



September 21, 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

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.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.

Between January 14 and February 5, 2016, the U.S. Department of the Treasury transferred approximately \$1.7 billion to Iran. Four hundred million came from the Foreign Military Sales Trust Fund, while the remainder was paid from the taxpayer-funded Judgment Fund. The payments allegedly settled a long-standing claim before the Iran-U.S. Claims Tribunal.² Conveniently, the payments also served as “leverage” to ensure the release of several Americans held hostage by Iran.³ The Treasury Department wired each of the payments to a European bank, where it was then converted into foreign currency and the cash disbursed to an Iranian official.

Regardless of the merits of the settlement agreement the State Department reached with Iran, and regardless of whether the cash payments created “leverage” for the release of the American hostages, shipping more than \$1.7 billion in untraceable cash to the world’s leading state sponsor of terrorism is nonsensical – particularly when alternative, more transparent means were available.

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

² However, the Department of Justice was concerned that the deal looked like a ransom payment. Devlin Barrett, *Justice Department Officials Raised Objections on U.S. Cash Payment to Iran*, WALL ST. J., Aug. 3, 2016, <http://www.wsj.com/articles/justice-department-officials-raised-objections-on-u-s-cash-payment-to-iran-1470262789>.

³ Carol E. Lee & Jay Solomon, *U.S. Acknowledges Cash Payment to Iran was ‘Leverage’ in Prisoner Release*, WALL ST. J., Aug. 18, 2016, <http://www.wsj.com/articles/u-s-acknowledges-cash-payment-to-iran-was-leverage-in-prisoner-release-1471558389>.

Just last month, President Obama said that “we had to give [the Iranians] cash . . . because we’re so strict in maintaining sanctions.”⁴ This month, the Treasury Department provided testimony to Congress directly contradicting the President’s statement and asserting that in fact the U.S. government has broad leeway to engage in transactions necessary to settle claims before the Iran-U.S. Claims Tribunal.⁵ This discrepancy raises questions about the nature of the payments and why – if they were made pursuant to a settlement agreement and therefore could have been wired – the Obama Administration agreed to pay the Iranians in untraceable cash.

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

1. Copies of Fiscal Service (FS) Forms 194, 196, and 197 for the following payments:
 - a. 16832016;
 - b. 16842016;
 - c. 16852016;
 - d. 16862016;
 - e. 16872016;
 - f. 16882016;
 - g. 16892016;
 - h. 16902016;
 - i. 16912016;

⁴ Carol E. Lee & Jay Solomon, *Obama Defends Cash Payment to Iran*, WALL ST. J., Aug. 4, 2016, <http://www.wsj.com/articles/obama-defends-cash-payment-to-iran-1470348837>.

⁵ *Fueling Terror: The Dangers of Ransom Payments to Iran: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Fin. Servs.*, 114th Cong. (2016) (statement of Paul Ahern, Assistant Gen. Counsel for Enforcement and Intelligence, U.S. Dep’t of the Treasury) (“Treasury’s Iranian Transactions and Sanctions Regulations, at 31 C.F.R. 560.510, explicitly authorize ‘[a]ll transactions necessary to payments pursuant to settlement agreements entered into by the United States Government’ in a legal proceeding in which the United States is a party, such as settlements of claims before the Tribunal.”).

⁶ 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”).

- j. 16922016;
 - k. 16932016;
 - l. 16942016;
 - m. 16952016;
 - n. 16962016; and
 - o. Any other payments associated with Defendant Agency File 163-68-50;
2. All supporting documents provided to the Treasury Department pursuant to 31 C.F.R. § 256.12, including a copy of the settlement agreement, for the payments identified in Item 1;
 3. All records concerning or relating to any taxpayer identification numbers (TIN) associated with the payments identified in Item 1;
 4. All records concerning or relating to the electronic funds transfer (EFT) requirement for the payments identified in Item 1;
 5. All records related to the payments identified in Item 1 maintained in the Judgment Fund Internet Claims System (JFICS);
 6. All communications concerning any transactions authorized by 31 C.F.R. § 560.510, from November 13, 2015 to February 16, 2016; and
 7. All communications between the Treasury Department and the State Department concerning the settlement with Iran, from September 7, 2016 to the present.

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.”⁷

In this case, the requested records would unquestionably shed light on the “operations or activities of the government,” namely the circumstances surrounding the transfer of over \$1.7 billion in foreign cash to Iran, a state sponsor of terrorism. While the State Department announced the settlement agreement in January 2016 around the time the payments were made, the details of the payments – which strongly bear on their legality and the risks of engaging in financial transactions with Iran – were withheld for months. The requested records also contain

⁷ 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).

previously undisclosed information and will further the public's understanding of how the Treasury Department reviewed, approved, and structured the transfer of more than \$1.3 billion in taxpayer funds to Iran.

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.⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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.¹² These distinct works

⁸ 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).

⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 31 C.F.R. § 1.5(b)(2)(iv).

¹⁰ See *Cause of Action*, 799 F.3d at 1121.

¹¹ CoA Institute notes that the agency'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. 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.

¹² 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>.

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."¹³ In light of the foregoing, numerous federal agencies have appropriately recognized the Institute's news media status in connection with its FOIA requests.¹⁴

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.¹⁵

¹³ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁴ 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).

¹⁵ 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).

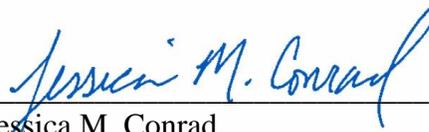
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Record Production and Contact Information

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. Thank you for your attention to this matter.



Jessica M. Conrad
Counsel