

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| CAUSE OF ACTION INSTITUTE        | ) |                          |
| 1875 Eye Street, N.W., Suite 800 | ) |                          |
| Washington, D.C. 20006,          | ) |                          |
|                                  | ) |                          |
| Plaintiff,                       | ) |                          |
|                                  | ) |                          |
| v.                               | ) | Civil Action No. 16-1783 |
|                                  | ) |                          |
| INTERNAL REVENUE SERVICE         | ) |                          |
| 1111 Constitution Avenue, N.W.   | ) |                          |
| Washington, D.C. 20224,          | ) |                          |
|                                  | ) |                          |
| Defendant.                       | ) |                          |

**COMPLAINT**

This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), seeking access to records requested by Plaintiff Cause of Action Institute (“CoA Institute”). The requested records, maintained by Defendant, the Internal Revenue Service (“IRS”), may illuminate how the IRS and the White House communicated on matters pertaining to the targeting of applications for 501(c)(4) tax-exempt status and the handling of confidential taxpayer information.

**NATURE OF THE ACTION**

1. This case concerns two FOIA requests. Despite acknowledging receipt of the first CoA Institute request and processing it for over a year, Defendant ultimately closed the request, asserting its invalidity. That closure was improper and not in accordance with the FOIA, IRS FOIA regulations, or the Internal Revenue Manual. Defendant also refused to accept as valid a second CoA Institute FOIA request that seeks a similar, though narrower, collection of records. In both cases, Defendant has unlawfully withheld records to which CoA Institute has a right and

the disclosure of which will serve the public interest in ensuring a transparent and accountable government.

2. The two FOIA requests concern records of communications between high-level political appointees at the IRS and the White House. Specifically, the requests at issue seek access to records of correspondence between IRS leadership and three persons who worked at the White House: Andrew C. Strelka, Danielle C. Gray, and Boris Bershteyn.

3. Andrew Strelka is an attorney who formerly worked in the Exempt Organizations Section of the IRS and then became a trial attorney in the Department of Justice (“DOJ”) Tax Division from 2010 – 2014. From December 2013 to June 2014, Mr. Strelka was detailed from the DOJ to work as “clearance counsel” in the Office of the White House Counsel in the Executive Office of the President. Mr. Strelka now works in private practice.

4. As part of its investigation into the targeting of politically-disfavored groups in the review and determination of applications for 501(c)(4) tax-exempt status, the U.S. House of Representatives Committee on Oversight and Government Reform discovered that Mr. Strelka, while serving as a trial attorney at the DOJ, represented the IRS in litigation brought by Z Street, Inc., a group which had applied for tax exempt status during Mr. Strelka’s tenure at the IRS Exempt Organizations Section and which alleged that it had been unlawfully targeted by the IRS. Congressman Darrel Issa, former Chairman of the House Oversight Committee, called this representation a “conflict of interest.” Letter from Rep. Darrell Issa & Rep. Jim Jordan, U.S. H.R. Comm. on Oversight & Gov’t Reform, to Eric H. Holder, U.S. Att’y Gen., Dep’t of Justice, at 3–4 (Aug. 25, 2014), *available at* <http://bit.ly/29ykqMf>.

5. While Mr. Strelka was detailed from the DOJ to work as clearance counsel in the Office of the White House Counsel, he vetted potential candidates for appointment by President

Obama to high-ranking government posts by, among other means, examining confidential taxpayer information. Through its own independent investigation, CoA Institute has sought to identify existing policies, procedures, rules, or guidelines, if any, that were in place to ensure that detailees, such as Mr. Strelka, were appropriately screened to prevent confidential taxpayer returns or return information from being unlawfully accessed or disclosed. To date, it appears that no such safeguards were in place to prevent private and confidential taxpayer information from being inappropriately disclosed to the White House. In addition, there appear to have been no safeguards in place to prevent the continued involvement—even informal—of Mr. Strelka in IRS matters while he was detailed to the White House. This is especially concerning considering his ongoing communication with the IRS while employed at the DOJ. *See* U.S. H. Comm. on Oversight & Gov't Reform, Staff Report: The Internal Revenue Service's Targeting of Conservative Tax-Exempt Applicants: Report of Findings for the 113th Congress at 167 (Dec. 23, 2014 ), *available at* <http://bit.ly/29nHE9s> (“Even after he left the IRS, Strelka maintained a close relationship with [Lois] Lerner . . . . Strelka’s connection with the IRS is so strong that he was made aware of Lerner’s hard drive crash in June 2011 almost immediately after it occurred.”) (citations omitted).

6. Danielle C. Gray is a former Special Assistant to the President and Associate Counsel in the Office of the White House Counsel. Ms. Gray began her employment at the White House in 2009 and left approximately two years later to work for the DOJ. Ms. Gray returned to the White House in 2011 to become Deputy Assistant to the President for Economic Policy and, eventually, Deputy Director of the National Economic Council. In 2013, Ms. Gray was appointed Assistant to the President and Cabinet Secretary. Ms. Gray currently works in private practice.

7. Boris Bershteyn is a former Special Assistant to the President and Associate Counsel in the Office of the White House Counsel. Mr. Bershteyn later became General Counsel for the White House Office of Management and Budget (“OMB”). From 2012 – 2013, Mr. Bershteyn served as Acting Administrator of the White House OMB Office of Information and Regulatory Affairs. Mr. Bershteyn currently works in private practice.

8. The two CoA Institute FOIA requests seek the release of records that may reveal the extent to which confidential taxpayer information was the subject of improper communications between the IRS and the White House, and, in turn, between attorneys detailed to the White House and employees of the IRS. The requested records may also reveal the extent to which top-level White House employees knew of or coordinated with the IRS in the targeting of conservative and free-market groups that had applied for tax-exempt status.

9. The improper closure of the CoA Institute FOIA requests illustrates an endemic problem among agency FOIA offices. The administrative closure of requests for unjustifiable reasons frustrates public access to government information and evidences the breach of agency obligations under the FOIA. *See, e.g.*, Letter from Cause of Action Inst., *et al.*, to Miriam Nisbet, Dir., Office of Gov’t Info. Servs., Nat’l Archives & Records Admin. (Oct. 30, 2014), *available at* <http://bit.ly/29wzZ9P> (requesting that “OGIS investigate [improper administrative closure] and its impact on FOIA requesters as a barrier to pursuing government records”). The DOJ Office of Information Policy has addressed some of those concerns with respect to the use of “still-interested” letters, *see* Dep’t of Justice, Office of Info. Pol’y, *Limitations on Use of “Still-Interested” Inquiries*, <http://bit.ly/29iX6QT> (last accessed July 6, 2016), but agencies such as the IRS continue to abuse the practice.

10. FOIA requires that requesters “reasonably describe” records and otherwise comply with published FOIA regulations. 5 U.S.C. § 552(a)(3)(A)(i)–(ii). The IRS FOIA regulations construe this provision to require that a requester describe requested records “in reasonably sufficient detail to enable the IRS employees who are familiar with the subject matter of the request to locate the records without placing an unreasonable burden upon the IRS.” 26 C.F.R. § 601.702(c)(5)(i). When a requester is deficient in his description of such records, he “shall be afforded an opportunity to refine the request,” which “may involve a conference with knowledgeable IRS personnel[.]” *Id.* The IRS prohibits this “reasonable description requirement” from being “used . . . as a device for improperly withholding records[.]” *Id.*

11. The Internal Revenue Manual reiterates these requirements and instructs disclosure officials “not to read a request so strictly that the requester is denied information the agency knows exists.” Internal Revenue Serv., Internal Revenue Manual 11.3.13.5.5(1) (revised Aug. 14, 2013) [hereinafter “IRM”], *available at* <http://bit.ly/29yhhvR>. When a request is in some manner defective, IRS regulations and the IRM require that “[c]ase workers . . . notify the requester that the [imperfect] request does not meet certain requirements of the FOIA[,] that more information is needed,” and that the requester has “35 calendar days to perfect the request.” IRM 11.3.13.5.5(2); *see* 26 C.F.R. § 601.702(c)(1)(i).

12. The CoA Institute FOIA requests at issue in this case met the “reasonable description” requirement set forth under FOIA, the IRS FOIA regulations, and the IRM.

### **JURISDICTION AND VENUE**

13. Jurisdiction is asserted pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 552(a)(4)(B), (a)(6)(E)(iii).

14. Venue is proper pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

## **PARTIES**

15. CoA Institute is a non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. 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. It regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including the IRS, and disseminates its findings, analysis, and commentary to the general public.

16. The IRS is an agency within the meaning of 5 U.S.C. § 552(f)(1) and has possession, custody, and control of records to which CoA Institute seeks access and which are the subject of this Complaint.

## **FACTS**

### **A. The January 2014 FOIA Request**

17. By letter, dated January 23, 2014, CoA Institute submitted a FOIA request to the IRS seeking “all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or any Internal Revenue Service (IRS) employee within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.” Ex. 1 (“January 2014 FOIA Request”).

18. The time period of this first request was January 2010 to the present. *Id.*

19. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. *Id.*

20. The IRS received the January 2014 FOIA Request on January 28, 2014 and assigned it tracking number F14034-0011. *See* Ex. 2.

21. On several occasions throughout the remainder of 2014, the IRS unilaterally extended its response time for the January 2014 FOIA Request.

22. On February 25, 2014, the agency asked for more time to complete the CoA Institute request, stating that it needed “additional time to search for, collect, and review responsive records from other locations” and thereby implicitly acknowledging that it was processing the CoA request. *Id.* The IRS also stated that there was no “need to reply to this letter if you agree to [an] extension” to May 30, 2014 for the IRS to “provide a final response.” *Id.* CoA Institute did not reply to that letter.

23. On May 21, 2014, the IRS wrote again, stating that it was “still working on your request” and that it “need[ed] additional time to obtain documents responsive to your request.” Ex. 3. The IRS said it would contact CoA Institute by August 29, 2014 if it was “still unable to complete your request.” *Id.*

24. On August 19, 2014, the IRS again wrote to CoA Institute to extend its expected response date, this time to December 2, 2014. *See* Ex. 4. The IRS letter stated that the agency was “still working on your request and need[ed] additional time to collect, process [sic] review any documents responsive to your request.” *Id.*

25. On December 1, 2014, the IRS wrote yet another letter, this time extending its response date to March 23, 2015. *See* Ex. 5. The agency repeated its earlier statements that it was “still working on” the January 2014 FOIA Request and that it “need[ed] additional time to collect, process [sic] review any documents responsive” to it. *Id.* The IRS stated it would contact CoA Institute by March 23, 2015 “if [it was] still unable to complete [the] request.” *Id.*

26. On April 9, 2015, the IRS wrote to CoA Institute providing what the IRS called its “final response” to the January 2014 FOIA Request. Ex. 6. In that letter, the IRS asserted for

the first time that the January 2014 FOIA Request was “not valid,” because it did not “‘reasonably describe’ the records sought” and did not “describe the documents in sufficient detail to enable [the IRS] to locate the records ‘without placing an unreasonable burden upon the IRS.’” *Id.* at 1. The IRS suggested that CoA Institute “consider revising [its] request making it more specific as to subject matter, time period and/or limiting the request only to specific employees within the Tax Exempt & Government Entities Division.” *Id.* at 2.

27. By letter, dated July 22, 2015, CoA Institute wrote to the IRS objecting to the agency’s administrative closure of the January 2014 FOIA Request and asking the IRS to re-open it on the grounds that it met all the FOIA’s requirements for a proper request. *See Ex. 7.*

28. In its letter, CoA Institute explained that the January 2014 FOIA Request was proper because it identified likely record custodians, stated the subject matter of the request, and otherwise conformed to all applicable FOIA regulations. *Id.* at 2. CoA Institute also explained that, while the January 2014 FOIA Request was pending for more than a year during which time the IRS had written multiple times to CoA Institute about it, the IRS had never once sought to clarify or narrow the scope of the request, never once suggested that more information was needed or would help to process the request, and never once indicated that the request was in any way imperfect or defective prior to issuing its “final response.” *Id.*

29. CoA Institute also outlined how the administrative closure of the January 2014 FOIA request was contrary to IRS FOIA regulations and procedure. *Id.* at 2–3. CoA Institute cited Section 11.3.13.5.5(2) of the Internal Revenue Manual, which states that IRS caseworkers must “notify the requester that the request does not meet certain requirements of the FOIA and that more information is needed before the request can be processed. The letter must point out the specific deficient item(s) to the requester and must advise the requester that he/she has 35

calendar days to perfect the request.” IRM 11.3.13.5.5(2) (revised Aug. 14, 2013). Before its “final response,” the IRS never notified CoA Institute that the January 2014 FOIA Request did not meet any particular requirement of the FOIA or that more information was needed to process it, nor did it point out any specifically deficient item or other defect. *See* Exs. 2-6. In addition, the IRS never informed CoA Institute that it had 35 calendar days to perfect its request.

30. By letter, dated July 31, 2015, the IRS responded with another purported “final response,” again stating that the January 2014 FOIA Request was invalid and could not be processed. *See* Ex. 8. The IRS maintained that the January 2014 FOIA Request, which it had assigned a new tracking number, F15209-0097, needed to be revised, but the agency did not address any of the arguments CoA Institute made in its July 22, 2015 letter. *See id.*

**B. The May 2016 FOIA Request**

31. On May 20, 2016, CoA Institute submitted a second FOIA request to the IRS seeking “all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.” Ex. 9 (“May 2016 FOIA Request”).

32. The time period of this second FOIA request was January 2010 to June 2014. *Id.*

33. CoA Institute also requested a public interest fee waiver and classification as a representative of the news media for fee purposes. *Id.* at 1–3.

34. By letter, dated June 14, 2016, the IRS issued a “final response” to the May 2016 FOIA Request. *See* Ex. 10. The agency stated that it was “unable to process” the May 2016 FOIA Request “as it does not meet the requirements of the FOIA or the applicable agency regulations” because it did not “‘reasonably describe’ the records sought” and did not “describe the documents in sufficient detail to enable [the IRS] to locate the records ‘without placing an unreasonable burden upon the IRS.’” *Id.* at 1.

35. By letter, dated July 7, 2016, CoA Institute wrote the IRS requesting that the agency re-open the May 2016 FOIA Request and asserting that the IRS had inappropriately refused to process the request in violation of FOIA and IRS rules. *See* Ex. 11. CoA Institute explained that the May 2016 FOIA Request met FOIA's requirement to "reasonably describe" the requested records because it "provided the IRS with a discrete and manageable list of likely records custodians" and "identified by name four IRS employees who may have communicated with three named White House employees." *Id.* at 2. CoA Institute also provided the discrete time period for which it was seeking records, stated the subject matter as "correspondence between the named IRS and White House officials," and otherwise conformed to all applicable FOIA regulations. *Id.*

36. By letter, dated August 9, 2016, the IRS appeared to respond to the July 6, 2016 CoA Institute correspondence by re-opening the May 2016 FOIA Request. *See* Ex. 12.<sup>1</sup> The agency assigned the request a new tracking number, F16194-0089, and indicated it would be unable to issue a final determination within the statutory response period. *Id.* CoA Institute has been unable to confirm that the IRS continues to process the May 2016 FOIA Request under this new tracking number.

### **COUNT I**

#### **(Violation of FOIA: Failure to Comply with Statutory Requirements)**

37. CoA Institute repeats paragraphs 1 through 36.

38. The January 2014 and May 2016 FOIA Requests both reasonably describe the requested records and otherwise comply with the FOIA and applicable FOIA regulations.

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<sup>1</sup> In its August 9, 2016 letter, the IRS did not specifically indicate that it was re-opening the May 2016 FOIA Request. However, based on the date of the "FOIA request" referenced in the letter, CoA Institute believes the letter refers to the May 2016 FOIA Request.

39. The FOIA requires agencies to respond to requests within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. 5 U.S.C. §§ 552(a)(6)(A)–(B). If an agency requires additional time, the FOIA mandates that the agency provide requesters “an opportunity to arrange with the agency an alternative time frame for processing the request[.]” *Id.* § 552(a)(6)(B)(ii).

40. The statutory time limit for the processing of the January 2014 FOIA Request has expired. Although the IRS implicitly acknowledged that the January 2014 FOIA Request was valid by processing it for more than a year, it thereafter closed the request in violation of the FOIA, IRS FOIA regulations, and the Internal Revenue Manual.

41. The statutory time limit also has expired for the May 2016 FOIA Request without any effort by the IRS to process the request.

42. By refusing to make any search so as to locate records responsive to the January 2014 and May 2016 FOIA Requests within the relevant statutory timeframes and by improperly closing the requests as invalid, the IRS has denied CoA Institute access to agency records to which it has a right under the FOIA.

43. CoA Institute has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C).

### **RELIEF REQUESTED**

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

- a. Order the IRS to process the January 2014 and May 2016 FOIA Requests and to make a final determination on each within twenty (20) business days of the date of the Order;

- b. Order the IRS to produce all responsive records promptly after issuing its final determinations on the January 2014 and May 2016 FOIA Requests;
- c. Order the IRS to issue a *Vaughn* index accompanying the records produced explaining each redaction or withholding;<sup>2</sup>
- d. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant such other relief as the Court may deem just and proper.

Dated: September 6, 2016

Respectfully submitted,

/s/ Julie Smith

Julie Smith  
D.C. Bar No. 435292  
Lee A. Steven  
D.C. Bar No. 468543  
Ryan P. Mulvey  
D.C. Bar No. 1024362

CAUSE OF ACTION INSTITUTE  
1875 Eye Street, N.W., Suite 800  
Washington, D.C. 20006  
Telephone: (202) 499-4232  
Facsimile: (202) 330-5842  
julie.smith@causeofaction.org  
lee.steven@causeofaction.org  
ryan.mulvey@causeofaction.org

*Counsel for CoA Institute*

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<sup>2</sup> See generally *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (requiring an agency to prepare an index correlating each withheld document, or portion thereof, with a specific FOIA exemption and nondisclosure justification).

# Exhibit 1



January 23, 2014

**VIA CERTIFIED MAIL**

Bertrand Tzeng  
IRS FOIA Request  
HQ FOIA  
Stop 211  
2980 Brandywine Road  
Chamblee, GA 30341

INTERNAL REVENUE SERVICE  
DISCLOSURE SCANNING OPERATION

JAN 28 2014

DSO - ATLANTA, GA

Dear Mr. Tzeng:

**Re: Freedom of Information Act Request**

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or any Internal Revenue Service (IRS) employee within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.

The time period of this request is January 2010 to the present.

**Cause of Action Is Entitled to a Public Interest Fee Waiver.**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records shall be furnished 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>1</sup> As discussed below, Cause of Action satisfies the statutory standard for a public interest fee waiver.

A. *Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<sup>2</sup> Cause of Action is a non-profit, nonpartisan government accountability organization that uses investigative, legal, and

<sup>1</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>2</sup> *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); *see also* *Ctr. to Prevent Handgun Violence v. U.S. Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

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communications tools to educate the public about how government transparency and accountability protect economic opportunity for American taxpayers. It is in pursuit of these educational goals that Cause of Action seeks disclosure of the requested records.

In this instance, Cause of Action meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.<sup>3</sup> First, the requested records would disclose how the IRS interacted with the White House on matters pertaining to the targeting of applicants for 501(c)(4) tax-exempt status. Second, the requested information is “likely to contribute”<sup>4</sup> to the understanding of the IRS’s operations because the information is not already in the public domain and consists largely of substantive material, as opposed to routine administrative information. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>5</sup> Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Cause of Action’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 Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. For example, Cause of Action has recently published reports on its website which reached a broad segment of the public via Twitter and e-mail.<sup>6</sup> Fourth, and finally, disclosure is likely to contribute “significantly” to the public understanding of the IRS’s activities, as these records are not readily available from other sources and public understanding of the IRS’s operations will be substantially greater as a result of disclosure.<sup>7</sup>

*B. Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.*

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, committed to advancing public awareness of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. Rather, this information will be used to further the knowledge and interests of the general public regarding how the IRS may have interacted with the White House in relation to the scrutiny of applicants for 501(c)(4) tax-exempt status. In the event the disclosure of this information does create a profit motive, however, that is not dispositive for the commercial interest test; media requesters like Cause of Action can have a profit motive, so long as the dissemination of the information requested is in

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<sup>3</sup> See, e.g., 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of the IRS’s fee waiver regulation).

<sup>4</sup> *Id.* § 601.702(f)(2)(B).

<sup>5</sup> *Id.* § 601.702(f)(2)(C).

<sup>6</sup> See CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), available at <http://causeofaction.org/report-unfair-enrichment-forest-city-enterprises-acts-law/>; see also CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>.

<sup>7</sup> 26 C.F.R. § 601.702(f)(2)(D).

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their professional capacity and would further the public interest.<sup>8</sup> For the foregoing reasons, this request is not primarily in the commercial interest of Cause of Action.<sup>9</sup>

### **Request for news media status**

For fee purposes, Cause of Action qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action uses the information that it gleans from a wide variety of sources, including whistleblowers/insiders, government agencies, universities, scholarly works, FOIA requests and other investigative efforts, to publish original content on its website, such as reports, newsletters, memoranda, press releases, and other news-like materials. Since the beginning of 2013, for example, Cause of Action has published eight reports that incorporated information obtained from diverse sources.<sup>10</sup> During that same period, Cause of Action produced seven blog posts specifically related to its FOIA activity which editorialized on responsive documents or the failure of agencies to reply satisfactorily,<sup>11</sup> as well as numerous

<sup>8</sup> See *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>9</sup> See 26 C.F.R. § 601.702(f)(2)(D)-(E).

<sup>10</sup> See, e.g., CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), <http://causeofaction.org/assets/uploads/2013/12/131209-Forest-City-Report-III.pdf>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART II (Nov. 7, 2013), <http://causeofaction.org/political-profiteering-forest-city-enterprises-makes-private-profits-expense-americas-taxpayers-part-ii/>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICA’S TAXPAYERS PART I (Aug. 2, 2013), <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>; CAUSE OF ACTION, INVESTIGATION OF DHS DEPUTY IG CHARLES EDWARDS (July 9, 2013), <http://causeofaction.org/2013/07/09/foia-request-and-complaint-regarding-dhs-oig-charles-edwards/>; CAUSE OF ACTION, THE COLLAPSE OF MF GLOBAL: SUMMARY & ANALYSIS (June 25, 2013), <http://causeofaction.org/2013/06/25/the-collapse-of-mf-global-summary-analysis/>; CAUSE OF ACTION, CONPROFIT: HOW THE IRS’S FAILED OVERSIGHT ALLOWS NONPROFIT MONEY LAUNDERING (June 17, 2013), <http://causeofaction.org/2013/06/17/conprofit-how-the-irss-failed-oversight-allows-nonprofit-money-laundering/>; CAUSE OF ACTION, ETHICAL VIOLATIONS AND INAPPROPRIATE INFLUENCE AT BUREAU OF INDIAN AFFAIRS (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-inappropriate-influence-at-bureau-of-indian-affairs/>; CAUSE OF ACTION, REPORT ON CPPW: PUTTING POLITICS TO WORK (Apr. 1, 2013), <http://causeofaction.org/2013/04/16/Cause-of-Action-report-on-cppw-putting-politics-to-work-2/>.

<sup>11</sup> See, e.g., *FOIA Follies: HUD Flags Sensitive Freedom of Information Act Requests for Extra Scrutiny; Political Appointees Involved*, CAUSE OF ACTION (July 31, 2013), <http://causeofaction.org/2013/07/31/hud-flags-sensitive-freedom-of-information-act-requests-for-extra-scrutiny-political-appointees-involved/>; *FOIA Requesters Misled by Military to Waive Appeal Rights*, CAUSE OF ACTION (July 18, 2013), <http://causeofaction.org/2013/07/18/foia-requesters-misled-by-military-to-waive-appeal-rights/>; *Secret Pentagon Policy May Delay Responses to Freedom of Information Act Requests*, CAUSE OF ACTION (July 9, 2013), <http://causeofaction.org/2013/07/09/secret-pentagon-policy-may-delay-responses-to-freedom-of-information-act-requests/>; *White House and Treasury Department Politicize FOIA*, CAUSE OF ACTION (June 24, 2013), <http://causeofaction.org/2013/06/24/white-house-and-treasury-department-politicize-foia/>; *CFPB Advises Employees to FOIA-proof their Work Calendars*, CAUSE OF ACTION (June 18, 2013), <http://causeofaction.org/2013/06/18/cfpb-advises-employees-to-foia-proof-their-work-calendars/>; *FOIA Freak-Out: IRS Wrongly Denies FOIA Request, Comes Unglued Over Media Response*, CAUSE OF ACTION (May 13, 2013), <http://causeofaction.org/2013/05/13/foia-freak-out-irs-wrongly-denies-foia-request-comes-unglued->

Mr. Bertrand Tzeng  
 January 23, 2014  
 Page 4

other posts on a wide-range of subjects.<sup>12</sup> All of these activities required the extensive research and writing skills of Cause of Action's analysts, lawyers, and communications experts.

Cause of Action routinely and systematically disseminates information acquired from its investigative efforts to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed well over 100,000 times in the past year alone, including by visitors from other media organizations (e.g., *Fox News*, *Associated Press*, *New York Times*, *Bloomberg*, *Congressional Quarterly*, and *NBC*).<sup>13</sup> Cause of Action also disseminates news to the public via television and radio interviews, as well as Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>14</sup>

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over-media-response/; *FOIA Freak-Out: DOJ Scrambles to Avoid Fallout Over Swag Purchases*, CAUSE OF ACTION (Apr. 25, 2013), <http://causeofaction.org/2013/04/25/foia-freak-out-doj-scrambles-to-avoid-fallout-over-swag-purchases/>.

<sup>12</sup> See, e.g., *What to Do about Data Security? A Discussion of the FTC's LabMD & Wyndham Cases*, CAUSE OF ACTION (Sept. 4, 2013), <http://causeofaction.org/2013/09/04/what-to-do-about-data-security-a-discussion-of-the-ftcs-labmd-wyndham-cases/>; *Ethical Violations and Retaliation: How to Get Promoted at the Bureau of Indian Affairs*, CAUSE OF ACTION (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-retaliation-how-to-get-promoted-at-the-bureau-of-indian-affairs/>; *How HHS Secretary Sebelius Broke Federal Law and Avoided Punishment*, CAUSE OF ACTION (June 4, 2013), <http://causeofaction.org/2013/06/04/how-hhs-secretary-sebelius-broke-federal-law-and-avoided-punishment/>; *GAO on CPPW: Nothing to See Here*, CAUSE OF ACTION (June 3, 2013), <http://causeofaction.org/2013/06/03/gao-on-cppw-nothing-to-see-here/>; *Jon Corzine: The Rogue Trader that is Too Big to Jail*, CAUSE OF ACTION (May 30, 2013), <http://causeofaction.org/2013/05/30/jon-corzine-the-rogue-trader-that-is-too-big-to-jail/>; *Cronies Putting Politics to Work*, CAUSE OF ACTION (Apr. 16, 2013), <http://causeofaction.org/2013/04/16/cronies-putting-politics-to-work/>; *Leading the Way in Scientific Misconduct*, CAUSE OF ACTION (Apr. 5, 2013), <http://causeofaction.org/2013/04/05/leading-the-way-in-scientific-misconduct/>; *Senator Unveils "Victims of Government,"* CAUSE OF ACTION (Apr. 3, 2013), <http://causeofaction.org/2013/04/03/senator-unveils-victims-of-government/>; *Most Transparent Administration in History?*, CAUSE OF ACTION (Feb. 19, 2013), <http://causeofaction.org/2013/02/19/most-transparent-administration-in-history/>; *After The State of the Union: One Look at Energy and Jobs*, CAUSE OF ACTION (Feb. 13, 2013), <http://causeofaction.org/2013/02/13/after-the-state-of-the-union-one-look-at-energy-and-jobs/>; *What's a CEO to Do?*, CAUSE OF ACTION (Jan. 29, 2013), <http://causeofaction.org/2013/01/29/whats-a-ceo-to-do/>; *Dispelling the Myths about the Drakes Bay Oyster Company Conflict*, CAUSE OF ACTION (Jan. 23, 2013), <http://causeofaction.org/2013/01/23/5-myths-about-dbo/>; *The Future may not hold the "Sunshine" we Government Accountability Advocates Long to See*, CAUSE OF ACTION (Jan. 21, 2013), <http://causeofaction.org/2013/01/21/the-future-may-not-hold-the-sunshine-we-government-accountability-advocates-long-to-see/>; *White House Opens New Year with Open Data Mandate*, CAUSE OF ACTION (Jan. 11, 2013), <http://causeofaction.org/2013/01/11/white-house-opens-new-year-with-open-data-mandate/>; *When Cronyism Takes the Place of Merit at the DOE, Everyone Loses*, CAUSE OF ACTION (Jan. 10, 2013), <http://causeofaction.org/2013/01/10/when-cronyism-takes-the-place-of-merit-everyone-loses/>; *A New Year's Resolution for the Federal Government*, CAUSE OF ACTION (Jan. 4, 2013), <http://causeofaction.org/2013/01/04/a-new-years-resolution-for-the-federal-government/>.

<sup>13</sup> *Google Analytics* for <http://www.causeofaction.org> (Jan. 1, 2013 – Dec. 2, 2013) (on file with Cause of Action).

<sup>14</sup> See, e.g., 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 2014-010F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request CFPB-2014-002-F, Consumer Fin. Prot. Bureau (Oct. 2, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3,

Mr. Bertrand Tzeng  
January 23, 2014  
Page 5

**Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, .PDF). If a certain set of responsive records can be produced more readily, we respectfully request that these records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232.

Thank you for your attention to this matter.

  
\_\_\_\_\_  
ROBYN BURROWS  
COUNSEL

**CERTIFIED MAIL**

Cause of Action  
1919 PENN AVE NW, STE 650  
WASHINGTON, DC 20006



9414 8118 9956 0773 9783 07

PS Form 3800 6/02

**\$5.270**  
US POSTAGE  
FIRST-CLASS  
FROM 20006  
JAN 23 2014  
stamps.com



96250008544213



Mr Bertrand Tzeng  
IRS FOIA Request  
HQ FOIA  
Stop 211  
2980 Brandywine Rd.  
Chamblee GA 30341-5524

# Exhibit 2



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

February 25, 2014

Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

I am unable to send the information you requested by February 26, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

**STATUTORY EXTENSION OF TIME FOR RESPONSE**

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to March 12, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

**REQUEST FOR ADDITIONAL EXTENSION OF TIME**

Unfortunately, we will still be unable to locate and consider release of the requested records by March 12, 2014. We have extended the response date to May 30, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

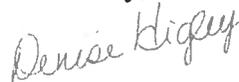
You may file suit after March 12, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14034-0011.

Sincerely,



Denise Higley  
Tax Law Specialist  
Badge No. 1000142331  
Headquarters (HQ) Disclosure FOIA Group

# Exhibit 3



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

May 21, 2014

Robyn Burrows  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

On February 25, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to obtain documents responsive to your request. I will contact you by August 29, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14034-0011.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office

# Exhibit 4



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

August 19, 2014

AUG 22 2014

Robyn Burrows  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

On May 21, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to collect, process review any documents responsive to your request. I will contact you by December 2, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14034-0011.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office

# Exhibit 5



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

December 1, 2014

Robyn Burrows  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

On August 19, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to collect, process review any documents responsive to your request. I will contact you by March 23, 2015, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, Stop 211, PO Box 621506, Atlanta, GA 30362-3006. Please refer to case number F14034-0011.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office

# Exhibit 6



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

April 9, 2015

APR 13 2015

Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave., NW  
Washington, DC 20006

APR 13 2015

Dear Ms. Burrows:

This is our final response to your Freedom of Information Act (FOIA) request dated January 23, 2014, which we received on January 28, 2014.

We apologize for the delay in providing this response to you. Both the volume and scope of the FOIA requests on the section 501(c)(4) issue have been exceptional. From May, 2013 to December, 2014, the Internal Revenue Service (IRS) received 149 FOIA requests seeking 501(c)(4) information. In addition, the vast majority of the information responsive to these requests was compiled by the IRS Office of Chief Counsel in order to respond to inquiries from four separate Congressional committees. The IRS made it a priority to respond to requests from Congress resulting in the delay in this response to your request.

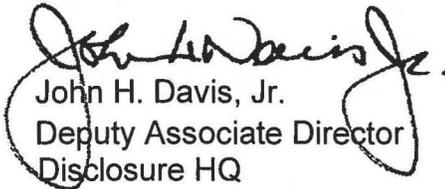
You asked for all communication between Douglas Shulman, Steven Miller, Daniel Werfel, or any IRS employees within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn from January, 2010 to the date of the request.

The FOIA specifies two requirements for a request. It must (1) "reasonably describe" the records sought and (2) be made in accordance with published rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records, "without placing an unreasonable burden upon the IRS." A request for "all communications between . . . any IRS employees within the Tax Exempt & Government Entities Division and Andrew C Strelka, Danielle C. Gray, or Boris Bershteyn" over a four year period would be unreasonably burdensome for the IRS to process, given the number of IRS employees involved and the commensurate amount of data to be searched. A request of the type you have submitted seeking "any and all" records amongst those of numerous IRS employees without reference to subject matter and over such an expansive time period is not valid. See Dale v. IRS, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (concluding that request seeking "any and all documents . . . that refer or relate in any way" to requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense").

We encourage you to consider revising your request making it more specific as to subject matter, time period and/or limiting the request only to specific employees within the Tax Exempt & Government Entities Division.

If you have any questions please call Acting Manager Rhonda O'Reilly at 860-756-4673 or write to: Internal Revenue Service, HQ Disclosure, Stop 211, PO Box 621506, Atlanta, GA 30362-3006. Please refer to case number F14034-0011.

Sincerely,



John H. Davis, Jr.  
Deputy Associate Director  
Disclosure HQ

# Exhibit 7



July 22, 2015

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
Internal Revenue Service  
HQ Disclosure, Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

**Re: Freedom of Information Act Request No. F14034-0011**

Dear Ms. O'Reilly:

This letter is in response to the Internal Revenue Service's ("IRS") administrative closure of Cause of Action's Freedom of Information Act ("FOIA") request No. F14034-0011. Cause of Action requests that IRS re-open this FOIA request because it appears to have been inappropriately closed and because its closure was not in compliance with applicable IRS rules.

**Background**

On January 23, 2014, Cause of Action submitted a FOIA request for records reflecting all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or any other IRS employee within the Tax Exempt & Government Entities Division ("TEGE"), and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.<sup>1</sup> The request was limited to records created between January 2010 and the present.<sup>2</sup> Cause of Action also sought representative of the news media status for fee purposes, as well as a public interest fee waiver.<sup>3</sup>

On February 25, 2014, IRS acknowledged receipt of Cause of Action's request and invoked an automatic ten-day statutory extension of its response period because it required "additional time to search for, collect, and review responsive records from other locations."<sup>4</sup> IRS indicated that it expected to provide a final response before May 30, 2014.<sup>5</sup> Over the course of nearly a year, however, IRS released multiple *pro forma* letters extending its response deadline.<sup>6</sup>

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<sup>1</sup> Letter from Cause of Action to Bertrand Tzeng, Internal Revenue Serv. (Jan. 23, 2014) (Exhibit 1).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Letter from Denise Higley, Internal Revenue Serv., to Cause of Action (Feb. 25, 2014) (Exhibit 2).

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

<sup>6</sup> *See* Letter from Denise Higley, Internal Revenue Serv., to Cause of Action (Aug. 19, 2014) (Exhibit 3); Letter from Denise Higley, Internal Revenue Serv., to Cause of Action (Dec. 1, 2014) (Exhibit 4).

Finally, on April 9, 2015, IRS issued a “final response.”<sup>7</sup> After apologizing for the delay caused by ongoing Congressional and law enforcement investigations into IRS wrongdoing related to the 501(c)(4) targeting scandal, IRS summarily closed Cause of Action’s request—presumably as imperfect—because it did not “reasonably describe” the records that Cause of Action sought.<sup>8</sup> As set forth before, this was an improper determination, and IRS must re-open and process Cause of Action’s request.

### Discussion

FOIA requires that requests “reasonably describe” requested records and otherwise comply with published FOIA regulations.<sup>9</sup> Cause of Action’s January 23, 2014 request clearly met these requirements for perfection. First, Cause of Action provided IRS with the names of likely records custodians when it identified three IRS employees who may have communicated with certain White House officials. Moreover, Cause of Action restricted the parameters of the requested search to a four-year period. This is hardly a burdensome request because the universe of potentially responsive records is unlikely to be overwhelming. For example, additional subject-matter search terms are unnecessary because the subject matter of the request is clearly stated: Cause of Action seeks records concerning TEGE’s correspondence with three specific White House officials.

Regardless, even assuming that Cause of Action’s request were broad or wide-reaching, that does not, in and of itself, entitle IRS to close the request as imperfect.<sup>10</sup> As the Department of Justice has explained, “[t]he sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records within the meaning of 5 U.S.C. § 552(a)(3)(A). That provision in the FOIA was intended to ensure that a FOIA request description “‘be sufficient [to enable] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.’”<sup>11</sup> To the extent IRS required further explanation to process the request, or sought a narrowed scope, it should have made an effort to contact Cause of Action and negotiate the relevant amendments. IRS never did so.

Cause of Action’s request also conformed to all applicable FOIA regulations, as it cited the FOIA statute, provided a clear description of the requested records, contained the necessary citations and arguments for news media fee requester status and public interest fee waiver, and was properly addressed and submitted. IRS has not asserted otherwise. Indeed, IRS was processing Cause of Action’s request for nearly a year before it determined that Cause of Action had not reasonably described the records at issue.

Even if Cause of Action’s request were defective (which, as set forth above, it is not), IRS’s response still deviates from IRS’s FOIA regulations and the Internal Revenue Manual, which states that “[c]aseworkers must . . . notify the requester that the [imperfect] request does not meet certain requirements of the FOIA[,] that more information is needed . . . and [they] must

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<sup>7</sup> Letter from John H. Davis, Jr., Internal Revenue Serv., to Cause of Action (Apr. 9, 2015) (Exhibit 5).

<sup>8</sup> *Id.* (citing 5 U.S.C. § 552(a)(3)(A)).

<sup>9</sup> 5 U.S.C. § 552(a)(3)(A)(i)-(ii).

<sup>10</sup> See, e.g., *Ruotolo v. Dep’t of Justice*, 53 F.3d 4, 9-10 (2d Cir. 1995); *Pub. Citizen Health Research Group v. Food & Drug Admin.*, No. 90-0018, slip op. at 1-2 (D.D.C. Feb. 9, 1996).

<sup>11</sup> Office of Info. Policy, Dep’t of Justice, FOIA Update: FOIA Counselor: Questions & Answers, vol. IV, no. 3 (Jan. 1, 1983), available at <http://goo.gl/YISuri> (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. 6 (1974)).

advise the requester that he/she has 35 calendar days to perfect the request.”<sup>12</sup> IRS did not indicate how Cause of Action’s request was “defective” prior to its “final response,” nor did IRS indicate the 35-day period within which Cause of Action could attempt to perfect its request.

The improper administrative closure of proper FOIA requests is concerning because it frustrates public access to government information and evidences the breach of an agency’s obligations under FOIA.<sup>13</sup> Thus, greater care should be taken to ensure that administrative closure only happens when necessary and appropriate. Here, we trust that the above will result in Cause of Action’s FOIA request being re-opened. In addition, given that the request in fact has been outstanding for 17 months, IRS should not only re-open the request but deliver its final determination and responsive documents within 20 working days.

Thank you for your immediate attention to this matter. If you have any questions, please contact me by e-mail at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org) or by telephone at (202) 499-4232.

Sincerely,

  
RYAN P. MULVEY  
COUNSEL

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<sup>12</sup> Internal Revenue Manual 11.3.13.5.5(2), available at <http://goo.gl/btMuAH>; see also 26 C.F.R. § 601.702(c)(1)(i).

<sup>13</sup> See, e.g., Letter to Miriam Nisbet, Dir., Office of Gov’t Info. Servs., Nat’l Archives & Records Admin., from Cause of Action, et al. (Oct. 30, 2014), available at <http://causeofaction.org/assets/uploads/2014/10/FINAL-OGIS-Letter-with-Attachments.pdf>; see also Cause of Action, *Cause of Action Signs Coalition Letter Asking for OGIS Investigation of Administrative Closures* (Oct. 30, 2014), <http://causeofaction.org/cause-action-signs-coalition-letter-asking-ogis-investigation-administrative-closure>.

# EXHIBIT

1



January 23, 2014

**VIA CERTIFIED MAIL**

Bertrand Tzeng  
IRS FOIA Request  
HQ FOIA  
Stop 211  
2980 Brandywine Road  
Chamblee, GA 30341

INTERNAL REVENUE SERVICE  
DISCLOSURE SCANNING OPERATION

JAN 28 2014

DSO - ATLANTA, GA

Dear Mr. Tzeng:

**Re: Freedom of Information Act Request**

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests records reflecting all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or any Internal Revenue Service (IRS) employee within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.

The time period of this request is January 2010 to the present.

**Cause of Action Is Entitled to a Public Interest Fee Waiver.**

Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). The FOIA provides that requested records shall be furnished 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>1</sup> As discussed below, Cause of Action satisfies the statutory standard for a public interest fee waiver.

A. *Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”<sup>2</sup> Cause of Action is a non-profit, nonpartisan government accountability organization that uses investigative, legal, and

<sup>1</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

<sup>2</sup> *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); *see also* *Ctr. to Prevent Handgun Violence v. U.S. Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

Mr. Bertrand Tzeng  
January 23, 2014  
Page 2

communications tools to educate the public about how government transparency and accountability protect economic opportunity for American taxpayers. It is in pursuit of these educational goals that Cause of Action seeks disclosure of the requested records.

In this instance, Cause of Action meets the four-factor test used by the IRS to determine whether disclosure of the requested information is in the public interest.<sup>3</sup> First, the requested records would disclose how the IRS interacted with the White House on matters pertaining to the targeting of applicants for 501(c)(4) tax-exempt status. Second, the requested information is “likely to contribute”<sup>4</sup> to the understanding of the IRS’s operations because the information is not already in the public domain and consists largely of substantive material, as opposed to routine administrative information. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>5</sup> Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Cause of Action’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 Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. For example, Cause of Action has recently published reports on its website which reached a broad segment of the public via Twitter and e-mail.<sup>6</sup> Fourth, and finally, disclosure is likely to contribute “significantly” to the public understanding of the IRS’s activities, as these records are not readily available from other sources and public understanding of the IRS’s operations will be substantially greater as a result of disclosure.<sup>7</sup>

*B. Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.*

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization, as defined under Section 501(c)(3) of the Internal Revenue Code, committed to advancing public awareness of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. Rather, this information will be used to further the knowledge and interests of the general public regarding how the IRS may have interacted with the White House in relation to the scrutiny of applicants for 501(c)(4) tax-exempt status. In the event the disclosure of this information does create a profit motive, however, that is not dispositive for the commercial interest test; media requesters like Cause of Action can have a profit motive, so long as the dissemination of the information requested is in

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<sup>3</sup> See, e.g., 26 C.F.R. § 601.702(f)(2)(A)-(D) (outlining first four factors of the IRS’s fee waiver regulation).

<sup>4</sup> *Id.* § 601.702(f)(2)(B).

<sup>5</sup> *Id.* § 601.702(f)(2)(C).

<sup>6</sup> See CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), available at <http://causeofaction.org/report-unfair-enrichment-forest-city-enterprises-acts-law/>; see also CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>.

<sup>7</sup> 26 C.F.R. § 601.702(f)(2)(D).

Mr. Bertrand Tzeng  
 January 23, 2014  
 Page 3

their professional capacity and would further the public interest.<sup>8</sup> For the foregoing reasons, this request is not primarily in the commercial interest of Cause of Action.<sup>9</sup>

### **Request for news media status**

For fee purposes, Cause of Action qualifies as a “representative of the news media” under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, among other things, to publish and broadcast news, *i.e.*, information that is about current events or that would be of current interest to the public. Cause of Action uses the information that it gleans from a wide variety of sources, including whistleblowers/insiders, government agencies, universities, scholarly works, FOIA requests and other investigative efforts, to publish original content on its website, such as reports, newsletters, memoranda, press releases, and other news-like materials. Since the beginning of 2013, for example, Cause of Action has published eight reports that incorporated information obtained from diverse sources.<sup>10</sup> During that same period, Cause of Action produced seven blog posts specifically related to its FOIA activity which editorialized on responsive documents or the failure of agencies to reply satisfactorily,<sup>11</sup> as well as numerous

<sup>8</sup> See *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>9</sup> See 26 C.F.R. § 601.702(f)(2)(D)-(E).

<sup>10</sup> See, e.g., CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART III (Dec. 9, 2013), <http://causeofaction.org/assets/uploads/2013/12/131209-Forest-City-Report-III.pdf>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART II (Nov. 7, 2013), <http://causeofaction.org/political-profiteering-forest-city-enterprises-makes-private-profits-expense-americas-taxpayers-part-ii/>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICA’S TAXPAYERS PART I (Aug. 2, 2013), <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>; CAUSE OF ACTION, INVESTIGATION OF DHS DEPUTY IG CHARLES EDWARDS (July 9, 2013), <http://causeofaction.org/2013/07/09/foia-request-and-complaint-regarding-dhs-oig-charles-edwards/>; CAUSE OF ACTION, THE COLLAPSE OF MF GLOBAL: SUMMARY & ANALYSIS (June 25, 2013), <http://causeofaction.org/2013/06/25/the-collapse-of-mf-global-summary-analysis/>; CAUSE OF ACTION, CONPROFIT: HOW THE IRS’S FAILED OVERSIGHT ALLOWS NONPROFIT MONEY LAUNDERING (June 17, 2013), <http://causeofaction.org/2013/06/17/conprofit-how-the-irss-failed-oversight-allows-nonprofit-money-laundering/>; CAUSE OF ACTION, ETHICAL VIOLATIONS AND INAPPROPRIATE INFLUENCE AT BUREAU OF INDIAN AFFAIRS (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-inappropriate-influence-at-bureau-of-indian-affairs/>; CAUSE OF ACTION, REPORT ON CPPW: PUTTING POLITICS TO WORK (Apr. 1, 2013), <http://causeofaction.org/2013/04/16/Cause-of-Action-report-on-cppw-putting-politics-to-work-2/>.

<sup>11</sup> See, e.g., *FOIA Follies: HUD Flags Sensitive Freedom of Information Act Requests for Extra Scrutiny; Political Appointees Involved*, CAUSE OF ACTION (July 31, 2013), <http://causeofaction.org/2013/07/31/hud-flags-sensitive-freedom-of-information-act-requests-for-extra-scrutiny-political-appointees-involved/>; *FOIA Requesters Misled by Military to Waive Appeal Rights*, CAUSE OF ACTION (July 18, 2013), <http://causeofaction.org/2013/07/18/foia-requesters-misled-by-military-to-waive-appeal-rights/>; *Secret Pentagon Policy May Delay Responses to Freedom of Information Act Requests*, CAUSE OF ACTION (July 9, 2013), <http://causeofaction.org/2013/07/09/secret-pentagon-policy-may-delay-responses-to-freedom-of-information-act-requests/>; *White House and Treasury Department Politicize FOIA*, CAUSE OF ACTION (June 24, 2013), <http://causeofaction.org/2013/06/24/white-house-and-treasury-department-politicize-foia/>; *CFPB Advises Employees to FOIA-proof their Work Calendars*, CAUSE OF ACTION (June 18, 2013), <http://causeofaction.org/2013/06/18/cfpb-advises-employees-to-foia-proof-their-work-calendars/>; *FOIA Freak-Out: IRS Wrongly Denies FOIA Request, Comes Unglued Over Media Response*, CAUSE OF ACTION (May 13, 2013), <http://causeofaction.org/2013/05/13/foia-freak-out-irs-wrongly-denies-foia-request-comes-unglued->

Mr. Bertrand Tzeng  
 January 23, 2014  
 Page 4

other posts on a wide-range of subjects.<sup>12</sup> All of these activities required the extensive research and writing skills of Cause of Action's analysts, lawyers, and communications experts.

Cause of Action routinely and systematically disseminates information acquired from its investigative efforts to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed well over 100,000 times in the past year alone, including by visitors from other media organizations (e.g., *Fox News*, *Associated Press*, *New York Times*, *Bloomberg*, *Congressional Quarterly*, and *NBC*).<sup>13</sup> Cause of Action also disseminates news to the public via television and radio interviews, as well as Twitter and Facebook, and it provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have continually recognized Cause of Action's news media status in connection with its FOIA requests.<sup>14</sup>

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over-media-response/; *FOIA Freak-Out: DOJ Scrambles to Avoid Fallout Over Swag Purchases*, CAUSE OF ACTION (Apr. 25, 2013), <http://causeofaction.org/2013/04/25/foia-freak-out-doj-scrambles-to-avoid-fallout-over-swag-purchases/>.

<sup>12</sup> See, e.g., *What to Do about Data Security? A Discussion of the FTC's LabMD & Wyndham Cases*, CAUSE OF ACTION (Sept. 4, 2013), <http://causeofaction.org/2013/09/04/what-to-do-about-data-security-a-discussion-of-the-ftcs-labmd-wyndham-cases/>; *Ethical Violations and Retaliation: How to Get Promoted at the Bureau of Indian Affairs*, CAUSE OF ACTION (June 11, 2013), <http://causeofaction.org/2013/06/11/ethical-violations-and-retaliation-how-to-get-promoted-at-the-bureau-of-indian-affairs/>; *How HHS Secretary Sebelius Broke Federal Law and Avoided Punishment*, CAUSE OF ACTION (June 4, 2013), <http://causeofaction.org/2013/06/04/how-hhs-secretary-sebelius-broke-federal-law-and-avoided-punishment/>; *GAO on CPPW: Nothing to See Here*, CAUSE OF ACTION (June 3, 2013), <http://causeofaction.org/2013/06/03/gao-on-cppw-nothing-to-see-here/>; *Jon Corzine: The Rogue Trader that is Too Big to Jail*, CAUSE OF ACTION (May 30, 2013), <http://causeofaction.org/2013/05/30/jon-corzine-the-rogue-trader-that-is-too-big-to-jail/>; *Cronies Putting Politics to Work*, CAUSE OF ACTION (Apr. 16, 2013), <http://causeofaction.org/2013/04/16/cronies-putting-politics-to-work/>; *Leading the Way in Scientific Misconduct*, CAUSE OF ACTION (Apr. 5, 2013), <http://causeofaction.org/2013/04/05/leading-the-way-in-scientific-misconduct/>; *Senator Unveils "Victims of Government,"* CAUSE OF ACTION (Apr. 3, 2013), <http://causeofaction.org/2013/04/03/senator-unveils-victims-of-government/>; *Most Transparent Administration in History?*, CAUSE OF ACTION (Feb. 19, 2013), <http://causeofaction.org/2013/02/19/most-transparent-administration-in-history/>; *After The State of the Union: One Look at Energy and Jobs*, CAUSE OF ACTION (Feb. 13, 2013), <http://causeofaction.org/2013/02/13/after-the-state-of-the-union-one-look-at-energy-and-jobs/>; *What's a CEO to Do?*, CAUSE OF ACTION (Jan. 29, 2013), <http://causeofaction.org/2013/01/29/whats-a-ceo-to-do/>; *Dispelling the Myths about the Drakes Bay Oyster Company Conflict*, CAUSE OF ACTION (Jan. 23, 2013), <http://causeofaction.org/2013/01/23/5-myths-about-dboic/>; *The Future may not hold the "Sunshine" we Government Accountability Advocates Long to See*, CAUSE OF ACTION (Jan. 21, 2013), <http://causeofaction.org/2013/01/21/the-future-may-not-hold-the-sunshine-we-government-accountability-advocates-long-to-see/>; *White House Opens New Year with Open Data Mandate*, CAUSE OF ACTION (Jan. 11, 2013), <http://causeofaction.org/2013/01/11/white-house-opens-new-year-with-open-data-mandate/>; *When Cronyism Takes the Place of Merit at the DOE, Everyone Loses*, CAUSE OF ACTION (Jan. 10, 2013), <http://causeofaction.org/2013/01/10/when-cronyism-takes-the-place-of-merit-everyone-loses/>; *A New Year's Resolution for the Federal Government*, CAUSE OF ACTION (Jan. 4, 2013), <http://causeofaction.org/2013/01/04/a-new-years-resolution-for-the-federal-government/>.

<sup>13</sup> *Google Analytics* for <http://www.causeofaction.org> (Jan. 1, 2013 – Dec. 2, 2013) (on file with Cause of Action).

<sup>14</sup> See, e.g., 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 2014-010F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request CFPB-2014-002-F, Consumer Fin. Prot. Bureau (Oct. 2, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-01234-F, Dep't of Energy (July 1, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3,

Mr. Bertrand Tzeng  
January 23, 2014  
Page 5

**Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, e-mail, .PDF). If a certain set of responsive records can be produced more readily, we respectfully request that these records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by email at [Robyn.Burrows@causeofaction.org](mailto:Robyn.Burrows@causeofaction.org), or by telephone at (202) 499-4232.

Thank you for your attention to this matter.

  
\_\_\_\_\_  
ROBYN BURROWS  
COUNSEL

Cause of Action  
1919 PENN AVE NW, STE 650  
WASHINGTON, DC 20006



9414 8118 9956 0773 9783 07

PS Form 3800 6/02

**\$5.270**  
US POSTAGE  
FIRST-CLASS  
FROM 20006  
JAN 23 2014  
stamps.com



96250008544213



Mr Bertrand Tzeng  
IRS FOIA Request  
HQ FOIA  
Stop 211  
2980 Brandywine Rd.  
Chamblee GA 30341-5524

# EXHIBIT

2



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

February 25, 2014

Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

I am unable to send the information you requested by February 26, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

**STATUTORY EXTENSION OF TIME FOR RESPONSE**

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to March 12, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

**REQUEST FOR ADDITIONAL EXTENSION OF TIME**

Unfortunately, we will still be unable to locate and consider release of the requested records by March 12, 2014. We have extended the response date to May 30, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

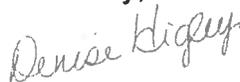
You may file suit after March 12, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14034-0011.

Sincerely,



Denise Higley  
Tax Law Specialist  
Badge No. 1000142331  
Headquarters (HQ) Disclosure FOIA Group

# EXHIBIT

3



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

August 19, 2014

AUG 22 2014

Robyn Burrows  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

On May 21, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to collect, process review any documents responsive to your request. I will contact you by December 2, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14034-0011.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office

# EXHIBIT

4



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

December 1, 2014

Robyn Burrows  
1919 Pennsylvania Ave, NW  
Suite 650  
Washington, DC 20006

Dear Robyn Burrows:

I am responding to your Freedom of Information Act (FOIA) request dated January 23, 2014 that we received on January 28, 2014.

On August 19, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to collect, process review any documents responsive to your request. I will contact you by March 23, 2015, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, Stop 211, PO Box 621506, Atlanta, GA 30362-3006. Please refer to case number F14034-0011.

Sincerely,

A handwritten signature in cursive script that reads "Denise Higley".

Denise Higley  
Tax Law Specialist  
Headquarters (HQ) Disclosure Office

# EXHIBIT

5



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

April 9, 2015

APR 13 2015

Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave., NW  
Washington, DC 20006

APR 13 2015

Dear Ms. Burrows:

This is our final response to your Freedom of Information Act (FOIA) request dated January 23, 2014, which we received on January 28, 2014.

We apologize for the delay in providing this response to you. Both the volume and scope of the FOIA requests on the section 501(c)(4) issue have been exceptional. From May, 2013 to December, 2014, the Internal Revenue Service (IRS) received 149 FOIA requests seeking 501(c)(4) information. In addition, the vast majority of the information responsive to these requests was compiled by the IRS Office of Chief Counsel in order to respond to inquiries from four separate Congressional committees. The IRS made it a priority to respond to requests from Congress resulting in the delay in this response to your request.

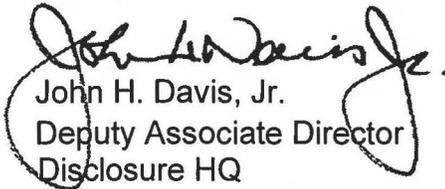
You asked for all communication between Douglas Shulman, Steven Miller, Daniel Werfel, or any IRS employees within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn from January, 2010 to the date of the request.

The FOIA specifies two requirements for a request. It must (1) "reasonably describe" the records sought and (2) be made in accordance with published rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records, "without placing an unreasonable burden upon the IRS." A request for "all communications between . . . any IRS employees within the Tax Exempt & Government Entities Division and Andrew C Strelka, Danielle C. Gray, or Boris Bershteyn" over a four year period would be unreasonably burdensome for the IRS to process, given the number of IRS employees involved and the commensurate amount of data to be searched. A request of the type you have submitted seeking "any and all" records amongst those of numerous IRS employees without reference to subject matter and over such an expansive time period is not valid. See Dale v. IRS, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (concluding that request seeking "any and all documents . . . that refer or relate in any way" to requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense").

We encourage you to consider revising your request making it more specific as to subject matter, time period and/or limiting the request only to specific employees within the Tax Exempt & Government Entities Division.

If you have any questions please call Acting Manager Rhonda O'Reilly at 860-756-4673 or write to: Internal Revenue Service, HQ Disclosure, Stop 211, PO Box 621506, Atlanta, GA 30362-3006. Please refer to case number F14034-0011.

Sincerely,



John H. Davis, Jr.  
Deputy Associate Director  
Disclosure HQ

# Exhibit 8



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

July 31, 2015

Ryan P. Mulvey  
Cause of Action  
1919 Pennsylvania Ave., NW  
Suite 650  
Washington, DC 20006

Dear Mr. Mulvey:

This is our final response to your Freedom of Information Act (FOIA) request dated July 22, 2015, which we received on July 28, 2015.

You asked for all communication between Douglas Shulman, Steven Miller, Daniel Werfel, or any IRS employees within the Tax Exempt & Government Entities Division, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn from January, 2010 to the date of the request.

In our previous response dated April 9, 2015, we explained we were unable to process your request because it did not reasonably describe the records you are seeking. We asked that the request be revised to be more specific as to subject matter, time period and/or limiting the request only to specific employees within the Tax Exempt & Government Entities Division.

The current request dated July 22, 2015, has not been revised and therefore we are still unable to process the request.

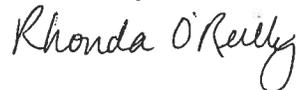
The FOIA specifies two requirements for a request. It must (1) "reasonably describe" the records sought and (2) be made in accordance with published rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records, "without placing an unreasonable burden upon the IRS." A request for "all communications between . . . any IRS employees within the Tax Exempt & Government Entities Division and Andrew C Strelka, Danielle C. Gray, or Boris Bershteyn" over a four year period would be unreasonably burdensome for the IRS to process, given the number of IRS employees involved and the commensurate amount of data to be searched. A request of the type you have submitted seeking "any and all" records amongst those of numerous IRS employees without reference to subject matter and over such an expansive time period is not valid. See Dale v. IRS, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (concluding that request seeking "any and all documents . . . that refer or relate in any way" to requester failed to reasonably describe records sought

and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense").

We encourage you again to consider revising your request making it more specific as to subject matter, time period and/or limiting the request only to specific employees within the Tax Exempt & Government Entities (TEGE) Division. Without a specific subject matter or specifying employees within the TEGE Division, we are unable to initiate a search and process your request.

If you have any questions please call Acting Manager Rhonda O'Reilly at 860-756-4673 or write to: Internal Revenue Service, HQ Disclosure, Stop 211, PO Box 621506, Atlanta, GA 30362-3006. Please refer to case number F15209-0097.

Sincerely,

A handwritten signature in cursive script that reads "Rhonda O'Reilly".

Rhonda O'Reilly  
Acting Disclosure Manager  
Headquarters (HQ) FOIA

# Exhibit 9



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

1875 Eye Street, Ste. 800 · Washington, DC 20006

May 20, 2016

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
IRS FOIA Request  
HQ FOIA  
Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

**Re: Freedom of Information Act Request**

Dear Ms. O'Reilly:

I write on behalf of Cause of Action 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, Cause of Action Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), Cause of Action Institute hereby requests access to all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn. The time period for this request is January 2010 to June 2014. The scope of this request includes, but is not limited to, correspondence via e-mail, instant/text message, and formal letter, as well as work calendar entries, visitor logs, and meeting notes.

**Request for a Public Interest Fee Waiver**

Cause of Action Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the IRS 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

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<sup>1</sup> See CAUSE OF ACTION INSTITUTE, *About*, [www.causeofaction.org/about/](http://www.causeofaction.org/about/) (last accessed Apr. 26, 2016).

Ms. Rhonda O'Reilly

May 20, 2016

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primarily in the commercial interest of the requester.”<sup>2</sup> In this case, the requested records would disclose how the IRS interacted with the White House on matters pertaining to the processing of applications for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code. These sorts of communications have not been widely distributed, and their disclosure and dissemination would contribute to public understanding of the nature of the relationship between White House officials and political appointees at the IRS.

Cause of Action 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 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 the Institute’s regularly published online newsletter, memoranda, reports, or press releases.<sup>3</sup> In addition, as Cause of Action 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, Cause of Action Institute also qualifies as a “representative of the news media.”<sup>4</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>5</sup> Cause of Action 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>6</sup>

Although it is not required by the statute, Cause of Action 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>7</sup> These distinct works

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 26 C.F.R. § 601.702(f)(2); *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).

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<sup>6</sup> Cause of Action Institute notes that the IRS definition of “representative of the news media,” 26 C.F.R. § 601.702(f)(3)(ii)(B), 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.”). Yet, under either definition, Cause of Action Institute qualifies as news media requester.

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are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. Cause of Action Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" unequivocally contemplates that organizations such as Cause of Action Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."<sup>8</sup> In light of the foregoing, numerous federal agencies have appropriately recognized the Institute's news media status in connection with its FOIA requests.<sup>9</sup>

### **Record Preservation Requirement**

Cause of Action 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>10</sup>

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<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</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 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).

<sup>10</sup> *See* 26 C.F.R. § 601.702(e)(14); 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, Cause of Action 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 [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your assistance.

Sincerely,



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RYAN P. MULVEY

COUNSEL

# Exhibit 10



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

June 14, 2016

Ryan Mulvey  
Cause of Action Institute  
1875 Eye Street, NW, Suite 800  
Washington, DC 20006

Dear Mr. Mulvey:

This is our final response to your Freedom of Information Act (FOIA) request dated May 20, 2016 that we received on May 25, 2016.

You requested all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn for the time period of January 2010 to June 2014.

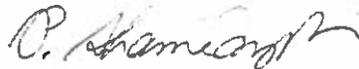
Unfortunately, we are unable to process your request as it does not meet the requirements of the FOIA or the applicable agency regulations. The FOIA requires that requests (1) "reasonably describe" the records sought and (2) be made in accordance with published agency rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records "without placing an unreasonable burden upon the IRS." A request for all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn over a four year period would be unreasonably burdensome for the IRS to process, given the amount of data to be searched. A request of the type you have submitted seeking "any and all" records amongst those of IRS employees without reference to subject matter and over such an expansive time period is not valid. See, for example, *Dale v. IRS*, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002), where the court held that request seeking "any and all documents . . . that refer or relate in any way" to requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense."

We encourage you to consider revising your request, possibly by making it much more specific as to subject matter and specifying particular dates that might include the documents you are seeking.

If you have any questions, please call Tax Law Specialist A. Amparano, ID # 0220447, at (214) 413-5489, or write to: Internal Revenue Service, Disclosure Office 9, P.O. Box

621506, Stop 211, Atlanta, GA 30362-3006. Please refer to case number # F16146-0127.

Sincerely,



**P. Sharrise Tompkins  
Disclosure Manager  
Disclosure Office 9**

# Exhibit 11



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

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

July 7, 2016

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
Internal Revenue Service  
HQ Disclosure, Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

**Re: Freedom of Information Act Request No. F16146-0127**

Dear Ms. O'Reilly:

This letter is in response to the Internal Revenue Service ("IRS") rejection of the Cause of Action Institute ("CoA Institute") Freedom of Information Act ("FOIA") request F16146-0127, dated May 20, 2016. CoA Institute requests that the IRS re-open the request as it has been inappropriately closed and because its rejection as imperfect was not in compliance with applicable IRS rules.

**Background**

On May 20, 2016, CoA Institute submitted a FOIA request to the IRS seeking access to all records of communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn.<sup>1</sup> The request was limited to records created between January 2010 and June 2014.<sup>2</sup> CoA Institute also requested categorization as a representative of the news media for fee purposes, as well as a public interest fee waiver.<sup>3</sup>

On June 14, 2016, the IRS issued its "final response," summarily closing the request and indicating that the agency is "unable to process" the request "as it does not meet the requirements of the FOIA or the applicable [IRS] regulations."<sup>4</sup> The agency argued that the request was imperfect because it did not "reasonably describe" the records sought.<sup>5</sup> As set forth below, this is an improper determination. The IRS must re-open and process the CoA Institute request.

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<sup>1</sup> Letter from CoA Institute to Rhonda O'Reilly, Internal Revenue Serv. (May 20, 2016) (attached as Exhibit 1).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Letter from P. Sharrise Tompkins, Internal Revenue Serv., to CoA Institute (June 14, 2016) (attached as Exhibit 2).

<sup>5</sup> *Id.* (citing 5 U.S.C. § 552(a)(3)(A)).

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### Discussion

The FOIA requires that requests “reasonably describe” requested records and otherwise comply with published FOIA regulations.<sup>6</sup> The May 20, 2016 CoA Institute request meets these requirements. First, CoA Institute provided the IRS with a discrete and manageable list of likely records custodians when it identified by name four IRS employees who may have communicated with three named White House employees. Further, CoA Institute restricted the parameters of the requested search to a four-year period. This is hardly burdensome and the universe of potentially responsive records is unlikely to be voluminous. Additional search terms are unnecessary as the subject matter of the request is clearly stated; that is, CoA Institute seeks correspondence between the named IRS and White House officials.

Even if the IRS considers the CoA Institute request to be broad or wide-reaching, that does not justify the decision to treat the request as imperfect.<sup>7</sup> As the Department of Justice has explained, “[t]he sheer size or burdensomeness of a FOIA request, in and of itself, does not entitle an agency to deny that request on the ground that it does not ‘reasonably describe’ records within the meaning of 5 U.S.C. § 552(a)(3)(A). That provision was intended to ensure that a request description ‘be sufficient [to enable] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.’”<sup>8</sup> To the extent the IRS required further explanation to process the instant request or sought a narrowed scope, it should have made an effort to contact CoA Institute and negotiate the relevant amendments. The IRS never did so.

The CoA Institute FOIA request conformed to all applicable IRS regulations: it cited the FOIA statute, provided a clear description of the requested records, contained the necessary citations and arguments for news media fee requester status and public interest fee waiver, and was properly addressed and submitted. The IRS has not asserted otherwise.

Even if the CoA Institute request were in some manner defective—which, as set forth above, it is not—the IRS response still deviates from IRS FOIA regulations and the Internal Revenue Manual, which states that “[c]aseworkers must . . . notify the requester that the [imperfect] request does not meet certain requirements of the FOIA[,] that more information is needed . . . and [they] must advise the requester that he/she has 35 calendar days to perfect the request.”<sup>9</sup> The IRS did not indicate how the CoA Institute request was “defective” or how it might be corrected prior to its “final response,” nor did the IRS indicate a 35-day period within which CoA Institute could attempt to perfect its request.

The improper closure of a proper FOIA request is concerning because it frustrates public access to government information and evidences the breach of the agency’s obligations under the

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<sup>6</sup> 5 U.S.C. § 552(a)(3)(A)(i)–(ii).

<sup>7</sup> See, e.g., *Ruotolo v. Dep’t of Justice*, 53 F.3d 4, 9–10 (2d Cir. 1995); *Pub. Citizen Health Research Group v. Food & Drug Admin.*, No. 90-0018, slip op. at 1–2 (D.D.C. Feb. 9, 1996).

<sup>8</sup> Office of Info. Policy, Dep’t of Justice, FOIA Update: FOIA Counselor: Questions & Answers, vol. IV, no. 3 (Jan. 1, 1983), available at <http://bit.ly/29hZ6N3> (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. 6 (1974)).

<sup>9</sup> Internal Revenue Manual 11.3.13.5.5(2), available at <http://bit.ly/29yhvR>; see also 26 C.F.R. § 601.702(c)(1)(i).

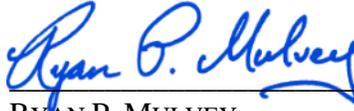
July 7, 2016

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FOIA.<sup>10</sup> Greater care must be taken to ensure that closure only happens when necessary and appropriate. Here, for the reasons stated, we expect that the CoA Institute FOIA request will be re-opened and the IRS will produce responsive documents without further delay.

Thank you for your immediate attention to this matter. If you have any questions, please contact me by e-mail at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org) or by telephone at (202) 499-4232.

Sincerely,



RYAN P. MULVEY

COUNSEL

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<sup>10</sup> See, e.g., Letter to Miriam Nisbet, Dir., Office of Gov't Info. Servs., Nat'l Archives & Records Admin., from CoA Institute, *et al.* (Oct. 30, 2014), available at <http://bit.ly/29wzZ9P>; see also CoA Institute, *Cause of Action Signs Coalition Letter Asking for OGIS Investigation of Administrative Closures* (Oct. 30, 2014), <http://bit.ly/29kqrKf>.

# EXHIBIT

1



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

1875 Eye Street, Ste. 800 · Washington, DC 20006

May 20, 2016

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
IRS FOIA Request  
HQ FOIA  
Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

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Ms. Rhonda O'Reilly

May 20, 2016

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Ms. Rhonda O'Reilly

May 20, 2016

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*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>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</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 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).

<sup>10</sup> *See* 26 C.F.R. § 601.702(e)(14); 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).

**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, Cause of Action 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 [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your assistance.

Sincerely,



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RYAN P. MULVEY  
COUNSEL

# EXHIBIT

2



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY**  
**INTERNAL REVENUE SERVICE**  
**WASHINGTON, DC 20224**

June 14, 2016

Ryan Mulvey  
Cause of Action Institute  
1875 Eye Street, NW, Suite 800  
Washington, DC 20006

Dear Mr. Mulvey:

This is our final response to your Freedom of Information Act (FOIA) request dated May 20, 2016 that we received on May 25, 2016.

You requested all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn for the time period of January 2010 to June 2014.

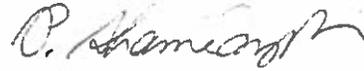
Unfortunately, we are unable to process your request as it does not meet the requirements of the FOIA or the applicable agency regulations. The FOIA requires that requests (1) "reasonably describe" the records sought and (2) be made in accordance with published agency rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records "without placing an unreasonable burden upon the IRS." A request for all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn over a four year period would be unreasonably burdensome for the IRS to process, given the amount of data to be searched. A request of the type you have submitted seeking "any and all" records amongst those of IRS employees without reference to subject matter and over such an expansive time period is not valid. See, for example, *Dale v. IRS*, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002), where the court held that request seeking "any and all documents . . . that refer or relate in any way" to requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense."

We encourage you to consider revising your request, possibly by making it much more specific as to subject matter and specifying particular dates that might include the documents you are seeking.

If you have any questions, please call Tax Law Specialist A. Amparano, ID # 0220447, at (214) 413-5489, or write to: Internal Revenue Service, Disclosure Office 9, P.O. Box

621506, Stop 211, Atlanta, GA 30362-3006. Please refer to case number # F16146-0127.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Sharrise Tompkins". The signature is fluid and cursive, with a large, stylized initial "P".

**P. Sharrise Tompkins  
Disclosure Manager  
Disclosure Office 9**

# EXHIBIT

12



PRIVACY, GOVERNMENTAL  
LIAISON AND DISCLOSURE

**DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224**

August 9, 2016

Ryan Mulvey  
Cause of Action  
1875 Eye Street, NW  
Suite 800  
Washington, DC 20006

Dear Mr. Mulvey:

I am responding to your Freedom of Information Act (FOIA) request dated July 7, 2016 that we received on July 12, 2016.

I am unable to send the information you requested by August 9, 2016, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

**STATUTORY EXTENSION OF TIME FOR RESPONSE**

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to August 23, 2016, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

**REQUEST FOR ADDITIONAL EXTENSION OF TIME**

Unfortunately, we will still be unable to locate and consider release of the requested records by August 23, 2016. We have extended the response date to November 10, 2016, when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

You may file suit after August 23, 2016. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue  
Attention: CC:PA: Br 6/7  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions, please call Tax Law Specialist A. Amparano, ID # 0220447, at (214) 413-5489, or write to: Internal Revenue Service, Disclosure Office 9, P.O. Box 621506, Stop 211, Atlanta, GA 30362-3006. Please refer to case number # F16194-0089.

Sincerely,



P. Sharisse Tompkins  
Disclosure Manager  
Disclosure Office 9