



October 20, 2016

VIA CERTIFIED MAIL

Ms. Brooke Dorner
Chief FOIA Officer, Attorney-Advisor
Council on Environmental Quality
Executive Office of the President
722 Jackson Place NW
Washington, DC 20503

Re: Freedom of Information Act Request

Dear Ms. Dorner:

We write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. To that end, we are examining the Administration’s designations of new national monuments and expansion of existing monuments under the Antiquities Act of 1906, 54 U.S.C. § 320301 (“Antiquities Act” or the “Act”). In addition, we are looking into current and potential proposals for the President to exercise his authority under that Act. The Administration’s broad and frequent use of the Antiquities Act raises questions about the lack of transparency and consultation with local stakeholders leading up to the President’s designation of national monuments.² In particular, we are seeking to better understand the Council on Environmental Quality’s (“CEQ”) role in the Administration’s process for determining whether to designate new national monuments in response to proposals crafted by nongovernmental organizations and third-party interest groups.³

Specifically, we are concerned that CEQ Managing Director Christy Goldfuss may have been using a private email account (cgoldfuss@gmail.com) to coordinate regarding the selection or designation of national monuments under the Antiquities Act with third-party interest groups and individuals, including John Podesta, former Counselor to President Obama and now-

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

² President Obama has used the Antiquities Act to establish more new national monuments than any other president. See Douglas Brinkley, Op-Ed., *Obama the Monument Maker*, N.Y. TIMES, Aug. 27, 2016, available at <http://www.nytimes.com/2016/08/28/opinion/sunday/obama-the-monument-maker.html>.

³ According to recent media reports, “much of the monuments legwork is delegated to high-level staff at the White House Council on Environmental Quality[.]” Phil Taylor, *Meet the Advisers Driving Obama’s Monument Agenda*, GREENWIRE, May 25, 2016, available at <http://www.eenews.net/stories/1060037858>.

Campaign Chair for former Secretary Hillary Clinton’s presidential campaign.⁴ For instance, in an alleged email exchange, Managing Director Goldfuss sent a work-related email to Mr. Podesta using her private nongovernmental Gmail account in which she stated:

Hi John, . . . It’s all coming together. *I may have an oceans monument question for you soon. We’re looking at the NE, and it’s messy.* Hope all is well! We sure do feel your absence now that Kristina is gone. I always felt like she channeled you so well. Talk soon, Christy.⁵

Managing Director Goldfuss reportedly plays an important role in the Administration’s Antiquities Act determinations. For example, in addition to her role promoting the President’s climate change agenda, it has been reported that Managing Director “Goldfuss, a close ally of [John] Podesta, is leading Obama’s monuments team.”⁶ Likewise, the Conservation Alliance has reported that Managing Director “Goldfuss and her team advise the President on conservation policy, and play a key role in determining which landscapes to preserve as National Monuments.”⁷ According to the Associated Press, “Christy Goldfuss, managing director of the White House Council on Environmental Quality, won’t discuss specific national monument possibilities but said Obama ‘certainly feels we have more to do to protect this planet from climate change, so we’ll see how this plays out.’”⁸ Earlier this year, Managing Director Goldfuss explained that the Administration has “big ambitions” for land protection initiatives based on “local requests for action.”⁹ Given her role in the monuments designation process, Managing Director Goldfuss’s work-related private email correspondence with Mr. Podesta about current

⁴ Elizabeth Shogren, *John Podesta: Legacy maker*, HIGH COUNTRY NEWS, May 25, 2015, available at <http://www.hcn.org/issues/47.9/john-podesta-legacy-maker>.

⁵ Alleged Email from Christy Goldfuss to John Podesta (Aug. 28, 2015, 3:48 pm) (emphasis added). It may be that this is not the only instance in which Managing Director Goldfuss has used Gmail to correspond with Mr. Podesta about her work at CEQ. See, e.g., Alleged Email from Christy Goldfuss to John Podesta (Feb. 22, 2015, 8:36 pm) (Managing Director Goldfuss informs Mr. Podesta that “[a]s an FYI, [Senator Lisa] Murkowski’s staff is already pressing NPS on the costs associated with Every Kid [in a Park initiative].”); Alleged Email from Christy Goldfuss to John Podesta (Feb. 22, 2015, 1:54 pm) (“Hi John, Chicago received its first unit of the national park system. POTUS announced Every Kid in a Park [initiative], and I got to ride on AF1 . . . Your ideas and motivation continue in your absence. Thank you again, Christy Goldfuss”). There is also reason to believe that Managing Director Goldfuss and Mr. Podesta may have had discussions over the telephone. See, e.g., Alleged Email from Eryn Sepp to John Podesta (May 21, 2015, 3:23 pm) (email indicates that Managing Director Goldfuss would be available to talk with Mr. Podesta on a stated date and time).

⁶ Phil Taylor, *Meet the Advisers Driving Obama’s Monument Agenda*, GREENWIRE, May 25, 2016, available at <http://www.eenews.net/stories/1060037858>.

⁷ *Outdoor Retailer Events Promote National Monument Campaigns in Alaska and Utah*, THE CONSERVATION ALLIANCE, Aug. 22, 2016, <http://www.conservationalliance.com/category/advocacy/> (last visited Oct. 11, 2016).

⁸ *Groups Urging Obama to Create New National Monuments*, ASSOCIATED PRESS, Aug. 15, 2016, available at <https://www.bostonglobe.com/news/nation/2016/08/15/groups-urging-obama-declare-new-national-monuments/s7pTVjwZ4pYw2MEDEv5MEL/story.html>.

⁹ Juliet Eilperin, *Obama Designates New National Monuments in the California Desert*, WASH. POST, Feb. 12, 2016, available at https://www.washingtonpost.com/politics/obama-to-designate-new-national-monuments-in-the-california-desert/2016/02/11/5b77db4e-c6be-11e5-a4aa-f25866ba0dc6_story.html.

and proposed national monuments raises questions about a lack of transparency and politicized decision-making.

On September 29, 2015, the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Water, Power and Oceans held an oversight hearing on “The Potential Implications of Pending Marine Designations.”¹⁰ A witness at that hearing expressed concern about the process leading to the September 15, 2015, NOAA Town Hall meeting to discuss the proposed monument:

The hastily-arranged and poorly advertised “Town Meeting” hosted by NOAA in Providence on September 15 was a charade. With no details available, the fishermen whose livelihoods are at stake could not comment intelligently on the proposal, other than to express their fear that it would harm their businesses. On the other side, the people who bought the environmentalists’ propaganda would have been happy to support anything that they believed would protect the oceans, because they didn’t know and didn’t care about the details, or about who would be hurt unnecessarily.

The most troublesome thing about the use of the Antiquities Act to create marine national monuments is the complete lack of meaningful public input. The current proposal entirely circumvents the public processes outlined in the National Environmental Policy Act (NEPA), the Administrative Procedures Act, and numerous Executive Orders that were intended to protect the public against arbitrary rule-making. In the fishing industry, we are also governed by the Magnuson-Stevens Fishery Conservation and Management Act.¹¹

Shortly after that hearing, on October 7, 2015, the Chairman of the House Natural Resources Committee wrote Managing Director Goldfuss and Ms. Eileen Sobeck, Assistant Administrator for NOAA Fisheries, requesting information and documents relating to proposals for new marine monuments.¹² Specifically, the Chairman expressed concern about “potential collusion” between outside groups and Administration officials, noting that “the public input process surrounding the designation or expansion of national marine monuments has been woefully inadequate, or even nonexistent” and that “[t]he American people and those impacted by such potential designations deserve the right to know now what the federal government is or has been doing behind closed doors[.]”¹³ Managing Director Goldfuss’s August 28, 2015,

¹⁰ *The Potential Implications of Pending Marine National Monument Designations: Oversight Hearing Before the Subcomm. on Water, Power and Oceans of the H. Comm. on Natural Resources*, 114th Cong. (2015), available at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399339> [hereinafter *Oversight Hearing*].

¹¹ *Oversight Hearing* (Testimony of Jon Williams, President, Atlantic Red Crab Company), available at http://naturalresources.house.gov/uploadedfiles/williams_testimony_9_29_15.pdf.

¹² Letter from the Honorable Rob Bishop, Chairman, House Natural Resources Committee, et al., to Christy Goldfuss, Managing Director, Council on Environmental Policy, et al. (Oct. 7, 2015), available at http://naturalresources.house.gov/uploadedfiles/10.7.15_national_marine_monuments_information__request.pdf.

¹³ *See id.* at 2-3.

alleged Gmail correspondence with Mr. Podesta falls within the scope of the Subcommittee's October 7, 2015, document request to CEQ and thus should have been produced to the Subcommittee.¹⁴

The U.S. House of Representatives Committee on Oversight and Government Reform ("OGR") has also expressed interest in better understanding the roles of CEQ and Managing Director Goldfuss in the Administration's "broad and frequent application of the Antiquities Act."¹⁵ Specifically, OGR expressed concern that the President's unprecedented and extensive use of the "Act to unilaterally designate approximately 265 million acres of land and water as national monuments" through an opaque process "raises questions about the lack of transparency and consultation with local stakeholders leading up to the President's designation of national monuments."¹⁶ As with the Natural Resources Committee's request, Managing Director Goldfuss's August 28, 2015, alleged Gmail correspondence with Mr. Podesta also falls within the scope of OGR's March 29, 2016, document request to CEQ and thus should have been produced to OGR.¹⁷

Managing Director Goldfuss's alleged use of a Gmail account to conduct government business also raises questions about the nature, extent, and frequency of her work-related communications with Mr. Podesta and others via a private, nongovernmental email account concerning the Administration's use of the Antiquities Act, as well as whether such communications comply with applicable federal transparency and recordkeeping laws, including the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As CoA Institute has previously argued, the "courts will not allow unscrupulous federal employees to shield their work-related communications from FOIA's disclosure requirements—and thereby avoid public scrutiny of their professional activities—through the simple expedient of using their personal e-mail accounts and personal communications devices to conduct agency business within the scope of their employment."¹⁸ The U.S. Court of Appeals for the D.C. Circuit recently explained that "we agree . . . that an agency cannot shield its records from search or disclosure under FOIA by the expedient of storing them in a private email account controlled by the agency head[.]"¹⁹ Therefore, under D.C. Circuit precedent, Managing Director Goldfuss's any work-related Gmail communications with Mr. Podesta and others are "agency records" subject to the FOIA.²⁰

¹⁴ *See id.*

¹⁵ Letter from the Honorable Jason Chaffetz, Chairman, Committee on Oversight and Government Reform, et al. to Christy Goldfuss, Managing Director, Council on Environmental Quality, 1 (Mar. 29, 2016), *available at* <https://oversight.house.gov/wp-content/uploads/2016/03/2016-03-29-JEC-Bishop-Rogers-to-Goldfuss-CEQ-Antiquities-Act-Monuments-due-4-12.pdf>.

¹⁶ *Id.*

¹⁷ *See id.* (requesting "[a]ll documents and communications referring or relating to the selection or designation of national monuments under the Antiquities Act of 1906 by the President from January 1, 2015, to the present").

¹⁸ CAUSE OF ACTION INSTITUTE, *Gmail.gov: When Politics Gets Personal, Does the Public Have a Right to Know?*, ENGAGE, Vol. 13, Issue 2 (July 2012), *available at* <http://www.fed-soc.org/publications/detail/gmailgov-when-politics-gets-personal-does-the-public-have-a-right-to-know>.

¹⁹ *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 146 (D.C. Cir. 2016).

²⁰ *See id.* at 149-50.

Because there is evidence suggesting that Managing Director Goldfuss has used her Gmail account to conduct government business relating to the Administration's use of the Antiquities Act to unilaterally proclaim new national monuments, the "cgoldfuss@gmail.com" account (and any other nongovernmental email account or personal communications device Managing Director Goldfuss uses for work-related purposes) should be searched for agency records responsive to this FOIA request.

Pursuant to the FOIA, CoA Institute hereby requests access to the following records for the time period of January 1, 2015, to the present:²¹

1. All records — including emails from governmental (e.g., christina_w_goldfuss@ceq.eop.gov) and personal (e.g., cgoldfuss@gmail.com) accounts, text messages, and voicemails — reflecting, referring, or relating to communications CEQ Managing Director Christy Goldfuss has directly or indirectly received from or sent to non-governmental organizations²² and other outside individuals (e.g., Mr. John Podesta) and entities referring or relating to the Antiquities Act of 1906.
2. All records referring or relating to the work calendar of Managing Director Christy Goldfuss.

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not

²¹ For purposes of this request, the term "present" should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002). The term "record" means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at *7-9 (D.C. Cir. July 29, 2016) (admonishing agency for withholding information as "non-responsive" because "nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure").

²² By way of example, nongovernmental organizations include but are not limited to the Conservation Law Foundation, Conservation Lands Foundation, Alaska Wilderness League, Sierra Club, Pew Charitable Trusts, Earthjustice, Center for American Progress, the Natural Geographic Society, Wilderness Society, Environment America, and the Natural Resources Defense Council. Thus, by way of illustrative example, communications or records to, from, or even "ccing" or "bccing" any "clf.org," americanprogress.org," "nrdc.org," any variation of "sierraclub.org" or "sierrafoundation.org" or any other email address in any way affiliated with the Sierra Club, "conservationlands.org," "tws.org," and/or "earthjustice.org" email addresses would be potentially responsive to this request, as would private email accounts used by anyone affiliated with these non-governmental organizations (e.g., Gmail). Likewise, nongovernmental organizations also include the Conservation Alliance, Outdoor Industry Association, Outdoor Alliance, and other similar groups. The term "non-governmental organization" should be construed expansively to include employees, officers, volunteers, and others affiliated with such organizations.

primarily in the commercial interest of the requester.”²³ In this case, given congressional and public concerns that the Antiquities Act process lacks transparency and a meaningful opportunity for public participation, as well as related concerns about collusion between favored third-party interest groups and Administration officials, there is significant public interest in educating the public at large about the Administration’s use of the Antiquities Act of 1906. The broad public interest in better understanding the Administration’s Antiquities Act designation process is underscored by the extensive media coverage its Presidential Proclamations have received,²⁴ as well as numerous congressional hearings relating to the Administration’s expansive interpretation and aggressive use of the Act.²⁵

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.²⁶ In addition, as CoA Institute is a nonprofit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

²³ 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 1515.15(b); *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).

²⁴ *See, e.g.,* Cynthia Barnett, *Obama Creates Connecticut-Size Ocean park, First in Atlantic*, NAT’L GEOGRAPHIC, Sept. 15, 2016, *available at* <http://news.nationalgeographic.com/2016/09/obama-creates-a-monument-bigger-than-connecticut-in-the-atlantic/>; Richard Perez-Pena, *Obama Designates National Monument in Maine, to Dismay of Some*, N.Y. TIMES, Aug. 24, 2016, http://www.nytimes.com/2016/08/25/us/obama-maine-katahdin-woods-and-waters.html?_r=0; THE CONSERVATION, *The Antiquities Act and America’s National Parks*, U.S. NEWS, Aug. 19, 2016, *available at* <http://www.usnews.com/news/articles/2016-08-19/the-antiquities-act-and-americas-national-parks>; Donald J. Kochan, *Midnight Monuments*, THE HILL, Oct. 3, 2016, *available at* <http://64.147.104.30/blogs/congress-blog/energy-environment/298916-midnight-monuments>.

²⁵ *See, e.g., Oversight Hearing, supra* note 10; *Field Hearing on Elevating Local Voices and Promoting Transparency for a Potential Monument Designation in Maine Before the H. Comm. on Natural Resources* 114th Cong. (2016), *available at* <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=400497>; *see also Legislative Hearing on H.R. 5780, “Utah Public Lands Initiative Act” Before the Subcomm. On Federal Lands of the H. Comm. on Natural Resources*, 114th Cong. (2016), *available at* <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=401106>; *Legislative Hearing on H.R. 302, H.R. 758, H.R. 817, H.R. 845, H.R. 846 and H.R. 2147 Before the Subcomm. On National Parks, Forest and Public Lands of the H. Comm. on Natural Resources*, 112th Cong. (2011), *available at* <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=258136>.

²⁶ *See also Cause of Action*, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.²⁷ 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.²⁸ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.²⁹ Although it is not required by the statute, CoA Institute gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.³⁰ These distinct works are distributed to the public through various media, including the Institute’s website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”³¹ In light of the foregoing, numerous federal agencies have appropriately recognized the Institute’s news media status in connection with its FOIA requests.³²

²⁷ 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see* 40 C.F.R. § 1515.11.

²⁸ *See Cause of Action*, 799 F.3d at 1121.

²⁹ *See* 40 C.F.R. § 1515.11.

³⁰ *See, e.g., Cause of Action Testifies Before Congress on Questionable White House Detail Program* (May 19, 2015), available at <http://coainst.org/2aJ8UAA>; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://coainst.org/2as088a>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), available at <http://coainst.org/2aJ8sm5>; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://coainst.org/2aFWxUZ>; COA INSTITUTE, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://coainst.org/2apTwqP>; COA INSTITUTE, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://coainst.org/2aJh901>.

³¹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

³² *See, e.g.,* FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep’t of Justice (Aug. 2, 2016); FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep’t of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep’t of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep’t of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep’t of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep’t of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep’t of Interior (Aug. 3, 2015); FOIA Request 780831, Dep’t of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request 145-FOI-13785, Dep’t of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep’t of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep’t of Energy (Nat’l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc’n Comm’n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep’t of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep’t of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat’l Labor Relations Bd. (Dec. 1,

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.³³

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact us by telephone at (202) 499-4232 or by email at kara.mckenna@causeofaction.org or michael.pepson@causeofaction.org. Thank you for your attention to this matter.

2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

³³ See 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).

CAUSE OF ACTION INSTITUTE

A handwritten signature in black ink, appearing to read "Michael Pepson", written above a horizontal line.

MICHAEL PEPSON
COUNSEL

A handwritten signature in blue ink, appearing to read "Kara E. McKenna", written above a horizontal line.

KARA E. MCKENNA
COUNSEL