



1875 Eye Street NW, Suite 800, Washington, DC 20006

August 10, 2016

**VIA EMAIL**

Mr. Ryan Law  
Director, FOIA and Transparency  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220  
TreasFOIA@Treasury.gov

**Re: Freedom of Information Act Request – Expedited Processing Requested**

Dear Mr. Law:

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 news reports have revealed that in January 2016 the Obama Administration sent \$400 million in cash to Iran.<sup>2</sup> Iran has been listed as a state sponsor of terror since 1984<sup>3</sup> and has

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

<sup>2</sup> See, e.g., Jay Solomon & Carol E. Lee, *U.S. Sent Cash to Iran as Americans Were Freed*, WALL ST. J., Aug. 3, 2016, <http://www.wsj.com/articles/ussentcashtoiranasamericanswerefreed1470181874>; *Kerry Defends \$400 Million Payment to Iran, Says U.S. Pays No Ransoms*, REUTERS, Aug. 4, 2016, available at <http://www.nytimes.com/reuters/2016/08/04/world/middleeast/04reuters-usa-iran-installment-kerry.html>.

<sup>3</sup> Determination Pursuant to Section 6(i) of the Export Administration Act of 1979—Iran, 49 Fed. Reg. 2836-02 (Jan. 23, 1984). See also *State Sponsors of Terrorism*, U.S. DEP’T OF STATE, <http://www.state.gov/j/ct/list/c14151.htm>.

been subject to various financial sanctions.<sup>4</sup> Moreover, serious concerns about money laundering and terrorist financing in Iran persist.<sup>5</sup>

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to the following records:<sup>6</sup>

1. All communications between and among the Office of the Secretary, the Office of Foreign Assets Control, the Office of International Finance, and/or the Office of Terrorist Financing and Financial Crimes concerning the delivery of \$400 million in cash to Iran in January 2016;
2. All communications between and among the offices identified in Item 1, the Department of State, the Department of Justice, and/or the White House concerning the delivery of \$400 million in cash to Iran in January 2016;
3. All communications between and among the offices identified in Item 1, the Department of State, the Department of Justice, and/or the White House concerning any other payments related to the settlement of a dispute stemming from a failed 1970s U.S.-Iran arms deal; and
4. All communications between and among the offices identified in Item 1, the Department of State, the Department of Justice, and/or the White House concerning Iran’s release of several detained American citizens on January 17, 2016.

### **Request for Expedited Processing**

CoA Institute hereby requests expedited processing of its request because (1) CoA Institute is “primarily engaged in disseminating information” and (2) the requested records pertain to “actual or alleged Federal government activity,” about which there exists an “urgency to inform the public.”<sup>7</sup>

#### ***1. CoA Institute is primarily engaged in disseminating information as a representative of the news media.***

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<sup>4</sup> Exec. Order No. 13,622, 77 Fed. Reg. 45,897 (July 30, 2012) (revoked by Exec. Order No. 13,716, 81 Fed. Reg. 3,693 (Jan. 16, 2016)); Exec. Order No. 13,645, 78 Fed. Reg. 33,945 (June 3, 2013) (revoked by Exec. Order No. 13,716, 81 Fed. Reg. 3,693 (Jan. 16, 2016)).

<sup>5</sup> U.S. Dep’t of State, Countries/Jurisdictions of Primary Concern – Iran (2015), *available at* <http://www.state.gov/j/inl/rls/nrcrpt/2015/vol2/239081.htm>.

<sup>6</sup> The term “record” means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at \*7-9 (D.C. Cir. July 29, 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

<sup>7</sup> 5 U.S.C. § 552(a)(6)(E)(v)(II); 31 C.F.R. § 1.5(e).

As discussed below, CoA Institute is primarily engaged in disseminating information because it qualifies as a news media organization.<sup>8</sup> CoA Institute 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.

***2. There is an urgency to inform the public about actual Federal government activity.***

In *Al-Fayed v. Central Intelligence Agency*, the U.S. Court of Appeals for the District of Columbia Circuit established a multi-factor test to determine whether a FOIA requester properly satisfies the “urgency to inform” standard.<sup>9</sup> These factors include: (1) whether a request concerns a “matter of current exigency to the American public”; (2) whether the consequences of delaying a response would “compromise a significant recognized interest”; (3) whether the request concerns “federal government activity”; and, (4) whether the requester has proffered credible “allegations regarding governmental activity.”<sup>10</sup>

In this case, the requested records concern the decision by multiple federal agencies, including the Department of the Treasury, to obtain \$400 million in U.S. dollars, exchange it for foreign currencies, and then deliver it to Iran. Not only does this decision implicate how the federal government disposes of large sums of money, but also it raises questions about whether the U.S. payment to Iran could directly or indirectly fund terrorists who wish to harm U.S. interests. For example, within just a few days of the transfer in January 2016, Secretary of State John Kerry acknowledged that some sanctions relief money flowing to Iran would “end up in the hands of [Iran’s Revolutionary Guard Corps] or other entities, some of which are labeled terrorists.”<sup>11</sup> Americans deserve to understand how the Treasury Department and other federal agencies decided to send \$400 million to Iran, particularly when there are serious and longstanding concerns about Iran’s ties to and support of terrorism. There is an urgent need to inform the public about such activities. This issue is already being widely covered by the news media.<sup>12</sup> In short, the CoA Institute request does not seek records of a merely “newsworthy” topic, but rather “subject[s] of a currently unfolding story.”<sup>13</sup> CoA Institute seeks records that unquestionably concern the activity of the federal government, insofar as they reflect the Treasury Department’s decision-making and communications with other federal agencies and the White House. The requested records may therefore reveal potential impropriety.

In this sense, delay in production of the requested records would compromise a significant and recognized public interest in government accountability. The Supreme Court has stated that the “core purpose of the FOIA” is to allow the American people access to information

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<sup>8</sup> *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (referencing *Elec. Privacy Info., Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)).

<sup>9</sup> 254 F.3d 300, 310–11 (D.C. Cir. 2001).

<sup>10</sup> *Id.*

<sup>11</sup> Elise Labott, *John Kerry: Some Sanctions Relief Money for Iran will go to Terrorism*, CNN, Jan. 21, 2016, <http://www.cnn.com/2016/01/21/politics/johnkerrymoneyiransanctionterrorism/>.

<sup>12</sup> *See supra* note 2, 11.

<sup>13</sup> *Al-Fayed*, 254 F.3d at 311.

that might “contribute significantly to public understanding of the operations or activities of the government.”<sup>14</sup> The ability of a government “watchdog” – CoA Institute – to secure such records as those sought in the instant request for the purposes of government accountability,<sup>15</sup> especially where a current exigency and unfolding story exists, thus weighs in favor of expedited processing. The foregoing is true and correct to the best of my knowledge and belief.<sup>16</sup>

### **Request for a Public Interest Fee Waiver**

CoA 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.”<sup>17</sup>

In this case, the requested records would shed light on the “operations or activities of the government,” namely, the steps taken by the Department of the Treasury and other federal agencies to obtain \$400 million, convert that money into foreign currencies, and then deliver it by cargo plane to Iran. Moreover, disclosure would “contribute significantly” to public understanding of the federal government’s transfer of hundreds of millions of dollars – and perhaps even more<sup>18</sup> – in cash to a state that is known to fund terrorism. Although the first payment to Iran was made in January 2016, it was not disclosed until over seven months later and few details are publicly available.

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. CoA Institute’s staff has a wealth of 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.<sup>19</sup> In addition, as CoA Institute is a non-profit organization

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<sup>14</sup> *Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

<sup>15</sup> *See Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001) (“[O]btaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”); *see also Ctr. to Prevent Handgun Violence v. 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>16</sup> 5 U.S.C. § 552(a)(6)(E)(vi).

<sup>17</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 31 C.F.R. § 1.7(d)(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).

<sup>18</sup> *Solomon & Lee*, *supra* note 2 (“The money represented the first installment of a \$1.7 billion settlement the Obama administration reached with Iran to resolve a decades-old dispute over a failed arms deal signed just before the 1979 fall of Iran’s last monarch, Shah Mohammad Reza Pahlavi.”).

<sup>19</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).

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>20</sup> As the D.C. Circuit has held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.<sup>21</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.<sup>22</sup> 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. CoA Institute 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>23</sup> These distinct works are distributed to the public through various media, including CoA Institute’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>24</sup> CoA Institute 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 CoA Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media

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<sup>20</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 31 C.F.R. § 1.5(b)(2)(iv).

<sup>21</sup> See *Cause of Action*, 799 F.3d at 1121.

<sup>22</sup> CoA Institute notes that Treasury’s definition of “representative of the news media” (31 C.F.R. § 1.5(b)(2)(iv)) is in conflict with the statutory definition and controlling case law. Treasury 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. . . . [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.

<sup>23</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>24</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

entities.”<sup>25</sup> In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute’s news media status in connection with its FOIA requests.<sup>26</sup>

### **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>27</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

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<sup>25</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>26</sup> See, e.g., FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep’t of Justice (Aug. 2, 2016); 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 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).

<sup>27</sup> See 31 C.F.R. § 1.5(m) (“Under no circumstances shall records be 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).


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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 [jessica.conrad@causeofaction.org](mailto:jessica.conrad@causeofaction.org). Thank you for your attention to this matter.

Sincerely,

  
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Jessica M. Conrad  
Counsel