality
Deputy General Counsel
722 Jackson Place, N.W., Room 31
Washington, D.C. 20006

Office of Administration
Director, Administrative Services Division
Old Executive Office Building,
Room 350
Washington, D.C. 20500

Office of Management and Budget
Deputy Assistant Director for Administration
New Executive Office Building,
Room 9026*
Washington, D.C. 20503

Office of National Drug Control Policy
FOIA Officer
750 17th Street, N.W., 8th Floor
Washington, D.C. 20500
Office of Science, Technology and Space Policy
Executive Director
726 Jackson Place, N.W., Room 5013
Washington, D.C. 20500

Office of the U.S. Trade Representative
FOIA Officer
600 17th Street, N.W., Room 222
Washington, D.C. 20506

- OMB requests that records be forwarded to the attention of Darrell A. Johnson at this address.

Department of Justice Guide to the Freedom of Information Act



Introduction

Enacted on July 4, 1966, and taking effect on one year later, the Freedom of Information Act provides that any person has a right, enforceable in court, to obtain access to federal agency records, except to the extent that any portions of such records are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.¹ The FOIA thus established a statutory right of public access to Executive Branch information in the federal government.²

The United States Supreme Court has explained that "[t]he basic purpose of [the] FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."³ The "FOIA is often explained as a means for citizens to know 'what their Government is up to.'"⁴ The Supreme Court stressed that "[t]his phrase should not be dismissed as a convenient formalism."⁵ Rather, "[i]t defines a structural necessity in a real democracy."⁶ As President Obama has declared, "[a] democracy requires

¹ 5 U.S.C. § 552 (2006 & Supp. IV 2010).

² See John Doe Agency v. John Doe Corp., 493 U.S. 146, 150 (1989) ("This Court repeatedly has stressed the fundamental principle of public access to Government documents that animates the FOIA.").

³ NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978).

⁴ NARA v. Favish, 541 U.S. 157, 171-72 (2004) (quoting DOJ v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 773 (1989)).

⁵ Id. at 172.

⁶ Id.

*Department of Justice Guide to the Freedom of Information Act
Procedural Requirements*

On occasion, courts have addressed the issue of an agency's technological ability to segregate records maintained in non-traditional formats and have held that records "[are] not reasonably segregable where the agency attested that it lacked the technical capabilities to edit the records in order to disclose non-exempt portions."²⁰⁸

Finally, when an agency completes its segregability analysis and determines that portions of the responsive documents can be disclosed as nonexempt and other portions are appropriately withheld as exempt, the resulting partial record disclosure must satisfy statutory document marking obligations.²⁰⁹ Agencies are required by the FOIA to mark partially-disclosed records so that the amount of deleted materials, and the exemption asserted are apparent, unless such markings would an interest protected by the exemption being asserted.²¹⁰ If technologically feasible, these markings should be placed in the record at the place where the deletion is made.²¹¹

Consultations and Referrals

When an agency locates records responsive to a FOIA request, it should determine whether another agency or agency component has a "substantial interest" in any of the records or information contained in the records.²¹² As a matter of sound administrative

(D.D.C. Sept. 29, 2004); Schrecker v. DOJ, 74 F. Supp. 2d 26, 32 (D.D.C. 1999) (finding that confidential informant "source codes and symbols are assigned in such a specific manner that no portion of the code is reasonably segregable"), rev'd & remanded in part on other grounds, 254 F.3d 162 (D.C. Cir. 2001).

²⁰⁸ Milton v. DOJ, 842 F. Supp. 2d 257, 259-61 (D.D.C. 2012) (explaining that segregability analysis focuses on "the agency's current technological capacity" and holding that responsive telephone conversations were not reasonably segregable because agency did not possess technological capacity to segregate non-exempt portions of requested records); see also Mingo v. DOJ, 793 F. Supp. 2d. 447, 454-55 (D.D.C. 2011) (concluding that nonexempt portions of recorded telephone calls are inextricably intertwined with exempt portions because agency "lacks the technical capability" to segregate information that is digitally recorded); Antonelli v. BOP, 591 F. Supp. 2d 15, 27 (D.D.C. 2008) (same); Swope v. DOJ, 439 F. Supp. 2d 1, 7 (D.D.C. 2006) (same).

²⁰⁹ See 5 U.S.C. § 552(b) (paragraph immediately following exemptions).

²¹⁰ Id; see FOIA Post, "OIP Guidance: Segregating and Marking Documents for Release In Accordance With the OPEN Government Act" (posted 10/23/08).

²¹¹ 5 U.S.C. § 552(b); see FOIA Post, "OIP Guidance: Segregating and Marking Documents for Release In Accordance With the OPEN Government Act" (posted 10/23/08).

²¹² See 5 U.S.C. § 552(a)(6)(B)(iii)(III) (2006 & Supp. IV 2010) (describing that one of three statutory circumstances where agencies can extend time to respond concerns "the need for consultation . . . with another agency [or among two or more agency components] having a substantial interest in the determination of the request").

*Department of Justice Guide to the Freedom of Information Act
Procedural Requirements*

practice, an agency should consult with any other agency or agency component whose information appears in the responsive records, especially if that other agency or component is better able to determine whether the information is exempt from disclosure.²¹³ The Department of Justice has issued detailed guidance for agencies to follow when consulting with other entities.²¹⁴

When an agency locates records that originated with another agency or component, as a matter of sound administrative practice it should ordinarily refer those records to their originator so that that agency can make a direct response to the requester on those records.²¹⁵ The referring agency ordinarily should advise the requester of the referral and of the name of the agency FOIA office to which it was made.²¹⁶

In Sussman v. U.S. Marshals Service, the Court of Appeals for the District of Columbia Circuit ruled that although consultations are the only procedure expressly mentioned in the FOIA to address situations where another agency has an interest in the handling of requested records, it was permissible for agencies to refer records to their originator for direct response to the requester.²¹⁷ The D.C. Circuit found that referring documents for direct response is a reasonable procedure so long as it does not "lead to improper withholding."²¹⁸ Additionally, the Department of Justice's guidance on referrals advises agencies not to refer records to an entity that is not itself subject to the FOIA.²¹⁹

²¹³ See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011); cf. DOJ FOIA Regulations, 28 C.F.R. § 16.4(c)(1) (2012).

²¹⁴ DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (advising that agencies should utilize time-efficient mechanisms in conducting consultations, should provide copies of material that would assist other agency in its analysis, should conduct consultations simultaneously rather than sequentially whenever possible, and should provide requesters updates on status of ongoing consultations).

²¹⁵ See id. (explaining that referrals foster efficiency and ensure consistency of responses, as well as ensure that agencies making release determinations are fully informed about the content of the records).

²¹⁶ See id. (explaining that providing this information ensures that requesters understand what has happened to the documents that are responsive to their requests, are not disadvantaged by the referral process, and have a point of contact should they have any questions about their request).

²¹⁷ 494 F.3d 1106, 1118 (D.C. Cir. 2007) (quoting McGehee v. CIA, 697 F.2d 1095, 1110 (D.C. Cir. 1983) and holding that "McGehee's admonition that the agency receiving the initial request 'cannot simply refuse to act on the ground that the documents originated elsewhere . . . imposes a duty on that agency, but the agency may acquit itself through a referral, provided the referral does not lead to improper withholding'").

²¹⁸ Id.; see also Inst. for Pol'y Stud. v. CIA, 885 F. Supp 2d 120, 241 (D.D.C. 2012) (citing Sussman, 494 F.3d at 1108, and upholding referral, noting that "[o]nce defendant

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As addressed in the Department of Justice guidance, it may sometimes be necessary for agencies to "coordinate" with another agency rather than refer records to avoid compromising sensitive law enforcement information that could invade an individual's personal privacy or damage national security interests.²²⁰

Courts have held that even after agencies make referrals of records in response to FOIA requests, they retain the responsibility of defending any agency action taken on those

discovered that some of the requested records originated with other agencies, it followed standard procedure by referring these documents to [those agencies] for [] direct response); Wilson v. DOT, 730 F. Supp. 2d 140, 154 (D.D.C. 2010) (observing that agency's referral of records was consistent with its regulations which permit referral to another agency "that originated or is substantially concerned with the records"); Cozen O'Connor v. U.S. Dep't of Treasury, 570 F. Supp. 2d 749, 770 (E.D. Pa. 2008) (finding referral process "not exceptionally lengthy" in light of nature of documents involved and "necessity of coordination among . . . various agencies"); El Badrawi v. DHS, 583 F. Supp. 2d 285, 310 (D. Conn. 2008) (granting summary judgment on "propriety and reasonableness of . . . referrals of certain records . . . to [those] . . . records' originating agencies"); Or. Natural Desert Ass'n v. Gutierrez, 409 F. Supp. 2d 1237, 1250 (D. Or. 2006) (concluding that agency's referral regulation "does not significantly impair the ability to get records" and that that regulation is "reasonable"); Rzeslawski v. DOJ, No. 97-1156, slip op. at 6 (D.D.C. July 23, 1998) (observing that an agency's "referral procedure is generally faster than attempting to make an independent determination regarding disclosure" and that "by placing the request in the hands of the originating agency, discretionary disclosure is more likely"), aff'd, No. 00-5029, 2000 WL 621299 (D.C. Cir. Apr. 4, 2000). But cf. Keys v. DHS, 570 F. Supp. 2d 59, 70 (D.D.C. 2008) (stating that referral was improper where agency referred records to incorrect agency and did not take steps to ensure that referred records were acted upon, and where second agency did not return incorrectly-referred records for nearly one year).

²¹⁹ See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (stating that, prior to referring records to entity, agencies should ensure entity is subject to FOIA); see also EPIC v. NSA, 795 F. Supp. 2d 85, 94 (D.D.C. 2011) (holding that while "[i]t is true that agencies that receive FOIA requests and discover responsive documents that were created by another agency [they] may forward, or 'refer'" those documents to the originating agency, if the originating entity is not an agency subject to the FOIA, it "cannot unilaterally be made subject to the statute by any action of an agency, including referral"); Maydak v. DOJ, 254 F. Supp. 2d 23, 40 (D.D.C. 2003) (noting that agency's referral of records requested under FOIA to entity not subject to FOIA -- a United States Probation Office -- "raises a genuine legal issue about the propriety" of agency's action).

²²⁰ See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (detailing administrative procedures for coordinating a response and stressing that agency in receipt of request is responsible for providing status updates to requester during pendency of coordination process).

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records if the matter proceeds to litigation,²²¹ which is typically done by submitting a declaration from the agency which processed the referral.²²² Additionally, as a matter of sound administrative practice agencies receiving referrals should handle them on a "first-in, first-out" basis among their other FOIA requests, according to the date of the request's initial receipt at the referring agency in order to avoid placing requesters at an unfair timing disadvantage through agency referral practices.²²³

Although a court has found that an agency generally is under no obligation to "forward" a request (which is distinct from "referring" records) to any other agency which might maintain records,²²⁴ an agency has been found required to do so, when it obligated itself to through its own FOIA regulations.²²⁵ As a matter of administrative discretion, an

²²¹ See, e.g., Hall v. CIA, 668 F. Supp. 2d 172, 182 (D.D.C. 2010) (instructing agency to "take affirmative steps to ensure that its referrals are being processed"); Skinner v. DOJ, 744 F. Supp. 2d 185, 216 (D.D.C. 2010) (denying summary judgment in part "[b]ecause the results of the [agency's] referral of records to [two agencies] have not been explained"); Schoenman v. FBI, 604 F. Supp. 2d 174, 203-04 (D.D.C. 2009) (requiring agency to submit a "comprehensive" Vaughn Index that will include "a complete accounting of all referrals made and indicate whether all documents so referred have been processed and released to Plaintiff"); Keys, 570 F. Supp. 2d at 68-69 (stating that withholding was improper where neither referring agency nor referee agency explained nature of pages withheld on referral, and where referring agency did not explain why referee agency required requester to submit additional request for responsive public records); Hronek v. DEA, 16 F. Supp. 2d 1260, 1272 (D. Or. 1998) (noting that with respect to records referred to nonparty agencies "the ultimate responsibility for a full response lies with the [referring] agencies"), aff'd, 7 F. App'x 591 (9th Cir. 2001).

²²² See, e.g., Hall v. CIA, No 04-814, 2012 WL 3143839, at *6 (D.D.C. Aug. 3, 2012) (concluding that agency "fulfilled its burden as to the coordination" of certain documents where it processed its own responsive records and provided "supporting declarations from the coordinating agencies").

²²³ See DOJ, OIP Guidance: Referrals, Consultations, and Coordination: Procedures for Processing Records when Another Agency or Entity Has an Interest in Them (2011) (agency should order referral according to date FOIA request was first received by agency making referral, not according to date referral itself was received by agency); cf. Williams v. United States, 932 F. Supp. 354, 357 & n.7 (D.D.C. 1996) (urging agency to set up an "express lane" for referred records so as to not "tie up other agencies by taking an inordinate period of time to review referred records [and] unnecessarily inhibit[ing] the smooth functioning of the [other] agencies' well oiled FOIA processing systems").

²²⁴ See Hardy v. DOD, No. 99-523, 2001 WL 34354945, at *10 (D. Ariz. Aug. 27, 2001) (holding that an agency was not obligated to forward to OPM a FOIA request for personnel records that agency did not maintain itself).

²²⁵ See Truesdale v. DOJ, 731 F. Supp. 2d 3, 6-8 (D.D.C. 2010) (denying in part defendant's motion for summary judgment because agency did not demonstrate compliance with own FOIA regulations concerning referrals).

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agency may of course advise the requester of the name and address of other agencies that are likely to maintain records responsive to the request.²²⁶

Finally, the FOIA does impose a duty to route misdirected requests to the proper FOIA component within an agency.²²⁷ Agency components must route misdirected requests within the agency within ten days of receipt, provided such requests are originally received by a component of the agency designated by the agency's regulations to receive FOIA requests.²²⁸ (See Procedural Requirements, Time Limits, above, for a discussion of the requirement to route misdirected requests.)

Responding to FOIA Requests

The FOIA requires that each agency "shall make [disclosable] records promptly available" upon request.²²⁹ The FOIA does not provide for limited disclosure; rather, it "speaks in terms of disclosure and nondisclosure [and] ordinarily does not recognize degrees of disclosure, such as permitting viewing, but not copying, of documents."²³⁰ Because the statute does not provide for limited disclosure, the Supreme Court has opined that there is also "no mechanism under [the statute] for a protective order allowing only the requester to see [the information] or for proscribing its general dissemination."²³¹ In short, "once there is disclosure, the information belongs to the general public."²³²

²²⁶ See Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009) (directing agencies to respond to FOIA requests "in a spirit of cooperation").

²²⁷ 5 U.S.C. § 552(a)(6)(A); see also FOIA Post, "OIP Guidance: New Requirement to Route Misdirected FOIA Requests" (posted 11/18/08).

²²⁸ 5 U.S.C. § 552(a)(6)(A); see also FOIA Post, "OIP Guidance: New Requirement to Route Misdirected FOIA Requests" (posted 11/18/08).

²²⁹ 5 U.S.C. § 552(a)(3)(A) (2006 & Supp. IV 2010).

²³⁰ Julian v. DOJ, 806 F.2d 1411, 1419 n.7 (9th Cir. 1986), aff'd, 486 U.S. 1 (1988); see NARA v. Favish, 541 U.S. 157, 172 (recognizing that information disclosed under FOIA "belongs to citizens to do with as they choose"), reh'g denied, 541 U.S. 1057 (2004); Berry v. DOJ, 733 F.2d 1343, 1355 n.19 (9th Cir. 1984); see also Seawell, Dalton, Hughes & Timms v. Exp.-Imp. Bank, No. 84-241-N, slip op. at 2 (E.D. Va. July 27, 1984) (stating that there is no "middle ground between disclosure and nondisclosure"). But see Antonelli v. ATF, No. 04-1180, 2006 WL 3147675, at *2 (D.D.C. Nov. 1, 2006) (finding that agency satisfied FOIA's requirements by making available for viewing inmate requester's presentence report); Chamberlain v. DOJ, 957 F. Supp. 292, 296 (D.D.C. 1997) (holding that FBI's offer to make "visicorder charts" available to requester for review at FBI Headquarters met FOIA requirements due to exceptional fact that charts could be damaged if photocopied), summary affirmance granted, 124 F.3d 1309 (D.C. Cir. 1997) (unpublished table decision).

²³¹ Favish, 541 U.S. at 174; see Maricopa Audubon Soc'y v. U.S. Forest Serv., 108 F.3d 1082, 1088-89 (9th Cir. 1997) (rejecting plaintiff's offer to receive requested documents under a confidentiality agreement due to rule that "FOIA does not permit selective disclosure of

Exhibit 4

THE WHITE HOUSE

April 15, 2009

MEMORANDUM FOR ALL EXECUTIVE DEPARTMENT AND AGENCY GENERAL
COUNSELS

FROM: GREGORY CRAIG, COUNSEL TO THE PRESIDENT

SUBJECT: Reminder Regarding Document Requests

This is a reminder that executive agencies should consult with the White House Counsel's Office on all document requests that may involve documents with White House equities. We ask that such consultation take place well in advance of the deadline for responding.

This need to consult with the White House arises with respect to all types of document requests, including Congressional committee requests, GAO requests, judicial subpoenas, and FOIA requests. And it applies to all documents and records, whether in oral, paper, or electronic form, that relate to communications to and from the White House, including preparations for such communications.

Please be in touch with your points of contact in the White House Counsel's Office or, if you are uncertain whom to contact, please call Chris Weideman (202-456-3096) or Blake Roberts (202-456-2948). We will respond to your requests promptly.

Exhibit 5

Amy-

Can you send copies of them down to me?

John R. Sandweg
Chief of Staff
Office of the General Counsel



From: Shlossman, Amy
Sent: Thursday, August 06, 2009 11:00 AM
To: Sandweg, John
Cc: 'Noah.Kroloff'; Smith, Sean; Grossman, Jordan
Subject: FW: Recent FOIA Requests

FYI- we received both of these

From: [Redacted]
On Behalf Of Kimball, Astri B.
Sent: Thursday, August 06, 2009 10:54 AM
To: Shlossman, Amy
Subject: FW: Recent FOIA Requests

From: Roberts, Blake C.
Sent: Thursday, August 06, 2009 10:47 AM
To: Kimball, Astri B.; Hurlbut, Brandon K.; French, Michael J.; Lu, Christopher P.; Smith, Elizabeth S.; Milakofsky, Benjamin E.
Cc: Weldeman, Christian; Gonzalez, Roberto J.
Subject: FW: Recent FOIA Requests

Heads-up – this just went out.

From: Negron, Michael A. **On Behalf Of** Bansal, Preeta D.
Sent: Thursday, August 06, 2009 10:29 AM
To: 'Dinneen, James'; 'Charlie.Rose'; 'Johnson'; 'Scott.Harris'; 'Katharine.Dickerson'; 'Hirsch.Pat'; 'David.Trissell'; 'Ivan.Fond'; 'Daniel.grant'; 'Travis.Bailey'; 'Art.Gary'; 'Smith.Patricia'; 'Robert.Rivkin'; 'Helen.R.Kanovsky'; 'Sara.Lipscomb'; 'CKerry'; 'Aloma.Shaw'; 'George.Madison'; 'kohhh'; 'david.cade'; 'Will.Gunn'; 'Williams, Kay'; 'Dedeo, Carol - SOL'; 'Donoghueje'; 'Perrelli, Thomas J.'; 'Barron, David'; Meltzer, Daniel; 'Hilary.Tompkins'; 'Rhee, Jeannie'; 'Bernard.Knight'; 'Sadler.Robert2'; 'MathiasS'; 'Gray, Danielle'; 'NLamb-Hale'; 'stephen.redmon'; 'Elizabeth.Gianturco'; 'lindy.knapp'; 'Cedarbaum, Jonathan'; 'Rosenfelt, Phil'; Roberts, Blake C.; Weldeman, Christian; Gonzalez, Roberto J.
Cc: Bansal, Preeta D.; Bershteyn, Boris; Aitken, Steven D.; Bender, Stuart; Negron, Michael A.
Subject: Recent FOIA Requests

TO ALL AGENCY GC's from OMB GC:

1. [REDACTED], a POLITICO reporter, submitted two broad FOIA requests to OMB on July. We have learned that many other agencies besides OMB may have received similar requests.

-- The first request asks for, roughly speaking, all emails and correspondence between a long list of media outlets and OMB regarding questions by the media and the responses by agency employees and officials. The request also encompasses communications between OMB and the White House Press Office regarding any media organizations or their officials.

-- The second request asks for all ethics waivers granted to all political appointees, letters of recusal and related matters, and specifically includes any and all communications received from or sent to the White House Counsel's office concerning the same. The request appears to be seeking waivers concerning the President's Executive Order on Ethics.

In response to our questions about the breadth and burdensomeness of the first request, the version of POLITICO's first request to OMB has narrowed considerably, and may narrow some more. Moreover, we are working to ensure that the second request does not result in the production of attorney-client or other privileged communications. In both cases, we will work with the WH Counsel's office to ensure that WH-related documents are produced only in coordination with WH Counsel's advance review.

2. We are happy to compare notes with you in responding to the requests.
3. Moreover, as a reminder, to the extent that these requests implicate documents with White House equities, agency GC offices should consult in advance with White House Counsel, consistent with the memorandum sent by White House Counsel to all agencies. Agencies can contact their usual White House Counsel point of contact or Blake Roberts [REDACTED]

Preeti D. Bansal
OMB General Counsel and Senior Policy Advisor
[REDACTED]

Cause of Action v. Internal Revenue Service, et al.

Exhibit 6

From: [FN-OMB-FOIA](#)
To: [Moira Smith](#)
Subject: RE: FOIA Request from Cause of Action
Date: Wednesday, May 14, 2014 10:28:21 AM

Good Morning:

This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated May 7, 2014, which was received in OMB's FOIA office on May 9, 2014. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 14-104.

Sincerely,
Dionne Hardy

From: Moira Smith [mailto:moira.smith@causeofaction.org]
Sent: Wednesday, May 07, 2014 10:07 AM
To: FN-OMB-FOIA
Subject: FOIA Request from Cause of Action

Attached is a FOIA request from Cause of Action.

Thank you.

Moira Smith | Cause of Action
1919 Pennsylvania Ave, NW
Suite 650
Washington, D.C. 20006
202-417-3577
Moira.Smith@causeofaction.org

Confidentiality:

The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

Cause of Action v. Internal Revenue Service, et al.

Exhibit 7



August 9, 2013

VIA FACSIMILE

Mr. Paul Jacobsmeyer
Office of the Secretary of Defense and Joint Staff
FOIA Requester Service Center
Office of Freedom of Information
1155 Defense Pentagon
Washington, D.C. 20301-1155
Facsimile: (571) 372-0500

Dear Mr. Jacobsmeyer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests access to the following records:

All communications between the Office of White House Counsel and OSD/JS FOIA personnel or the Department of Defense (DoD) Office of General Counsel concerning the Office of White House Counsel's review of DoD records. The time period for this request is August 2011 to the present.

Please note that we do not seek access to the actual documents forwarded to the Office of White House Counsel for review, but only to the records that establish that such consultations occurred (for example, cover e-mails).

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, among other things, 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/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 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. Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result

Mr. Paul Jacobsmeyer
August 9, 2013
Page 2

of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.¹

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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

¹ See, *e.g.*, 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); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Cause of Action v. Internal Revenue Service, et al.

Exhibit 8

Gaylord, Brandon J CIV WHS ESD (US)

From: Gaylord, Brandon J CIV WHS ESD (US)
Sent: Tuesday, August 13, 2013 12:21 PM
To: 'allan.blutstein@causeofaction.org'
Subject: FOIA 13-F-1252
Attachments: 13-F-1252 request.pdf
Signed By: brandon.gaylord@whs.mil

Dear Mr. Blutstein:

This is an interim response to your Freedom of Information Act (FOIA) request dated August 9, 2013, which was received in this office on the same day that it was submitted. Your request has been assigned case number 13-F-1252 and we ask that you use that number when referring to your request.

We will be unable to respond to your request within the FOIA's 20 day statutory time period as there are unusual circumstances which impact on our ability to quickly process your request. These unusual circumstances are: (a) the need to search for and collect records from a facility geographically separated from this Office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other agencies or DoD components having a substantial interest in either the determination or the subject matter of the records. For these reasons, your request has been placed in our complex processing queue and will be worked in the order the request was received. Our current administrative workload is 1,160 open requests.

Thank you,
Brandon J. Gaylord
OSD/JS FOIA Specialist
(571) 372-0413

Cause of Action v. Internal Revenue Service, et al.

Exhibit 9



June 26, 2013

VIA CERTIFIED MAIL AND FACSIMILE

Mr. Alexander C. Morris
FOIA Officer
U.S. Department of Energy
FOIA Requester Service Center
1000 Independence Avenue, SW
Mail Stop MA-90
Washington, DC 20585
Fax: (202) 586-0575

RE: Freedom of Information Act Request

Dear Mr. Morris:

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

All records reflecting communications between DOE FOIA personnel or DOE's Office of General Counsel and the White House Counsel's office wherein DOE 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 DOE 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

Mr. Alexander Morris
 June 26, 2013
 Page 2

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 DOE 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 DOE’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 DOE’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,

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. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁴ See 10 C.F.R. § 1004.9(a)(8)(i)(A)-(D) (DOE FOIA regulation setting forth the four-factor “public interest” test).

⁵ § 1004.9(a)(8)(i)(A).

⁶ § 1004.9(a)(8)(i)(B).

⁷ § 1004.9(a)(8)(i)(C).

Mr. Alexander Morris
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Page 3

reports or press releases. Fourth and lastly, disclosure is likely to contribute “significantly” to the public understanding of DOE’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 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. 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 DOE’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 § 1004.9(a)(8)(i)(D).

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

¹⁰ *See* 10 C.F.R. § 1004.9(a)(8)(ii).

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Exhibit 10



Department of Energy
Washington, DC 20585

July 1, 2013

Mr. Allan Blutstein
Cause of Action
1919 Pennsylvania Avenue, NW, Suite 650
Washington, DC 20006

Re: HQ-2013-01234-F

Dear Mr. Blutstein:

This is an interim response to the request for information that you sent to the Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You asked for all records reflecting communications from January 2009 to the present between DOE FOIA personnel or DOE's Office of the General Counsel and the White House Counsel's Office wherein DOE sought White House review of documents requested by Congress, the U.S. Government Accountability Office, or FOIA requesters.

A search for responsive records will be conducted of the files of the Office of Information Resources and the Office of the General Counsel. Upon completion of the searches and the review of any records located, you will be provided a response.

In your letter, you requested a waiver of all fees associated with the processing of the request. For purposes of assessment of any fees, you have been categorized under the DOE regulation at Title 10, Code of Federal Regulations (CFR), Section 1004.9(b)(3), as a "news media" requester. Requesters in this category are charged fees for duplication only and are provided 100 pages at no cost.

Pursuant to 10 CFR 1004.9(8), I have reviewed the information that you provided in your request letter to support your request for a fee waiver. I determined the information satisfies the criteria considered for a waiver of fees. A waiver, therefore, is appropriate for any fees that may be incurred because the subject of the request relates to a government activity, and information about the activity could lead to greater understanding by the public about the matter. You also have demonstrated the ability and intent of your organization to disseminate the information to the public in a form that can further understanding of the subject matter.

Please refer to the above referenced number in communications with the DOE about your request. If you have questions about processing of the request or this letter, please contact Ms. Joan Ogbazghi in this office at MA-90/Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, or (202) 586-3595.

I appreciate the opportunity to assist you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Morris".

Alexander C. Morris
FOIA Officer
Office of Information Resources



Cause of Action v. Internal Revenue Service, et al.

Exhibit 11



August 9, 2013

VIA FACSIMILE

Mr. Robert Eckert
FOIA Officer
U.S. Department of Health and Human Services
Mary E. Switzer Building, Room 2206
330 C Street, SW
Washington, D.C. 20201
Facsimile: (202) 690-8320

Dear Mr. Eckert:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests access to the following records:

All communications between the Office of White House Counsel and the Department's "FOI/Privacy Acts Division" or Office of General Counsel concerning the Office of White House Counsel's review of agency documents. The time period for this request is August 2011 to the present.

Please note that we do not seek access to the actual documents forwarded to the Office of White House Counsel for review, but only to the records that reflect that such consultations occurred (for example, cover e-mails).

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, among other things, 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/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 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. Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result


Mr. Robert Eckert
August 9, 2013
Page 2

of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.¹

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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

¹ *See, e.g.*, 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); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Cause of Action v. Internal Revenue Service, et al.

Exhibit 12

Allan Blutstein

From: delivery@critsend.com on behalf of FOIARequest@hhs.gov
Sent: Tuesday, August 13, 2013 9:05 AM
To: Allan Blutstein
Cc: FOIARequest@hhs.gov
Subject: Acknowledgement of Receipt of FOIA Request

Received On: 8/13/2013

Request Number : 13-1179

This acknowledges your Freedom of Information Act request received in this Office on the above date. We have asked the appropriate action Office(s) to send the requested records to us for review.

Your request has been assigned a case number based on the date of its receipt in this office and is being processed as expeditiously as possible. Pursuant to Departmental regulations, 43 CFR Part 5 Subpart D, charges can be made if applicable. The actual processing time will depend on the complexity of your request and whether sensitive records, voluminous records, extensive search, and/or consultation with other HHS components or other executive branch agencies are involved. These agencies will provide a direct response to you. There may be a charge for those records and, in some cases, the charges may be substantial.

You may contact this office by phone at (202) 690-7453, at any time concerning your request. When making an inquiry, we request that you please refer to the FOIA Request Number above.

Freedom of Information/Privacy Acts Division
Office of the Assistant Secretary for Public Affairs
330 C Street, S.W.
Switzer Building, Room 2206
Washington, DC 20201

Cause of Action v. Internal Revenue Service, et al.

Exhibit 13



November 26, 2013

VIA E-MAIL

Ms. Karen Neuman
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
E-mail: foia@hq.dhs.gov

Dear Ms. Neuman:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between (1) The Office of White House Counsel¹ and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DHS's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DHS's operations.⁴ To date, DHS has not disclosed to the public—either through its regulations or policy

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

Ms. Karen Neuman
November 26, 2013
Page 2

memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonable broad public audience through various media. Our staff members have 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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DHS’s heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

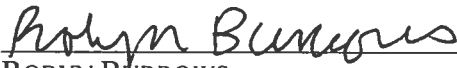
⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep’t of Educ. (Jan. 20, 2012).

Ms. Karen Neuman
November 26, 2013
Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ROBYN BURROWS
COUNSEL

Cause of Action v. Internal Revenue Service, et al.

Exhibit 14



**Homeland
Security**

Privacy Office, Mail Stop 0655

December 06, 2013

SENT VIA EMAIL TO: robyn.burrows@causeofaction.org

Robyn Burrows
Counsel
Cause of Action
1919 Pennsylvania Ave, NW
Suite 650
Washington, DC 20006

Re: **2014-HQFO-00180**

Dear Ms. Burrows:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated and received on November 26, 2013, and to your request for a waiver of all assessable FOIA fees. Specifically, you requested all communications between (1) The Office of White House Counsel and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for your request is January 1, 2012 to the present. You are not seeking access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations

or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS regulations applicable to media requesters, process the first 100 pages. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to media requestors. As a media requester you will be charged 10 cents per page for duplication; the first 100 pages are free. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

Your request has been assigned reference number **2014-HQFO-00180**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1- 866-431-0486 or 202-343-1743.

Sincerely,

A handwritten signature in black ink that reads "Mia Day". The signature is written in a cursive, slightly slanted style.

Mia Day
FOIA Program Specialist

Cause of Action v. Internal Revenue Service, et al.

Exhibit 15



**Homeland
Security**

Privacy Office, Mail Stop 0655

December 06, 2013

SENT VIA EMAIL TO: robyn.burrows@causeofaction.org

Robyn Burrows
Counsel
Cause of Action
1919 Pennsylvania Ave, NW
Suite 650
Washington, DC 20006

Re: 2014-HQFO-00180 (REVISED ACKNOWLEDGEMENT LETTER)

Dear Ms. Burrows:

This is in follow-up to my acknowledgement letter sent to you earlier today. This is the revised letter (revisions are highlighted in red) acknowledging receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated and received on November 26, 2013, and to your request for a waiver of all assessable FOIA fees. Specifically, you requested all communications between (1) The Office of White House Counsel and the U.S. Department of Homeland Security (DHS) Privacy Office, and (2) The Office of White House Counsel and the DHS Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for your request is January 1, 2012 to the present. You are not seeking access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances. As the subject matter of your request is of substantial interest to two or more components of this Department or of substantial interest to another agency, we will need to consult with those entities before we issue a final response. Due to these unusual circumstances, DHS will invoke a 10-day extension for your request pursuant to 5 U.S.C. § 552(a)(6)(B). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

You have requested a fee waiver. The DHS FOIA Regulations at 6 CFR § 5.11(k)(2) set forth six factors DHS must evaluate to determine whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns “the operations or activities of the government,” (2) Whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons, (4) Whether the contribution to public understanding of government operations or activities will be “significant,” (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure, and (6) Whether the magnitude of any identified commercial interest to the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, DHS has determined that it will conditionally grant your request for a fee waiver. The fee waiver determination will be based upon a sampling of the responsive documents received from the various DHS program offices as a result of the searches conducted in response to your FOIA request. DHS will, pursuant to DHS regulations applicable to non-commercial requesters, provide two hours of search time and process the first 100 pages at no charge to you. If upon review of these documents, DHS determines that the disclosure of the information contained in those documents does not meet the factors permitting DHS to waive the fees, then DHS will at that time either deny your request for a fee waiver entirely, or will allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, DHS will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by applicable law.

In the event that your fee waiver is denied, and you determine that you still want the records, provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to **non-commercial requestors**. As a **non-commercial requester** you will be charged for any search time and duplication beyond the free two hours and 100 pages mentioned in the previous paragraph. You will be charged 10 cents per page for duplication and search time at the per quarter-hour rate (\$4.00 for clerical personnel, \$7.00 for professional personnel, \$10.25 for managerial personnel) of the searcher. In the event that your fee waiver is denied, we will construe the submission of your request as an agreement to pay up to \$25.00. This office will contact you before accruing any additional fees.

Your request has been assigned reference number **2014-HQFO-00180**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1- 866-431-0486 or 202-343-1743.

Sincerely,


Mia Day

FOIA Program Specialist

Cause of Action v. Internal Revenue Service, et al.

Exhibit 16



November 26, 2013

VIA ONLINE SUBMISSION

FOIA Officer
U.S. Department of Housing and Urban Development
Freedom of Information Act Office
451 7th Street, SW, Room 10139
Washington, DC 20410-3000

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel¹ and the U.S. Department of Housing and Urban Development (HUD) FOIA Office, and (2) The Office of White House Counsel and the HUD Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely HUD's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of HUD's operations.⁴ To date, HUD has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

November 26, 2013

Page 2

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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding HUD's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

November 26, 2013

Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

A handwritten signature in cursive script that reads "Robyn Burrows". The signature is written in black ink and is positioned above a horizontal line.

ROBYN BURROWS
COUNSEL

Cause of Action v. Internal Revenue Service, et al.

Exhibit 17



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

December 27, 2013

Robyn Burrows, Esq.
Cause of Action
Suite 650
1919 Pennsylvania Avenue, NW
Washington, DC 20006

RE: Freedom of Information Act Request
FOIA Control No.: 14-FI-HQ-00375

Dear Ms. Burrows:

This letter acknowledges the Department of Housing and Urban Development's receipt of your Freedom of Information Act (FOIA) request dated November 26, 2013. Your request was received in the Department's FOIA Branch on December 3, 2013.

Pursuant to the FOIA, 5 U.S.C. 552(a)(6)(A)(i), once HUD properly receives a FOIA request, the Department has 20 working days within which to make a determination on the request unless unusual circumstances exist. Under unusual circumstances, such as an agency's backlog, or the need to examine a voluminous amount of records required by the request, HUD can extend the 20-day time limit for processing a request.

The Department will comply with your request to the extent permissible by law. Any records not subject to an exemption will be forwarded to you promptly upon the completion of HUD's search and review process. Your request has been assigned to Mrs. Sandra J. Wright for processing. If you have any questions regarding your request, please contact Mrs. Wright at (202) 402-5510.

Thank you for your interest in the Department's programs and policies.

Sincerely,

FOIA Branch
Office of the Executive Secretariat

Cause of Action v. Internal Revenue Service, et al.

Exhibit 18



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-3000

OFFICE OF THE CHIEF HUMAN CAPITAL OFFICER

APR 21 2014

Robyn Burrows, Esq.
Cause of Action
Suite 650
1919 Pennsylvania Avenue, NW
Washington, DC 20006

RE: Freedom of Information Act Request
FOIA Control No.: 14-FI-HQ-00375

Dear Ms. Burrows:

This letter is in response to your Freedom of Information Act (FOIA) request dated November 26, 2013. You asked for copies of all records reflecting communications between the Office of White House Counsel, the Department of Housing and Urban Development's FOIA Office, and the Office of White House Counsel and HUD's Office of General Counsel, concerning the Office of White House Counsel's review of HUD's records for the timeframe of January 1, 2012, to the present.

Under the Freedom of Information Act, an agency may extend the time to respond to a FOIA request for a limited number of reasons. One such reason, which is applicable to your request, is that the Department of Housing and Urban Development is unable to respond to your FOIA request within the statutory time frame due to an ongoing search for responsive records. HUD's search and review process should be completed within the next 15 to 20 days.

If you have questions concerning your request, you may contact Mrs. Sandra J. Wright at (202) 402-5510.

Sincerely,

A handwritten signature in black ink that reads "Deborah R. Snowden".

Deborah R. Snowden
Chief, FOIA Branch
Office of the Executive Secretariat

Cause of Action v. Internal Revenue Service, et al.

Exhibit 19



November 26, 2013

VIA FIRST CLASS MAIL

Ms. Carmen L. Mallon
Chief of Staff
Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Dear Ms. Mallon:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between (1) The Office of White House Counsel¹ and the U.S. Department of Justice (DOJ) Office of Information Policy, and (2) The Office of White House Counsel and the DOJ Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DOJ's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOJ's operations.⁴ To date, DOJ has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

Ms. Carmen Mallon
November 26, 2013
Page 2

of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have 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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOJ's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Ms. Carmen Mallon
November 26, 2013
Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

A handwritten signature in black ink that reads "Robyn Burrows". The signature is written in a cursive style and is positioned above a horizontal line.

ROBYN BURROWS
COUNSEL

Exhibit 20



February 10, 2014

VIA E-MAIL

Ms. Elizabeth Farris
Supervisory Paralegal
Office of Legal Counsel
Department of Justice
950 Pennsylvania Ave., NW, Rm. 5515
Washington, D.C. 20530-0001
E-mail: usdoj-officeoflegalcounsel@usdoj.gov

Re: Freedom of Information Act Request

Dear Ms. Farris:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between the Office of White House Counsel¹ and the U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC), concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DOJ's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOJ's operations.⁴ To date, DOJ has not disclosed to the public—either through its regulations or policy

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

Ms. Elizabeth Farris
February 10, 2014
Page 2

memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have 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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOJ’s heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from its investigative efforts 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 well over 100,000 times in the past year alone, including by visitors from other media organizations (*e.g.*, *Fox News*, *Associated Press*, *The New York Times*, *Bloomberg*, *Congressional Quarterly*, and *NBC*).⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, .pdf). If a certain set of responsive records can be produced more

⁵ See <http://www.causeofaction.org>.


⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request DOC-OS-2014-000304, Dep’t of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. , 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep’t of Educ. (Jan. 20, 2012).

Ms. Elizabeth Farris
February 10, 2014
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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 e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ROBYN BURROWS
COUNSEL

Exhibit 21



U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

January 7, 2014

Ms. Robyn Burrows
Cause of Action
Suite 650
1919 Pennsylvania Avenue, NW
Washington, DC 20006
robyn.burrows@causeaction.org

Re: OIP/14-00863 (F)
LAD:SBT

Dear Ms. Burrows:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated November 26, 2013, and received in this Office on December 5, 2013, in which you requested 1) communications between the Office of White House Counsel and the Office of Information Policy, and 2) communications between the Office of White House Counsel and the “[Department of Justice] Office of General Counsel” concerning the Office of White House Counsel’s review of agency records. The date range for which you are seeking records is from January 1, 2012 to the date the search began, which in this instance is December 31, 2013. This response is made on behalf of the Office of Information Policy (OIP).

Regarding item number two of your request seeking communications with the “DOJ Office of the General Counsel,” please be advised that no such office exists. You may wish to review an organization chart including all Department components, which is available at the following link: <http://www.justice.gov/oip/foiacontact/index.html>.

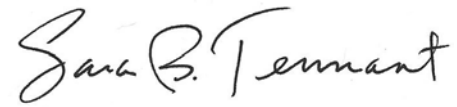
Regarding the remainder of your request (item number one) concerning communications between OIP and the Office of White House Counsel, please be advised that we are currently processing it and will respond to you again once any responsive records are located and disclosure determinations are made. The time needed to complete our processing of your request will necessarily depend on the complexity of our records search and on the volume and complexity of any records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in about a month, whereas complex requests necessarily take longer. At this time, your request has been assigned to the complex track. In an effort to speed up our records search, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options.

-2-

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

Sincerely,

A handwritten signature in black ink that reads "Sara B. Tennant". The signature is written in a cursive, flowing style.

Sara B. Tennant
Government Information Specialist

Cause of Action v. Internal Revenue Service, et al.

Exhibit 22



MAR 7 2014

U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

March 6, 2014

Robyn Burrows
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC 20006

Re: FOIA Tracking No. FY14-028

Dear Ms. Burrows:

This letter acknowledges receipt of your February 10, 2014 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") in which you seek records from January 1, 2012 to the present "reflecting all communications between the Office of White House Counsel and [OLC], concerning the Office of White House Counsel's review of agency records." Your request has been assigned tracking number **FY14-028**.

Because of the considerable number of FOIA requests received by OLC before your request, we have not yet been able to determine the extent to which there may be records within the scope of your request. Accordingly, we will be unable to comply with the statutory deadline for responding to your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as practicable.

We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

In the meantime, if you have any questions or wish to discuss your request, you may contact Elizabeth Farris, our Supervisory Paralegal and FOIA contact, at (202) 514-2038, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5515, Washington, DC 20530.

Sincerely,

A handwritten signature in black ink that reads "Paul P. Colborn".

Paul P. Colborn
Special Counsel

Cause of Action v. Internal Revenue Service, et al.

Exhibit 23



November 26, 2013

VIA ONLINE SUBMISSION

Office of Information Programs and Services
A/GIS/IPS/PP
U.S. Department of State
Washington, D.C. 20522-8100

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel¹ and the U.S. Department of State (DOS) Office of Information Programs and Services, and (2) The Office of White House Counsel and the DOS Office of the Legal Adviser, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DOS's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOS operations.⁴ To date, DOS has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records that are deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of experience and expertise in government oversight, investigative reporting, and federal public

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

November 26, 2013

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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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOS's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

⁵ See <http://www.causeofaction.org>.

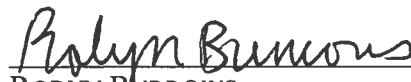
⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

November 26, 2013

Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

A handwritten signature in cursive script that reads "Robyn Burrows". The signature is written in black ink and is positioned above a horizontal line.

ROBYN BURROWS

COUNSEL

Cause of Action v. Internal Revenue Service, et al.

Exhibit 24

Allan Blutstein

From: State Department FOIA [<mailto:noreply@state.gov>]
Sent: Tuesday, November 26, 2013 9:40 AM
To: Robyn Burrows
Subject: FOIA Request Letter

Thank you for filing your FOIA request online on 11/26/2013. Here is a review of your request.

The records I request can be described as follows:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel and the U.S. Department of State (DOS) Office of Information Programs and Services, and (2) The Office of White House Counsel and the DOS Office of the Legal Adviser, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

The time period of my request is from 01/01/2012 to present

I am affiliated with an educational or noncommercial scientific institution seeking information for a scholarly or scientific purpose and not for commercial use.
Additional documentation will be required.

I am willing to pay \$25 for my request.

I request a waiver of all fees for this request.

Reason: Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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." The requested records would unquestionably shed light on the "operations or activities of the government," namely DOS's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOS operations. To date, DOS has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records that are deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have 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.

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOS's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

For fee purposes, Cause of Action also 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, among other things, 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/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. Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.

My additional comments are as follows:

In an effort to facilitate record production, please provide the responsive records 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 e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.

Contact Information

Ms. Robyn Burrows

1919 Pennsylvania Ave NW

Suite 650

Washington, District of Columbia 20006

P: (202) 499-4232

F: N/A

robyn.burrows@causeofaction.org

Cause of Action v. Internal Revenue Service, et al.

Exhibit 25



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

November 26, 2013

VIA E-MAIL

Ms. Kathy Ray
 U.S. Department of Transportation
 Departmental FOIA Office
 1200 New Jersey Ave, SE
 Washington, DC 20590
 E-mail: ost.foia@dot.gov

Dear Ms. Ray:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel¹ and the Department of Transportation (DOT) Departmental FOIA Office, and (2) The Office of White House Counsel and the DOT Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely DOT's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of DOT's operations.⁴ To date, DOT has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have a wealth of

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

Ms. Kathy Ray
November 26, 2013
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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.⁵

Further, Cause of Action, a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding DOT's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Ms. Kathy Ray
November 26, 2013
Page 3

If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ROBYN BURROWS
COUNSEL

Cause of Action v. Internal Revenue Service, et al.

Exhibit 26



**U.S. Department
of Transportation**

Office of the Secretary
of Transportation

GENERAL COUNSEL

1200 New Jersey Avenue, SE
Washington, DC 20590

December 18, 2013

Robyn Burrows
Cause of Action
1919 Pennsylvania Avenue, NW
Suite 650
Washington, DC 20006

Dear Ms. Burrows:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of records reflecting communications between (1) the Office of the White House Counsel and the Department of Transportation Departmental FOIA Office, and (2) the Office of the White House Counsel and the DOT Office of the General Counsel, concerning the Office of the White House Counsel's review of agency records. The time frame for this request is January 1, 2012 to the present.

Your letter has been given identification number **2014-51**.

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

A handwritten signature in black ink, appearing to read "Darlene A. Wallace".

Darlene A. Wallace
Program Assistant
FOIA Division

Cause of Action v. Internal Revenue Service, et al.

Exhibit 27



May 6, 2014

VIA EMAIL

Mr. Hugh Gilmore
FOIA Public Liaison
Department of the Treasury
Washington, D.C. 20220
Phone: 202-622-0930
Email: Hugh.Gilmore@treasury.gov

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) the Office of White House Counsel and the Department of the Treasury's (Treasury) Office of Disclosure Services, and (2) the Office of White House Counsel and the Treasury's Office of General Counsel (including the Office of Chief Counsel for the Office of Financial Stability), concerning the Office of White House Counsel's review of agency records.¹ The time period for this request is January 1, 2010 to January 1, 2013.

Please note that Cause of Action does not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover emails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would shed light on the "operations or activities of the government,"³ namely Treasury's policies and procedures with respect to processing records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of Treasury operations.⁴ To date, Treasury has not disclosed to the public—either through its regulations or

¹ Memorandum from Gregory Craig, Counsel to the President, to All Executive Department and Agency General Counsels (Apr. 15, 2009), *available at* <http://causeofaction.org/assets/uploads/2013/06/White-House-memo-equities.pdf?92f52c>.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

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policy memoranda—how it processes agency records that are deemed to implicate White House equities. Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Cause of Action’s staff members have 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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding Treasury’s heretofore undisclosed policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also qualifies as a “representative of the news media” as defined by the statute. 5 U.S.C. § 552(a)(4)(A)(ii)(II). Specifically, Cause of Action 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. *See id.*

Cause of Action gathers news that it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.⁶ These distinct works are distributed to the through various media, including Cause of Action’s website, which has been viewed just under 120,000 times in the past year alone.⁷ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via email.

The statutory definition of a “representative of the news media” unequivocally commands that organizations such as Cause of Action that electronically disseminate information and publications via “alternative media shall be considered to be news-media entities.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). In light of the foregoing, federal agencies have

⁵ *See* <http://www.causeofaction.org>.

⁶ *See, e.g.*, CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), *available at* <http://causeofaction.org/grading-government-white-house-targets-document-requesters/>; *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/>; *see also* CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), *available at* <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>.

⁷ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

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appropriately recognized Cause of Action's news media status in connection with its FOIA requests.⁸

Record production and contact information

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, email, .pdf). 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 Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.


ROBYN BURROWS
COUNSEL

⁸ *See, e.g.*, FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013, 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

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Exhibit 28



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

May 7, 2014

RE: 2014-05-025

Ms. Robyn Burrows
Cause of Action
1919 Pennsylvania Ave., N.W., Suite 650
Washington, DC 20006

Dear Ms. Burrows:

This letter acknowledges the receipt of your Freedom of Information Act (FOIA) request to U.S. Department of the Treasury, dated May 6, 2014. You have requested records of communications dated January 1, 2010 to January 1, 2013 between the Office of the White House Counsel and the Office of Disclosure Services and/or Office of General Counsel (including the Office of Chief Counsel for the Office of Financial Stability) concerning the Office of White House Counsel's review of agency records. A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. Every effort will be made to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search for and review of the information you have requested due to the volume of potentially responsive records. Additionally, two or more program offices will need to be consulted to prepare a response to your request. This will require an additional processing extension of ten (10) days.

You have also requested a fee waiver. The Treasury's FOIA Regulations, 31 CFR § 1.7(d) and Department of Justice Guidance¹ set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requestor has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor.

Upon review of the subject matter of your request, and an evaluation of the six factors identified above, I have determined your fee waiver will be conditionally granted. Treasury's final fee waiver determination will be based upon a sampling of records

¹ See FOIA Update, Vol. VIII, No. 1, at 3-10 ("New Fee Waiver Policy Guidance")

located in response to your request (if any). If, upon review of these documents, Treasury determines that the disclosure of the information contained in those documents does not meet the factors permitting Treasury to waive the fees then Treasury will at that time either deny your request for a fee waiver entirely or allow for a percentage reduction in the amount of the fees corresponding to the amount of relevant material found that meets the factors allowing for a fee waiver. In either case, Treasury will promptly notify you of its final decision regarding your request for a fee waiver and provide you with the responsive records as required by Treasury's FOIA regulations.

When replying to this office, please make reference to the identification number at the top of this letter and either fax your response to 202-622-3895, or mail it to:

FOIA/PA Request
FOIA and Transparency, DO
Department of the Treasury
Washington, DC 20220

Sincerely,



Digitally signed by Ryan A. Law
DN: c=US, o=U.S. Government,
ou=Department of the Treasury,
ou=Departmental Offices, ou=People,
serialNumber=716338, cn=Ryan A.
Law
Date: 2014.05.08 12:50:53 -04'00'

Ryan Law
Director, FOIA and Transparency

Enclosure

cp

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Exhibit 29



November 26, 2013

VIA E-MAIL

Mr. James P. Horan
Director
Office of Assistant Secretary for Information and Technology
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
(005R1C) VACO
Washington, D.C. 20420
E-mail: vacofoiaservice@va.gov

Dear Mr. Horan:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting communications between (1) The Office of White House Counsel¹ and the Department of Veteran Affairs (VA) Central FOIA Office, and (2) The Office of White House Counsel and the VA Office of the General Counsel, concerning the Office of White House Counsel's review of agency records. The time period for this request is January 1, 2012 to the present.

Please note that we do not seek access to the actual records that were forwarded to the Office of White House Counsel for review, but only to records that reflect that such consultations occurred (for example, cover e-mails).

Request for public-interest fee waiver

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This provision 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."² The requested records would unquestionably shed light on the "operations or activities of the government,"³ namely VA's policies and procedures with respect to records involving White House equities. Moreover, disclosure would "contribute significantly" to the public's understanding of VA operations.⁴ To date, VA has not disclosed to the public—either through its regulations or policy memoranda—how it processes agency records deemed to contain White House equities. Cause of Action has

¹ For purposes of this FOIA request, the Office of the White House Counsel includes all employees of that Office—not merely the White House Counsel.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*

⁴ *Id.*

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both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Our staff members have 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.⁵

Further, Cause of Action, a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used solely to educate the general public regarding VA's heretofore undisclosed FOIA policy and procedures for processing records with White House equities.

Request for news media status

For fee purposes, Cause of Action also 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, among other things, 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/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.⁶ Cause of Action also disseminates news to the public via Twitter and Facebook, and it 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.⁷

Record production and contact information

In an effort to facilitate record production, please provide the responsive records 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.

⁵ See <http://www.causeofaction.org>.

⁶ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁷ See, *e.g.*, FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 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 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

Mr. James P. Horan
November 26, 2013
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If you have any questions about this request, please contact me by e-mail at Robyn.Burrows@causeofaction.org, or by telephone at (202) 499-4232. Thank you for your attention to this matter.



ROBYN BURROWS
COUNSEL

Cause of Action v. Internal Revenue Service, et al.

Exhibit 30

Allan Blutstein

Subject: FW: FOIA Request Question

From: Karnay, Laurie [<mailto:Laurie.Karnay@va.gov>]

Sent: Friday, February 21, 2014 5:49 PM

To: Robyn Burrows

Subject: RE: FOIA Request Question

Robyn:

Yes the offices assigned as I first indicated are incorrect.

14-01320-F is assigned to the Office of the Secretary and not the FOIA Service. You may recall that I contacted you when this request first came in to inform you that the FOIA Service would not have any interaction with the White House Counsel; but that the Secretary's Office (and OGC of course) would. So 14-01320-F is assigned to OSVA and 14-01321-F is assigned to OGC.

I will contact both offices on Monday morning to inquire about the status of your request.

My apologies for the confusion.

Laurie

From: Robyn Burrows [<mailto:robyn.burrows@causeofaction.org>]

Sent: Friday, February 21, 2014 5:41 PM

To: Karnay, Laurie

Subject: [EXTERNAL] RE: FOIA Request Question

Laurie,

Was there a reason you re-called your below e-mail? I'm a little confused. Is the information below incorrect?

Thanks,

Robyn

Robyn Burrows | Counsel | Cause of Action | 202.499.2421

Confidentiality

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney client relationship between us. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

From: Karnay, Laurie [<mailto:Laurie.Karnay@va.gov>]

Sent: Friday, February 21, 2014 5:10 PM

To: Robyn Burrows

Subject: RE: FOIA Request Question

Allan Blutstein

Subject: FW: FOIA Request Question

From: Karnay, Laurie [<mailto:Laurie.Karnay@va.gov>]

Sent: Friday, February 21, 2014 5:10 PM

To: Robyn Burrows

Subject: RE: FOIA Request Question

Robyn:

My apologies. We did receive your request. The portion for the FOIA Office is tracking number 14-01320-F and for the OGC portion is 14-01321-F.

*Laurie L. Karnay
Department of Veterans Affairs
VACO FOIA Service (005R1C)
1100 First Street, NE
Washington, DC 20002
(202) 632-7465 - direct*

From: Robyn Burrows [<mailto:robyn.burrows@causeofaction.org>]

Sent: Friday, February 21, 2014 2:21 PM

To: Karnay, Laurie

Subject: [EXTERNAL] FOIA Request Question

Hi Laurie,

I have a question about a FOIA request my organization sent on November 26, 2013. I'm not sure we received an acknowledgment letter. Could you give me a call back at your earliest convenience?

Thank you,

Robyn

Robyn Burrows | Counsel | Cause of Action

1919 Pennsylvania Avenue, N.W. | Suite 650 | Washington, DC 20006

Robyn.Burrows@causeofaction.org

202.499.2421

Admitted to Practice Only in Virginia

Practice supervised by member of the D.C. Bar, Lorinda Harris.

Confidentiality

The information contained in this communication may be confidential, is intended only for the use of the recipient named above, and may be legally privileged. It is not intended as legal advice, and may not be relied upon or used as legal advice. Nor does this communication establish an attorney client relationship between us. If