



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

July 2, 2012

**VIA E-MAIL AND CERTIFIED MAIL**

Ms. Karen McFadden  
FOIA Contact  
Justice Management Division  
United States Department of Justice  
Room 1111 RFK, 950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001  
E-mail: JMDFOIA@usdoj.gov

**RE: Freedom of Information Act Request**

Dear Ms. McFadden,

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom. We write to request information pursuant to the Freedom of Information Act (FOIA).<sup>1</sup>

Since the mid-1990s, asset forfeiture has been a vital part of federal criminal law enforcement in the United States. Essentially, assets that are derived from proceeds of criminal activity or used to facilitate or commit an offense are subject to forfeiture.<sup>2</sup> Beginning in 1996, Congress commenced an aggressive effort to expand the parameters of asset forfeiture law in order to deter future illegal activity and to produce a stream of revenue to finance future investigations.<sup>3</sup> As a result, the Civil Asset Forfeiture Reform Act (CAFRA)<sup>4</sup> was enacted in 2000. By 2008, the United States Department of Justice's (DOJ) Asset Forfeiture Fund (AFF) held over \$1 billion dollars in net assets seized from forfeitures.<sup>5</sup>

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<sup>1</sup> 5 U.S.C. § 552, *et seq.*

<sup>2</sup> STEFAN D. CASELLA, *ASSET FORFEITURE LAW IN THE UNITED STATES* 4 (2007).

<sup>3</sup> In 1996, Stefan D. Cassella, Deputy Chief of the Asset Forfeiture and Money Laundering Section of the United States Department of Justice, testified before the House Judiciary Committee and stated that "there is poetic justice in this, Mr. Chairman. Forfeiture not only lets us take the profit out of crime; it provides support for the law enforcement agencies who catch the criminals and put them in jail." *The Civil Asset Forfeiture Reform Act: Hearings on H.R. 1916 Before The House Committee on the Judiciary*, 104<sup>th</sup> Cong. 214 (1996) (statement of Stefan D. Cassella, Deputy Chief of the Asset Forfeiture and Money Laundering Section of the United States Department of Justice).

<sup>4</sup> Pub. L. No. 106-185, 114 Stat. 202.

<sup>5</sup> MARIAN R. WILLIAMS ET AL., *INSTITUTE FOR JUSTICE, POLICING FOR PROFIT, THE ABUSE OF CIVIL ASSET FORFEITURE* 6 (2010).

There are three (3) types of forfeitures processes under federal law that have been used to achieve these means: administrative, civil, and criminal. Administrative forfeiture occurs when a federal law enforcement agency with requisite authority seizes property in the course of an investigation. The seizure must be based on probable cause that the property is subject to forfeiture.<sup>6</sup> The administrative forfeiture process is “non-judicial,” meaning it is uncontested with no involvement of a state or federal court.<sup>7</sup> With civil forfeiture, the federal government files a civil complaint *in rem* against the seized property and bears the burden to establish by a preponderance of the evidence that the property was derived from or used in the commission of a crime.<sup>8</sup> Civil forfeiture, much like administrative forfeiture, does not require criminal charges or conviction of the forfeited property owner of charges supporting the forfeiture in order for the government to prevail and seize the property. Criminal forfeiture, on the other hand, is initiated by the government only after the property owner has been convicted of charges supporting the forfeiture. The United States Department of Justice Asset Forfeiture Program (DOJ AFP)<sup>9</sup> initiates all three (3) types of forfeiture processes.

As the role of asset forfeiture has become more prominent in criminal law enforcement, concerns have been raised regarding inadequate due process safeguards and the abuse of the administrative and civil forfeiture processes.<sup>10</sup> Federal agencies are permitted to retain and spend portions of forfeited assets. This has given the investigating and seizing agency a direct financial interest in generating forfeiture funds.

As a result of this self-interest, Cause of Action is concerned with the lack of public oversight and transparent data regarding the number of forfeitures by type and related criminal charges, if any, of the property owners of assets which are forfeited through the administrative and civil processes. This information would shed light on the DOJ AFP and allow the public to determine if the DOJ is appropriately and fairly administering the same. Therefore, in accordance with FOIA, Cause of Action requests that the DOJ produce, within the next twenty (20) business days, the following documents from the time period of January 1, 2007 to the present:

- 1) All documents referring or relating to the total number of administrative, civil, and criminal forfeitures processed by the DOJ AFP.

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<sup>6</sup> 18 U.S.C. § 981(b).

<sup>7</sup> *Supra* note 2, at 9.

<sup>8</sup> *Id.* at 15.

<sup>9</sup> The DOJ AFP includes the Asset Forfeiture and Money Laundering Section; Bureau of Alcohol Tobacco and Firearms; Drug Enforcement Agency; Federal Bureau of Investigation; U.S. Marshals Service; U.S. Attorneys’ Office; Asset Forfeiture Management Staff; U.S. Postal Inspection Service; Food and Drug Administration; U.S. Department of Agriculture, U.S. Department of Agriculture Office of Inspector General; Department of State, Bureau of Diplomatic Security; and Defense Criminal and Investigative Services. See WEBSITE, UNITED STATES DEPARTMENT OF JUSTICE, ASSET FORFEITURE PROGRAM, PARTICIPANTS AND ROLES, available at <http://www.justice.gov/jmd/afp/05participants/index.htm>.

<sup>10</sup> *Supra* note 5. See also Eric Moores, *Reforming the Civil Asset Forfeiture Reform Act*, 51 ARIZ. L. REV. 788 (2009).



- 2) All documents referring or relating to the number of property owners in administrative and civil forfeiture processes who were charged with criminal violations supporting the forfeiture.

**Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).**

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents 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.” Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

- 1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

First and foremost, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<sup>11</sup> It is for this reason that Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom, seeks disclosure of the requested documents. Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the federal government as the documents requested concern the performance of the statutory and regulatory duties and responsibilities of the DOJ, a federal government agency, in administering the civil and administrative forfeiture processes.

The DOJ and DOJ AFP is funded with taxpayer dollars. As a result, the public at large has a moral and financial interest in knowing whether the DOJ is appropriately and fairly executing its duties and responsibilities, especially considering concerns of due process violations and lack of apt oversight and transparent information.<sup>12</sup> Because of this, the information requested will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons. Disclosure would undoubtedly be of value to members of the public. Thus, this element is met.

- 2) Disclosure of the requested information is not in the commercial interest of Cause of Action.

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of

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<sup>11</sup> *Baltimore Sun v. United States Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Center to Prevent Handgun Violence v. United States Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

<sup>12</sup> *Supra* note 10.



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. This information will be used to further the knowledge and interests of the general public regarding the DOJ and DOJ AFP. In the event the disclosure of this information creates a profit motive, it is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.<sup>13</sup> Therefore, Cause of Action satisfies this element.

3) Cause of Action has an ability to disseminate the requested information to the public and specifically intends to do so.

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy, and regularly disseminated publications to advance its mission. Our staff has a combined forty-five (45) years of expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its frequently visited website, [www.causeofaction.org](http://www.causeofaction.org), which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action's litigation and agency complaints. Lastly, after the production of the requested information, Cause of Action intends to produce a report on the DOJ AFP, addressing the concerns that have been raised.<sup>14</sup> This report may be published at [www.causeofaction.org](http://www.causeofaction.org), distributed to the news media, and sent to interested persons through our regular periodicals, including "Agency Check" and "Cause of Action News." An ability to show the presence of a website with occasional, consistent traffic is enough to show that a requester has an ability to disseminate information.<sup>15</sup> As with the other two (2) outlined above, Cause of Action has also met this element, in effect, justifying a fee waiver.

**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, or news media requester," under 5 U.S.C. § 552(a)(4)(A)(ii)(II).<sup>16</sup> In *National Security Archive v. U.S. Dep't of Defense*,<sup>17</sup> the U.S.

<sup>13</sup> See *Campbell v. Department of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>14</sup> *Supra* note 10.

<sup>15</sup> See *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

<sup>16</sup> Other agencies of the federal government have granted Cause of Action "representative of the news media" category status. See, e.g., FOIA Request HQ-2012-00752-F (Department of Energy), news media status granted on Feb. 15, 2012; FOIA Request No. 12-00455-F (Department of Education), news media status granted on Jan. 20, 2012; FOIA Request 12-267 (Federal Emergency Management Agency), news media status granted on Feb. 9, 2012; FOIA Request 2012-RMA-02563F (Department of Agriculture), news media status granted on May 3, 2012; FOIA Request 2012-078 (Department of Homeland Security), news media status granted on Feb. 15, 2012; FOIA Request 2012-00270 (Department of Interior), news media status granted on Feb. 17, 2012; FOIA Request (Department of



Court of Appeals for the District of Columbia Circuit noted that FOIA's legislative history demonstrates that "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*"<sup>18</sup>

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, [www.causeofaction.org](http://www.causeofaction.org). Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."<sup>19</sup>

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews, and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds, and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter, and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news, and journalism. Based on these extensive publication activities,<sup>20</sup> Cause of Action qualifies for a fee waiver as a "representative of the news media, or news media requester," under FOIA and agency regulations.

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Labor), news media status granted on April 20, 2012; FOIA Request CRRIF 2012-00077 (Department of Commerce), interim rolling production of documents on Mar. 1, 2012 without charge. As the U.S. Court of Appeals for the District of Columbia noted in *Oglesby v. United States Dep't of Army*, agencies should grant news media requestor status when other agencies have done so because of "the need for uniformity among the agencies in their application of FOIA." 920 F.2d 57, 66 (D.C. Cir. 1990).

<sup>17</sup> 880 F.2d 1381, 1386 (D.C. Cir. 1989).

<sup>18</sup> *Id.* (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis in original)).

<sup>19</sup> CAUSE OF ACTION WEBSITE, Newsletters, available at <http://causeofaction.org/newsletters/>.

<sup>20</sup> See, e.g., Matthew Boyle, *Report: ACORN-affiliated group gets \$300,000 more in taxpayer money*, THE DAILY CALLER, (Sept. 16, 2011), available at <http://dailycaller.com/2011/09/16/report-acorn-affiliated-group-gets-300000-more-in-taxpayer-money/>; Matthew Boyle, *Long-time ACORN affiliate secures \$350,000 in new taxpayer funding*, THE DAILY CALLER, (Sept. 19, 2011), available at <http://dailycaller.com/2011/09/19/long-time-acorn-affiliate-secures-350000-in-new-taxpayer-funding/>; Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, (Oct. 24, 2011); Bobby McMahon, *EPA Stalls Utility MACT Until December, Fights Industry Bid For Year Delay*, INSIDE EPA, (Oct. 24th, 2011), available at <http://insideepa.com/201110212379934/EPA-Daily-News/Daily-News/epa-stalls-utility-mact-until-december-fights-industry-bid-for-year-delay/menu-id-95.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-185, (Nov. 9, 2011); Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*,



Cause of Action's activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines "representative[s] of the news media" broadly to include organizations that disseminate news through electronic communications, including "*publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.*"<sup>21</sup> Moreover, the FOIA statute itself, as amended in 2007, explicitly defines "representative of the news media"—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.<sup>22</sup> The statutory definition unequivocally commands that organizations that electronically disseminate information and

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POLITICO, (Nov. 10, 2011), available at <http://www.politico.com/morningenergy/1111/morningenergy374.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-187, (Nov. 15, 2011); Frank Maisano, *Nov 14 Energy Update: Chu'd Out in Congress*, ENERGYNOW!, (Nov. 15, 2011), available at <http://www.energynow.com/energypanel/2011/11/15/nov-14-energy-update-chud-out-congress>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASHINGTON EXAMINER, (Nov. 27, 2011), available at <http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASHINGTON TIMES, (Nov. 28, 2011), available at <http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>; Matthew Boyle, *Obama administration, GAO appear to have ignored group's ACORN affiliation to award \$700K*, THE DAILY CALLER, (Nov. 28, 2011), available at <http://dailycaller.com/2011/11/28/obama-administration-gao-appear-to-have-ignored-groups-acorn-affiliation-to-award-700k/>; WORLDNETDAILY, *See which radicals got more taxpayer dollars: Support maintained despite organization's accounting 'problems,'* (Nov. 29, 2011), available at <http://www.wnd.com/index.php?fa=PAGE.view&pageId=372685>; Perry Chiramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS, (Nov. 30, 2011), available at <http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>; Marsha Shuler, *Group challenges La. contribution limit*, THE ADVOCATE, (Nov. 30, 2011), available at <http://theadvocate.com/news/1437637-123/group-challenges-la.-contribution-limit>; Margaret Menge, *Justice Audit Alleges ACORN Spin-Off in New York Misused Money*, NEWSMAX, (Dec. 1, 2011), available at <http://www.newsmax.com/US/ACORN-justice-audit-funds/2011/12/01/id/419672>; PITTSBURGH TRIBUNE-REVIEW, *Acorn lives: Meet AHCOA*, (Dec. 5, 2011), available at [http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s\\_770135.html](http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html); Tom Fitton, *Obama Administration Violating ACORN Funding Ban According to New Audit*, BIG GOVERNMENT, (Dec. 5, 2011), available at <http://biggovernment.com/tfitton/2011/12/05/obama-administration-violating-acorn-funding-ban-according-to-new-audit/>; NATIONAL RIGHT TO WORK COMMITTEE, *NLRB: Law Breakers?*, (Dec. 10, 2011), available at <http://www.nrtwc.org/nlr-law-breakers/>.

<sup>21</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(III) (emphasis added).

<sup>22</sup> The FOIA statute, as amended in 2007, defines "representative of the news media" as follows:

[T]he term "a representative of the news media" means any person or entity that 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. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), *such alternative media shall be considered to be news-media entities.*

5 U.S.C. § 552(a)(ii)(III) (emphasis added).



publications via “alternative media *shall* be considered to be news-media entities.”<sup>23</sup> As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a “representative of the news media” under the FOIA.

In *Electronic Privacy Information Center v. Dep’t of Defense*,<sup>24</sup> the court broadly construed a Department of Defense regulation defining “representative of the news media” to include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter. DOJ regulation defines “representative of the news media” in substantially the same way.<sup>25</sup> Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a “representative of the news media,” where the DOJ’s own regulation explicitly provide that “publishers of periodicals” qualify as representatives of the news media.<sup>26</sup>

The information requested regarding the DOJ and DOJ AFP, specifically the total amount of asset forfeitures by type and related criminal charges, if any, of the property owners of the assets administratively and/or civilly forfeited, will be of current interest to a large segment of the general public. This is more so the case due to the lack of transparent data and criticism of the asset forfeiture process. Cause of Action will ultimately disseminate this information that it is statutorily entitled to, *inter alia*, through its regularly published online newsletter. Additionally, Cause of Action will take the information that is disclosed, using its editorial skills and judgment, to publish news articles that will be published on our website, distributed to other media sources, and distributed to interested persons through our newsletters.

As outlined above, the plain language of 5 U.S.C. § 552(a)(4)(A)(ii)(III), controlling precedent, and the agency’s regulations clearly require the conclusion that Cause of Action is a representative of the news media.

### **Production of Information and Contact Information.**

We call your attention to President Obama’s January 21, 2009, Memorandum concerning the FOIA, which states in relevant part:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The

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<sup>23</sup> *Id.* (emphasis added). See generally *Nat’l Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word “shall” is generally imperative or mandatory).

<sup>24</sup> 241 F. Supp. 2d. 5, 12-15 (D.D.C. 2003). The court pointedly noted that “a ‘periodical,’ unlike a daily newspaper, has been defined simply as ‘a publication issued at regular intervals of more than one day.’” *Id.* at 14 n.4 (quoting *American Heritage Dictionary*, Second College Edition, at 923 (2000)).

<sup>25</sup> See 28 C.F.R. § 16.11(6).

<sup>26</sup> *Id.*

presumption of disclosure should be applied to all decisions involving FOIA.<sup>27</sup>

On the same day, President Obama spoke on the FOIA to incoming members of the Cabinet and staff of the White House and stated in relevant part:

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.<sup>28</sup>

If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record.<sup>29</sup> If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the "rolling production" of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis.

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<sup>27</sup> PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

<sup>28</sup> PRESIDENT BARACK OBAMA, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House*, Jan. 21, 2009, available at <http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>.

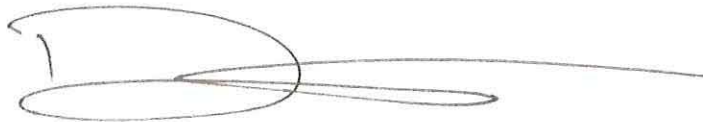
<sup>29</sup> See 5 U.S.C. § 552(b).



Ms. Karen McFadden  
July 2, 2012  
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If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me immediately ([Dale.Wilcox@causeofaction.org](mailto:Dale.Wilcox@causeofaction.org)) at (757) 560-7539, or Brandon Sherman ([Brandon.Sherman@causeofaction.org](mailto:Brandon.Sherman@causeofaction.org)) at (202) 507-5880. Please note that, for the purposes of responding to this request, the attached "Responding to Information Request" and "Definitions" should be interpreted consistently. We look forward to receiving the requested information and a waiver of both search and duplication fees within twenty (20) business days. Thank you for your time and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale L. Wilcox". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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DALE L. WILCOX  
OF COUNSEL

Encl. "Responding to Information Request" and "Definitions"



## Responding to Information Requests

1. In complying with this request, you should produce all responsive information and/or documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (*i.e.*, CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce information and/or documents, you should identify the paragraph in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce information and/or documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Cause of Action's staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that information and/or documentation is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any information and/or documentation responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to information and/or document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all information



and/or documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is January 1, 2007 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

### **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, e-mail, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might



otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, agents, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” when used in a question about an applicant, means to provide the following information: (a) the parties complete name and title; and (b) the parties business address and phone number.
6. The term “referring or relating” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.