



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

September 9, 2016

VIA E-MAIL

Office of Inspector General
U.S. Department of Commerce
Attention: Raman Santra, FOIA Officer
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
FOIA@oig.doc.gov

Re: Freedom of Information Act Request

Dear Mr. Santra:

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, we are examining misconduct by a high-ranking political appointee at the Department of Commerce (“Department”), including inappropriate travel reimbursements and excessive spending on office renovations.

On September 8, 2016, the Department of Commerce Office of Inspector General (OIG) released a report detailing numerous instances of misconduct and wasteful spending.² A High-Ranking Political Appointee at the Department appears to have regularly used the U.S. Treasury as a slush fund by staying in luxury hotels and using luxury car services.³ In one case, the High-Ranking Political Appointee traveled to Geneva, Switzerland where he stayed at a luxury hotel that cost around \$1,150 per night despite the allowable per diem being \$340 per night.⁴ The High-Ranking Political Appointee was ultimately reimbursed 150% of the standard per diem rate for his entire stay even though a portion of the of the trip was for personal travel and a family

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

² U.S. Dep’t of Commerce, Office of Inspector General, *Investigation into Travel & Other Improprieties in the Office of a Politically Appointed Official*, September 2016, available at <https://www.oig.doc.gov/OIGPublications/15-0444.pdf>.

³ *Id.*

⁴ *Id.*

member chose the luxury hotel.⁵ During the same trip, a staff member of the High-Ranking Political Appointee stayed in a room at a different hotel and below the per diem rate.⁶

Further, taxpayers also regularly paid for the High-Ranking Political Appointee to travel in luxury cars.⁷ For example, taxpayers paid nearly \$1,800 for the High-Ranking Political Appointee and his staff to ride in an SUV provided by a luxury hotel during a two-day trip to Boston, Massachusetts.⁸

Additionally, the High-Ranking Political Appointee spent taxpayer money excessively while renovating his office, likely violating the Anti-Deficiency Act.⁹ Despite Congress limiting office renovations to \$5,000, the Department spent over \$50,000 on this same High-Ranking Political appointee's office.¹⁰ Shortly after assuming his role with the Department, the High-Ranking Political appointee thought the office looked "awful" while another employee who worked in the suite described it as "just a regular government office."¹¹

The High-Ranking Political Appointee was so displeased with his office space that he called another senior official at the agency and said his office was "a[n] [expletive] dump."¹² This led to the senior official touring the office and sending an email to subordinates instructing them to make the space "exceed [High-Ranking] Political Appointee's expectations" and "reflective of [High-Ranking Political Appointee's] position."¹³ Some subordinate employees were apparently fearful of losing their position with the Department if the renovations were not acceptable to the High-Ranking Political Appointee.¹⁴ According to the OIG report, substantial renovations were made, including "new carpeting chosen by [High-Ranking] Political Appointee after consultation with an interior maintenance specialist" for a Luxury Hotel was installed in his immediate office and throughout the suite." An administrative official described the renovations as "over the top."¹⁵

The excessive spending on luxury items by a high-ranking political appointee raises serious questions about the internal agency controls in place at the Department. The waste, fraud, and abuse described in the OIG's report is unacceptable. Because this matter involves a high-

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ 31 U.S.C. § 1341(a)(1)(A); the Antideficiency Act states in pertinent part that a federal agency may not "make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."

¹⁰ OIG Report, *supra* note 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

ranking official who apparently intended to, and did, misuse agency funds, American taxpayers have the right to know the name and title of the High-Ranking Political Appointee involved in this matter. Further, the public has a significant interest in reviewing the materials compiled by the OIG in order to understand the full extent of the abuses by that same High-Ranking Political Appointee.

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, 2012 to the present.¹⁶

1. Any document containing the full name and title of the High-Ranking Political Appointee.
2. All records compiled by the Department of Commerce Office of Inspector General relating to Final Report 15-0444, *Investigation into Travel & Other Improprieties in the Office of a Politically Appointed Official*.

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.”¹⁷ In this case, the requested records unquestionably shed light on the “operations or activities of the government,” namely all details and instances where a particular High-Ranking Political Appointee misused taxpayer money for travel and office renovations. These records are not available to the public and will provide insight into the policies and procedures used by the Department relating to travel and office renovations.

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.¹⁸ In addition, as CoA Institute is a non-profit organization as defined

¹⁶ 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). 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”).

¹⁷ 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11 (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).

¹⁸ *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).

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.¹⁹ 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.²⁰ 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.²¹ 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.²² 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.”²³ In light of the foregoing, numerous federal agencies—including the Department—have appropriately recognized the Institute’s news media status in connection with its FOIA requests.²⁴

¹⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

²⁰ See *Cause of Action*, 799 F.3d at 1121.

²¹ CoA Institute notes that the agency’s definition of “representative of the news media” (15 C.F.R. § 4.11 (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. . . . [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.

²² 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>.

²³ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

²⁴ 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-

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.²⁵

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) 407-9964 or by e-mail at lamar.echols@causeofaction.org. Thank you for your attention to this matter.



Lamar Echols
Counsel

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).

²⁵ See 15 C.F.R. § 4.3(d) ("Components shall not dispose records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.") 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).

