



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.”).

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).

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

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<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->

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,

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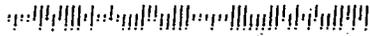
**Record production and contact information**

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.

  
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ROBYN BURROWS  
COUNSEL



**CERTIFIED MAIL**

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