



August 24, 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 Mr. 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. To that end, we are examining the State Department’s (“Department”) ethics program, particularly as applied to former Secretary of State Hillary Clinton.

A number of Secretary Clinton’s emails that have only recently become publicly available raise questions about her compliance with federal government ethics laws and regulations.<sup>2</sup> These questions are even more concerning in light of a 2013 Office of Inspector General (“OIG”) report documenting the shortcomings of the Department’s ethics program under Secretary Clinton.<sup>3</sup>

Specifically, the OIG found that only 53% of Presidentially-appointed, Senate-confirmed (“PAS”) Department officials completed mandatory ethics training in 2012.<sup>4</sup> In the same year, only 68% of senior, non-PAS officials received ethics training.<sup>5</sup> These findings suggest that Department

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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., Katy O’Donnell, *Ethicists: Clinton Team Violated ‘Spirit’ of Pledge*, POLITICO, Aug. 11, 2016, <http://www.politico.com/story/2016/08/hillary-clinton-emails-state-foundation-226897> (“The emails . . . show open lines of communication between the old Clinton hands running the family’s multimillion-dollar charity and those who’d moved on to help her run the State Department.”); Daniella Diaz, Pamela Brown & Elise Labott, *Newly Released Clinton Emails Shed Light on Relationship between State Dept. and Clinton Foundation*, CNN, Aug. 10, 2016, <http://www.cnn.com/2016/08/09/politics/hillary-clinton-emails-judicial-watch/>.

<sup>3</sup> *Review of the Department of State Ethics Program 13* (ISP-I-13-52, Sept. 2013).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

officials during Secretary Clinton's tenure did not take even their basic ethics responsibilities seriously.

Moreover, the Associated Press reported yesterday that "[m]ore than half the people outside the government who met with Hillary Clinton while she was secretary of state gave money – either personally or through companies or groups – to the Clinton Foundation."<sup>6</sup> This fact casts further doubt on the sincerity of Secretary Clinton's January 5, 2009 ethics agreement, where she wrote: "If confirmed as Secretary of State, I will not participate personally and substantially in any particular matter that has a direct and predictable effect upon [the Clinton Foundation], unless I first obtain a written waiver or qualify for a regulatory exemption."

Although recent reporting and email releases continue to shed light on Secretary Clinton's conduct while in office, many questions about the guidance Secretary Clinton received from the State Department's ethics office and whether she complied with such advice remain unanswered. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to the following records for the time period January 1, 2009 to December 31, 2013:<sup>7</sup>

1. All recusals or other ethics agreements for the following individuals:
  - a. Hillary Rodham Clinton;
  - b. Cheryl Mills;
  - c. Harold Koh;
  - d. Huma Abedin;
  - e. Jacob Sullivan
  - f. Caitlin Klevorick;
  - g. Philippe Reines;
  - h. Dennis Cheng;
  - i. Kris Balderston;

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<sup>6</sup> Stephen Braun & Eileen Sullivan, *Many Donors to Clinton Foundation Met with Her at State*, ASSOCIATED PRESS, Aug. 23, 2016, [http://hosted.ap.org/dynamic/stories/U/US\\_CAMPAIGN\\_2016\\_CLINTON\\_FOUNDATION?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2016-08-23-14-35-04](http://hosted.ap.org/dynamic/stories/U/US_CAMPAIGN_2016_CLINTON_FOUNDATION?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2016-08-23-14-35-04).

<sup>7</sup> For purposes of this request, 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").

- j. Bryan Pagliano; and
  - k. Patrick F. Kennedy.
2. All ethics waivers or exemptions obtained by the individuals identified in Item 1;
  3. All records of ethics advice or briefings the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure provided to Secretary Clinton before, during, and after her confirmation, including, but not limited to, communications, memoranda, meeting/call notes, and calendar entries;
  4. All communications sent or received by the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure concerning the Clinton Foundation; and
  5. All communications between the Office of the Assistant Legal Adviser for Ethics and Financial Disclosure and the Office of Government Ethics concerning Secretary Clinton.

#### **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>8</sup>

In this case, the requested records unquestionably concern the “operations or activities of the government,” namely, whether senior State Department officials complied with federal government ethics laws and regulations. Such laws are, of course, intended to assure taxpayers that their government is operating with integrity. These specific records would shed light on the propriety of the relationship between Secretary Clinton’s State Department and the Clinton Foundation. Additionally, they would allow the public to better understand Secretary Clinton’s knowledge of her ethics obligations and the need to avoid conflicts of interest while in office. There is a particularly significant public interest in understanding whether the activities and operations of the State Department were conducted in accordance with federal government ethics laws.

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 the Institute’s regularly published online newsletter, memoranda, reports, or press releases.<sup>9</sup>

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<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 22 C.F.R. § 171.16(a); *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>9</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).

In addition, as 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>10</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>11</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>12</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>13</sup> In light of the foregoing, numerous federal agencies—including the Department of State—have appropriately recognized the Institute’s news media status in connection with its FOIA requests.<sup>14</sup>

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<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 22 C.F.R. § 171.14(b)(5)(ii)(C).

<sup>11</sup> *See Cause of Action*, 799 F.3d at 1121.

<sup>12</sup> *See, e.g., Cause of Action Testifies Before Congress on Questionable White House Detail Program* (May 19, 2015), available at <http://coainst.org/2aJ8UAA>; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://coainst.org/2as088a>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), available at <http://coainst.org/2aJ8sm5>; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://coainst.org/2aFWxUZ>; COA INSTITUTE, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://coainst.org/2apTwqP>; COA INSTITUTE, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://coainst.org/2aJh901>.

<sup>13</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>14</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

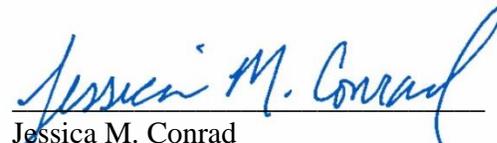
**Record Preservation Requirement**

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>15</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 [jessica.conrad@causeofaction.org](mailto:jessica.conrad@causeofaction.org). Thank you for your attention to this matter.

  
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Jessica M. Conrad  
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); 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>15</sup> See 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).