



Cause of Action Institute
1875 Eye Street NW, Suite 800
Washington, DC 20006

June 15, 2016

VIA E-MAIL

Consumer Financial Protection Bureau
Attention: Ms. Raynell D. Lazier, FOIA Manager, Operations Division/Chief FOIA Officer
1700 G Street, NW
Washington, DC 20552
E-mail: CFPB_FOIA@consumerfinance.gov

Re: Freedom of Information Act Request

Dear Ms. Lazier,

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

In Fiscal Year 2016, the Consumer Financial Protection Bureau (“CFPB”) granted GMMB, Inc. (“GMMB”), a political advertising firm, more than \$14 million in contract awards.² This accounts for all of GMMB’s federal contract revenue during that time period.³ GMMB clients include the political campaigns of President Barack Obama and former Secretary of State Hillary Clinton.⁴

CFPB is a federal agency engaged, as part of its consumer protection responsibilities, in substantial consumer information collection activities.⁵ Given GMMB’s partisan political

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/.

² Recipient Profile: GMMB Inc. (FY 2016), USASPENDING.GOV, *available at* <https://goo.gl/91YXny> (last accessed June 14, 2016).

³ *Id.*

⁴ Yuka Hayashi, *Consumer-Finance Agency, Under Fire, Accelerates Ad Spending*, WALL ST. J. (June 12, 2016), <http://www.wsj.com/articles/consumer-finance-agency-under-fire-accelerates-ad-spending-1465768902>.

⁵ Newt Gingrich, *A Government Snoop that Puts the NSA to Shame*, WALL ST. J. (July 7, 2015), <http://www.wsj.com/articles/SB10907564710791284872504581070502004499610>.

clients, CoA Institute is concerned about the nature of and safeguards applied to any CFPB information supplied to or received from GMMB.

Noting recent empirical data showing political favoritism in federal contract awards⁶ and the GMMB statement that the CFPB contract covers “pass-through costs for media placement and independent research on messaging and demographic targeting,”⁷ we seek to confirm that appropriate firewalls are in place to ensure that American taxpayers are not, through the effect of the CFPB contract with GMMB, subsidizing political coordination. Firms contracted by campaigns should not, and cannot, use information garnered by federal agencies to support political causes.⁸

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), Cause of Action Institute requests access to the following records for the time period January 1, 2013 to the present:⁹

1. All records reflecting communications sent to or received from GMMB, Inc.
2. All records reflecting the contract(s) CFPB entered into with GMMB, Inc.
3. All records reflecting the bidding process that CFPB used to select GMMB, Inc., including all bids from other advertising agencies, the merit-based process, and selection criteria.
4. All records reflecting data shared by CFPB with GMMB, Inc., including, but not limited to, non-public confidential information, Personally Identifiable Information, or proprietary information.
5. All records reflecting CFPB, or any agent thereof, granting written and/or oral permission to GMMB, Inc. to disclose or otherwise use any information it obtained or prepared in the course of performance under the contract.

Request for a Public Interest Fee Waiver

Cause of Action Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency 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.”¹⁰ Knowing the details of federal agency contracts, especially with known political operatives, will contribute significantly to the public understanding of government contract procedures and will ensure transparency in the political process.

⁶ See, e.g., Jonathan Brogaard, Matthew Denes & Dan Duchin, *Political Connections, Incentives and Innovation: Evidence from Contract-Level Data* (Apr. 2015), available at <https://goo.gl/YGnEus>.

⁷ Hayashi, *supra* note 4.

⁸ See, e.g., 5 U.S.C. §§ 7321-7326.

⁹ For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

¹⁰ 5 U.S.C. § 552(a)(4)(A)(iii); 12 C.F.R. § 1070.22(e)(1)(iii); see also *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

Cause of Action Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has extensive 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 the Institute's regularly published online newsletter, memoranda, reports, or press releases.¹¹ In addition, as Cause of Action Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, Cause of Action Institute also qualifies as a “representative of the news media” under FOIA.¹² As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the *requestor*, not the specific FOIA *request* at issue.¹³ Cause of Action Institute satisfies this test because it 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. Although it is not required by the statute, Cause of Action Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.¹⁴ These distinct works are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. Cause of Action Institute also 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 Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”¹⁵ In light of the foregoing, numerous federal agencies—including the CFPB—have appropriately recognized the Institute's news media status in connection with its FOIA requests.¹⁶

¹¹ See also *Cause of Action*, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

¹² 5 U.S.C. § 552(a)(4)(A)(ii)(II); 12 C.F.R. § 1070.22(b)(1)(iv).

¹³ See *Cause of Action*, 799 F.3d at 1121.

¹⁴ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; *CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD* (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS* (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; *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>.

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁶ See, e.g., FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA

Record Preservation Requirement

Cause of Action Institute requests that the disclosure officer responsible for the processing of this request issue an immediate records preservation hold notice on all records responsive, or potentially responsive, to this request, so as to prevent their disposal or destruction until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁷

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 a certain portion of responsive records can be produced more readily, Cause of Action Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact Eric Bolinder by telephone at (202) 470-2396 or by e-mail at eric.bolinder@causeofaction.org. Thank you for your attention to this matter.

Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); 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); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, 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).

¹⁷ See 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) ("[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act."); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

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Sincerely,

A handwritten signature in blue ink, reading "Alfred J. Lechner, Jr." in a cursive script.

Alfred J. Lechner, Jr.
PRESIDENT AND CEO