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July 14, 2016

VIA E-MAIL AND CERTIFIED MAIL

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

Re: Freedom of Information Act Request

Dear Ms. Neuman:

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. To that end, CoA Institute is examining the involvement, if any, by the Department of Homeland Security (“DHS”) in investigating and responding to the recent shooting of Dallas police officers.

On July 7, 2016, a gunman killed five police officers in Dallas, Texas (hereinafter “Dallas Shooting”).² Statements about the shootings by President Obama and DHS Secretary Jeh Johnson raise questions about the DHS role in responding to the incident and whether there is information about the shooter being withheld from the public. On July 8, Chief David Brown held a press conference and stated that multiple suspects may be involved.³ Three suspects were ultimately taken into custody.⁴ Later the same day, Secretary Johnson contradicted initial reports

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/ (last visited July 13, 2016).

² Dan Molinski, Dan Frosch, Alejandro Lazo, *Five Police Officers Dead, Several Hurt at Dallas Protest*, WALL ST. J., July 8, 2016, available at <http://www.wsj.com/articles/shots-fired-at-dallas-protest-over-police-shootings-in-baton-rouge-and-minnesota-1467947604>.

³ Wall St. J. Graphics, *What We Know About the Dallas Attack on Police*, WALL ST. J., July 8, 2016, available at <http://graphics.wsj.com/how-a-gunman-killed-five-dallas-police-officers/>

⁴ Molinski, *et al.*, *supra* note 2.

by announcing that the gunman apparently acted alone.⁵ According to media reports, Secretary Johnson was the first public official to announce that the gunman was a sole actor.⁶ Because Secretary Johnson appears to be the first public official to confirm that only one shooter existed, it raises questions as to what extent DHS was involved during the aftermath of the shooting and why local authorities were not first in alerting the public.

Additionally, at a press conference on July 9, President Obama said that it is “very hard to untangle the motives” of the Dallas shooter.⁷ He further stated, “I’ll leave that to psychologists and people who study these kinds of incidents . . . I think the danger is that we somehow suggest the act of troubled individuals speaks to some larger political statement across the country.”⁸ President Obama’s statement that the motives of the gunman appear uncertain directly contradicts Dallas Police Chief David Brown’s description of the incident. According to Chief Brown, the gunman stated that he “was upset about the recent police shootings . . . and he wanted to kill white people, especially white officers.”⁹ The discrepancy between the two statements raises concerns that there may be additional information about the motives of the gunman that are being withheld from the public by the Obama Administration.¹⁰

In light of the statements made by President Obama and Secretary Johnson, there is significant interest in examining the role, if any, played by DHS in the aftermath of the Dallas Shooting, including how DHS learned there was only one shooter and whether DHS is providing President Obama with information about the shooter’s motives that is being withheld from the public.

Accordingly, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to the following categories of records:¹¹

1. All records reflecting communications for the time period of July 7, 2016 to the present, regarding the Dallas Shooting between or among the Office of DHS Secretary Jeh Johnson—including all employees and staff—and the:
 - a. Executive Office of the President, including but not limited to the White House and all employees and staff;

⁵ Sarah Parvini, *Homeland Security Sec’y Jeh Johnson Says Dallas Gunman Appears to Have Acted Alone*, L.A. TIMES, July 8, 2016, available at <http://www.latimes.com/nation/la-na-dallas-police-shooting-live-homeland-security-secretary-jeh-1468016141-htmlstory.html>.

⁶ See *Id.*

⁷ Michael Warren, *Obama: ‘Very Hard to Untangle’ Dallas Shooter’s Motive*, THE WEEKLY STANDARD, July 9, 2016, available at <http://www.weeklystandard.com/obama-very-hard-to-untangle-dallas-shooters-motive/article/2003222>.

⁸ *Id.*

⁹ Manny Fernandez, Richard Perez-Pena, & Jonah Engel Bromwich, *Five Dallas Officers Were Killed as Payback, Police Chief Says*, N.Y. TIMES, July 8, 2016, available at <http://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html>.

¹⁰ According to a recent report, President Obama described the incident as a “hate crime” in a closed door meeting. Questions still remain regarding the process of how President Obama evolved on the motives of the gunman. See Sarah Wheaton, *Obama to Police: Dallas Shooting was a ‘Hate Crime’*, POLITICO, July 11, 2016, available at <http://www.politico.com/story/2016/07/obama-dallas-police-shooting-hate-225390>.

¹¹ 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).

- b. City of Dallas Police Department, including but not limited to David O. Brown and all employees and staff;
 - c. City of Dallas Mayor Mike Rawlings, including all employees and staff;
 - d. Office of the Texas Governor Greg Abbot, including all employees and staff; and/or
 - e. U.S. Department of Justice, including all employees and staff.
2. All records reflecting communications for the time period of July 7, 2016 to the present regarding the Dallas Shooting between or among the DHS Office for State and Local Enforcement—including all employees and staff—and the:
- a. Executive Office of the President, including but not limited to the White House and all employees and staff;
 - b. City of Dallas Police Department, including but not limited to David O. Brown, Chief of Police and all employees and staff;
 - c. City of Dallas Mayor Mike Rawlings, including all employees and staff;
 - d. Office of the Texas Governor Greg Abbott, including all employees and staff; and/or
 - e. U.S. Department of Justice, including all employees and staff.
3. All records for the time period of July 7, 2016 to the present reflecting communications regarding the Dallas Shooting between or among the Office of the DHS Secretary—including all employees and staff—and all employees and staff of the DHS Office for State and Local Enforcement.
4. All records from January 1, 2015 to present regarding Micah Johnson, the identified gunman.¹²

Request for Expedited Processing

Pursuant to FOIA and DHS regulations, Cause of Action hereby requests expedited processing of this request.¹³ One of the bases that qualifies a request for expedited processing is when there is “An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.”¹⁴

What role, if any, DHS played in the aftermath of the Dallas Shooting, including how DHS learned there was only one shooter and whether DHS is providing President Obama with information about the shooter’s motives that is being withheld from the public is “an actual or alleged federal government activity.” The request is being made by CoA Institute, a representative of the news media under FOIA.¹⁵ Therefore, this request meets the test for expedited processing.

¹² See Jennifer Emily, *Who Was Micah Johnson? A More Complex Picture Emerges*, DALLAS MORNING NEWS, July 10, 2016, available at <http://www.dallasnews.com/news/crime/headlines/20160710-who-was-micah-johnson-a-more-complex-picture-emerges.ece>.

¹³ See 5 U.S.C. § 552(a)(6)(E); 6 C.F.R. § 5.5(d)(2).

¹⁴ 6 C.F.R. § 5.5(d)(2).

¹⁵ See *Cause of Action*, 799 F.3d at 1121.

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that an 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.”¹⁶

In this case, the requested records unquestionably shed light on the “operations or activities of the government,” namely the role of DHS in investigating and responding to the July 7, 2016 police shooting in Dallas. Knowing the details of the role DHS played in responding to the Dallas shooting and whether any information is being withheld from the public will contribute significantly to public understanding about DHS operations, especially as they pertain to relations with state and local governments and public transparency. There is also a particularly significant public interest in understanding whether the White House played any role in assessing the motives of the gunman.

CoA 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 significant 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 CoA Institute’s regularly published online newsletter, memoranda, reports, or press releases.¹⁷ In addition, CoA 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, CoA Institute also qualifies as a “representative of the news media” under FOIA.¹⁸ 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.¹⁹ CoA 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.²⁰ Although it is not required by the statute, CoA Institute gathers the news it regularly

¹⁶ 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1); *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).

¹⁷ *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).

¹⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 5.11(b)(6).

¹⁹ *See* 799 F.3d at 1121, *supra* note 15.

²⁰ CoA Institute notes that the agency’s definition of “representative of the news media” (6 C.F.R. § 5.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *See Cause of Action*, 799 F.3d at 1125 (“Congress . . . omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007. . . .”).

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.²¹ These distinct works are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”²² In light of the foregoing, numerous federal agencies—including DHS—have appropriately recognized the Institute's news media status in connection with its FOIA requests.²³

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this

[Therefore,] there is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”). Under either definition, however, CoA Institute qualifies as a representative of the news media.

²¹ 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>.

²² 5 U.S.C. § 552(a)(4)(A)(ii)(II).

²³ See, e.g., FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); see also FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 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 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 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).

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request, so as to prevent their disposal 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.²⁴

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, CoA 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 me by telephone at (202) 499-4232 or by e-mail at lamar.echols@causeofaction.org. Thank you for your attention to this matter.

Sincerely,



LAMAR ECHOLS
COUNSEL

²⁴ See, e.g., 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).