



September 29, 2014

**VIA CERTIFIED MAIL**

Hon. Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear President Obama:

The undersigned represent nonprofit organizations and interested individuals concerned with government transparency and accountability. Given your commitment to transparency, we ask that you review an April 15, 2009 Memorandum from former White House Counsel Gregory Craig to Executive Department and Agency General Counsels requiring consultation with the White House Counsel's Office on any document request that may involve records implicating "White House Equities" (the "Craig Memorandum").<sup>1</sup> We believe the Craig Memorandum has caused significant confusion and delay among agencies in their compliance with the Freedom of Information Act ("FOIA").

On your first day in office, you issued a memorandum praising FOIA as "the most prominent expression of a profound national commitment to ensuring an open Government." You also expressed a desire that agencies "adopt a presumption in favor of disclosure" and "take affirmative steps to make information public." The Craig Memorandum, however, has the potential of impeding your vision for transparent government.

There are two significant reasons why the Craig Memorandum should be reviewed. First, agencies have been provided with no guidance as to what constitutes "White House Equities" and that term is undefined by statute, rulemaking or other guidance. Second, the use of White House Equities has, in limited circumstances, caused delay inconsistent with the statutory deadlines of FOIA<sup>2</sup> and interfered with Congressional oversight.<sup>3</sup> These practices have allowed the White House to affect agency decision-making in a manner that appears to contradict the

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<sup>1</sup> Available at <http://causeofaction.org/assets/uploads/2013/06/White-House-memo-equities.pdf>.

<sup>2</sup> E.g., a March 23, 2010 FOIA request from Cox Television was reportedly delayed 118 days after the General Services Administration provided records to the House of Representatives and the White House, according to a report from the GSA Inspector General.

<sup>3</sup> E.g., a March 27, 2013 Congressional document request from the House Oversight and Government Reform Committee was delayed for over six months by the Department of Interior while records were provided to the White House, Office of Management and Budget, and the Department of Justice, resulting in a Congressional subpoena to obtain access to the records.

intended purpose of FOIA as a vehicle for public access to government records.<sup>4</sup> The scope of “Equities” is broad – for example, FOIA requests, separate and apart from responsive records, have themselves been subject to review and tied to alerting the White House’s lawyers, Office of Cabinet Affairs and press offices.<sup>5</sup> Moreover, of particular concern to the transparency community is evidence that even FOIA requests from the media have been subject to White House review as a result of the Craig Memorandum.<sup>6</sup>

We are concerned that agencies, without the requisite guidance as to when the Craig Memorandum is to be invoked and how it is to be implemented, have failed to fully comply with their obligations under FOIA. As a consequence of the current interpretation of the Craig Memorandum, the FOIA process is being stalled – which hinders the important goal of open government. In this regard, the White House recently said that you are “committed to a transparent and open government and [have] taken unprecedented steps to ensure” that members of the public have access to information. We applaud that commitment but question whether the Craig Memorandum, without guidance, promotes or precludes public access to information. Accordingly, we respectfully request that you review the Craig Memorandum and either withdraw it or provide guidance to agencies as to how it is to be implemented.

Thank you in advance for your attention to this important matter. To discuss these issues in greater detail, please contact Dan Epstein at Cause of Action at 202-499-4232 or [daniel.epstein@causeofaction.org](mailto:daniel.epstein@causeofaction.org).

Sincerely,

American Library Association  
Brechtner Center for Freedom of Information  
Cause of Action  
Center for Effective Government  
Defending Dissent Foundation  
Electronic Privacy Information Center – EPIC  
Essential Information  
Government Accountability Project – GAP

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<sup>4</sup> See, e.g., an *Associated Press* investigation found that White House counsel had been asked to review FOIA requests regarding the economic-stimulus plan, and a similar consult was made in connection with requests regarding the GSA’s Las Vegas conference scandal, in both instances potentially impacting the release of responsive records.

<sup>5</sup> See, e.g., documents posted at <http://www.dhs.gov/xlibrary/assets/foia/dhs10-100-appeal-response-redacted-and-locked-down-img-part17.pdf>, at pp. 18, 21; see also *id.* at p. 19 (Blake Roberts e-mail showing applicability of “Presidential communications privilege” and “We consider any report sent to the White House to have White House equities” and the White House Counsel’s office has “departmental liaison[s] in [its] office”).

<sup>6</sup> See, e.g., <http://causeofaction.org/grading-government-white-house-targets-document-requesters/> (listing media requests subject to “White House equities” review at Environmental Protection Agency, Department of the Interior, and GSA).

James Madison Project  
MuckRock  
National Security Archive  
National Security Counselors  
Northern California Association of Law Libraries  
National Freedom of Information Center  
OpenTheGovernment.org  
PEN American Center  
Project On Government Oversight – POGO  
Public Employees for Environmental Responsibility – PEER  
Society of Professional Journalists  
Special Libraries Association  
The Sunlight Foundation  
Transactional Records Access Clearinghouse – TRAC  
Tully Center for Free Speech at Syracuse University  
Washington Coalition for Open Government

**Individual signatories (additional information for identification purposes only):**

Mark Tapscott, Executive Editor, Washington Examiner