



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

1875 Eye Street NW, Suite 800 · Washington, D.C. 20006

August 10, 2016

**VIA CERTIFIED MAIL**

Mr. John F. Hackett  
Director, Office of Information Programs  
A/GIS/IPS/RL, SA-2, Room 5021  
U.S. Department of State  
Washington, D.C. 20522-8100

**Re: Freedom of Information Act Request**

Dear Director Hackett:

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.<sup>1</sup> 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. Recent reports regarding Obama Administration activity related to Iran have called into question whether the State Department (“State”), along with other executive branch agencies, is negotiating secret, potentially unlawful, agreements with foreign governments, designed to evade Congressional and public notice and oversight.

In July 2015, the United States, along with six other countries, finalized a controversial agreement with Iran involving that nation’s nuclear program. Under that agreement, known as the Joint Comprehensive Plan of Action (“JCPOA”), Iran was, *inter alia*, supposedly barred for a 15 year period from engaging in nuclear research and development. Partially on that basis, JCPOA withstood Congressional scrutiny and went into effect beginning in October 2015.

Although reports had surfaced for some time of a confidential side agreement to JCPOA, only within the last few weeks have the contents of this secretive side agreement been revealed. According to the Associated Press, this side agreement allows Iran to start replacing its stockpile of uranium centrifuges with thousands of more sophisticated models beginning in 2027.<sup>2</sup> Such a process will apparently cut the time needed to develop weapons-grade uranium to six months or

<sup>1</sup> See CAUSE OF ACTION INSTITUTE, *About*, [www.causeofaction.org/about/](http://www.causeofaction.org/about/) (last visited August 4, 2016).

<sup>2</sup> George Jahn, AP Exclusive: *Document Shows Less Limits on Iran Nuke Work*, Associated Press (July 18, 2016), available at <http://bigstory.ap.org/article/140ca41aba7a42cda13792f07df4b8d3/ap-exclusive-secret-document-lifts-iran-nuke-constraints>.

less. This is in contrast to JCOPA provisions that set a “break-out” time of no less than 12 months beginning in 2031.<sup>3</sup> This side agreement, despite its serious consequences, was hidden from the public and from members of Congress.<sup>4</sup>

Meanwhile, this past week reports surfaced that, in January 2016, the Administration secretly organized a \$400 million cash payment to Iran that coincided with the release of four Americans held hostage by the Iranians.<sup>5</sup> Administration officials, including State spokesman John Kirby, denied any connection between this payment and the hostage release, asserting that the payment was part of a separate settlement agreement, despite reports that the Iranians considered the cash payments “ransom.”<sup>6</sup>

This “coincidental” payment was made entirely with foreign currency, flown into Iran in wooden pallets on an unmarked cargo plane, as any transaction with Iran in U.S. dollars violates U.S. sanctions provisions.<sup>7</sup> Department of Justice (“DOJ”) officials apparently objected to the \$400 million payment, on legal and policy grounds, but were overruled by State.<sup>8</sup> In addition, key details regarding this payment and the hostage release have long been withheld from members of the House Intelligence Committee.<sup>9</sup>

In order to further examine these issues, and pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to the following records:

1. All internal agency communications, including but not limited to, e-mails, texts, letters, meeting records, and phone records regarding the JCPOA side agreement discussed in the July 18, 2016 Associated Press story.<sup>10</sup>
2. All communications, including but not limited to, e-mails, texts, letters, meeting records, and phone records, between State officials and the White House, the Treasury Department or the Department of Energy, regarding the JCPOA side agreement discussed in the July 18, 2016 Associated Press story.<sup>11</sup>

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<sup>3</sup> Press Release, *AJC: Iran Nuclear Deal Side Agreement Deeply Troubling*, American Jewish Committee, (July 19, 2016), available at <http://bit.ly/2a194xH>.

<sup>4</sup> The Obama Administration maintains that “members of Congress who expressed interest were briefed on its substance.” Jahn, *supra* note 2.

<sup>5</sup> Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, Wall. St. J. (Aug. 3, 2016), available at <http://www.wsj.com/articles/u-s-sent-cash-to-iran-as-americans-were-freed-1470181874>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Devlin Barrett, *Justice Department Officials Raised Objections on U.S. Cash Payment to Iran*, Wall. St. J. (Aug. 3, 2016), available at <http://www.wsj.com/articles/justice-department-officials-raised-objections-on-u-s-cash-payment-to-iran-1470262789>.

<sup>9</sup> Adam Kredo, *Obama Admin Hid Details of Multi-Million Dollar Cash Payout to Iran From Congress*, Wash. Free Beacon, (August 4, 2016), <http://freebeacon.com/national-security/obama-admin-hid-details-multi-million-dollar-cash-payout-iran-congress/>.

<sup>10</sup> See *supra*, note 2.

<sup>11</sup> See *supra*, note 2.

3. All communications, including but not limited to, e-mails, texts, letters, meeting records, and phone records, between State officials and Iranian officials or officials of any other foreign country, regarding the JCPOA side agreement discussed in the July 18, 2016 Associated Press story.<sup>12</sup>
4. All internal agency communications, including but not limited, to e-mails, texts, letters, meeting records, and phone records, regarding the January 2016 \$400 million payment to Iran, as reported on August 3, 2016 in the Wall Street Journal.<sup>13</sup>
5. All communications, including but not limited, to e-mails, texts, letters, meeting records, and phone records, between State officials and the White House, the Treasury Department or the Department of Justice, regarding the January 2016 \$400 million payment to Iran, as reported on August 3, 2016 in the Wall Street Journal.<sup>14</sup>
6. All communications, including but not limited to, to e-mails, texts, letters, meeting records, and phone records between State officials and Iranian officials or officials of any other foreign country, regarding the January 2016 \$400 million payment to Iran, as reported on August 3, 2016 in the Wall Street Journal.<sup>15</sup>

#### **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.”<sup>16</sup> In this case, the requested records unquestionably shed light on the “operations or activities of the government,” namely State’s role in negotiating and enacting secret, potentially unlawful agreements, absent oversight, with the Iranian government. There is also a particularly significant public interest in understanding this activity as it concerns U.S. national security.

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

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<sup>12</sup> See *id.*

<sup>13</sup> See *supra*, note 5.

<sup>14</sup> See *supra*, note 5.

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

<sup>16</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.14(b)(5)(ii)(C); 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).

public, whether through CoA Institute's regularly published online newsletter, memoranda, reports, or press releases.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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. Although it is not required by the statute, CoA 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.<sup>20</sup> 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."<sup>21</sup> In light of the foregoing, numerous federal agencies—including State—have appropriately recognized the Institute's news media status in connection with its FOIA requests.<sup>22</sup>

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<sup>17</sup> 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).

<sup>18</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 6 C.F.R. § 171(b)(5)(ii)(c).

<sup>19</sup> See 799 F.3d at 1121, *supra* note 15.

<sup>20</sup> 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>.

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

<sup>22</sup> See, e.g., 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. Comm'n Comm'n

**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 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.<sup>23</sup>

**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 [josh.schopf@causeofaction.org](mailto:josh.schopf@causeofaction.org). Thank you for your attention to this matter.



JOSHUA N. SCHOPF  
COUNSEL

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(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).

<sup>23</sup> See, e.g., 22 C.F.R. § 171.18 ("Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA."); 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).