



April 15, 2015

VIA E-MAIL

Mr. Michael Kingsley
Information Management Specialist
Professional Responsibility Advisory Office
U.S. Department of Justice
1425 New York Avenue, N.W., Ste. 12000
Washington, D.C. 20530
E-mail: PRAO.FOIA@usdoj.gov

Re: Freedom of Information Act Request

Dear Mr. Kingsley:

I write on behalf of Cause of Action, a 501(c)(3) nonpartisan strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.¹ In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. In this regard, Cause of Action is concerned that there are potential violations of the law in connection with the practice of detailing Department of Justice (“DOJ”) attorneys to the Office of White House Counsel (“OWHC”). Specifically, Cause of Action is concerned that confidential taxpayer returns or return information, protected under § 6103 of the Internal Revenue Code, may have been unlawfully disclosed to unauthorized persons within the White House or the DOJ as a result of DOJ Tax Division attorneys serving on temporary details to the White House only to then return to DOJ Tax. Accordingly, Cause of Action requests access to the following documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”):

1. All records related to any policies, procedures, rules and/or guidelines, whether formal or informal, written or oral, intended to safeguard or otherwise screen DOJ attorneys from the unauthorized disclosure to the agency or entity to which they are detailed as counsel of confidential, sensitive or proprietary information (including privileged client information) obtained during the course of their representation at the DOJ. The time period for this item is January 1, 2009 to the present.
2. All records related to any policies, procedures, rules and/or guidelines, whether formal or informal, written or oral, intended to safeguard or otherwise screen

¹ CAUSE OF ACTION, *available at* www.causeofaction.org.

formerly detailed attorneys from the unauthorized disclosure to the DOJ of confidential, sensitive or proprietary information (including privileged client information) obtained during the course of their representation of the agency or entity to which they were detailed, upon their return to the DOJ. The time period for this item is January 1, 2009 to the present.

3. All records, including but not limited to reports, memoranda and communications, related to the detailing of Tax Division attorneys to OWHC. Please include correspondence or other records related to the selection (including invitations from the OWHC) of these detailed attorneys, any screening they underwent prior to and after detail, and/or any consultation(s) about their ethical obligations while on detail. The time period for this item is January 1, 2009 to the present.

Request for Public Interest Fee Waiver

Cause of Action requests a public interest waiver of all applicable fees.² This provision provides that agencies shall furnish requested records 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

In this case, the requested records would unquestionably shed light on the “operations or activities of the government,” namely, the manner in which the DOJ details attorneys to the White House. The requested records would further reflect the process, if any, to protect confidential information from being leaked to unauthorized users by detailees. This information is likely to contribute significantly to public understanding because, to date, the public knows very little about the detailing of DOJ attorneys and what safeguards are in place to protect confidential information when an attorney is detailed and/or returns to the DOJ.

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 has a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation.⁴ 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 nonprofit organization under § 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used to educate the general public about the DOJ’s detailing of attorneys to the White House.

² 5 U.S.C. § 552(a)(4)(A)(iii).

³ *Id.*; see also 28 C.F.R. § 16.11(k)(1).

⁴ See 28 C.F.R. § 16.11(k)(2)(iii) (providing that one factor is the “requester’s expertise in the subject area and ability and intention to effectively convey information to the public”).

Request to be Classified as a Representative of the News Media

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.⁵ Specifically, Cause of Action gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁶ Cause of Action gathers the news 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.⁷ These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed just under 100,000 times in the past year alone.⁸ Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”⁹ In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.¹⁰

⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.11(b)(6).

⁶ Cause of Action notes that the agency’s definition of “representative of the news media” at 28 C.F.R. § 16.11(b)(6) is out of date and in conflict with the current statutory definition. Under either definition, however, Cause of Action qualifies as a representative of the news media.

⁷ See, e.g., *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *Legal and Political Issues Raised by the Loss of Emails at the IRS*, CAUSE OF ACTION (July 8, 2014), available at <http://goo.gl/PaoEyi>; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; see also CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; 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://goo.gl/GpP1wR>.

⁸ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).


¹⁰ See, e.g., FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep’t of Energy (Nat’l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc’n Comm’n (Dec. 12, 2014); Dep’t of State, F-2014-21360 (Dec. 3, 2014); Nat’l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep’t of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. Dep’t of Interior (Office of Sec’y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep’t of Energy (Nat’l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep’t of Energy (Nat’l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat’l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm’n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep’t of Homeland Sec. (Jan. 8, 2014); 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 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).

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Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action 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 telephone at (202) 499-4232 or at ryan.mulvey@causeofaction.org. Thank you for your attention to this matter.


RYAN P. MULVEY
COUNSEL