

# CAUSE of ACTION

## INSTITUTE

Pursuing Freedom & Opportunity through Justice & Accountability<sup>SM</sup>

June 6, 2017

### VIA CERTIFIED MAIL

Environmental Protection Agency  
National Freedom of Information Office  
ATTN: Ann Dunkin, Chief Information Officer  
1200 Pennsylvania Avenue, N.W. (2822T)  
Washington, D.C. 20460

**Re: Freedom of Information Act Request**

Dear Ms. Dunkin:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.<sup>1</sup> In carrying out its mission, CoA Institute uses investigative and legal tools to educate the public about the importance of government transparency and accountability.

Recent news reports have raised concerns about the objectivity of Dr. Francesca Grifo, the Environmental Protection Agency’s (“EPA”) Science Integrity Official.<sup>2</sup> Specifically, there is some question as to whether Dr. Grifo, a civil servant, has sought to politicize the Office of Scientific Integrity to frustrate President Trump’s new policy agenda for the EPA. CoA Institute seeks access to records that may confirm the truth of these allegations, particularly as they pertain to Dr. Grifo’s possible communications with environmental groups and members of Congress.

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

1. All records concerning the distribution of invitations to the Office of Scientific Integrity’s June 2017 annual stakeholder meeting on scientific integrity, including any records reflecting a list of confirmed participants and declined invitations. The time period for this item of the request is May 1, 2017 to the present.<sup>3</sup>
2. All correspondence (*e.g.*, letters, e-mail, instant/text messages, *etc.*) created or received by Dr. Grifo on (a) November 8–9, 2016; (b) January 20, 2017; (c) January 30 – February 3, 2017; and (d) March 21–22, 2017.

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<sup>1</sup> See CAUSE OF ACTION INST., *About*, [www.causeofaction.org/about/](http://www.causeofaction.org/about/) (last accessed June 6, 2017).

<sup>2</sup> *E.g.*, Kimberley A. Strassel, *Anatomy of a Deep State*, WALL ST. J. (May 25, 2017), <http://on.wsj.com/2rZJdDG>.

<sup>3</sup> 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 a record any portion of which contains responsive information. See *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (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”).

3. All work calendar entries for Dr. Grifo dated January 30 – February 3, 2017.
4. All correspondence between Dr. Grifo and any of the following individuals for the period of January 20, 2017 to the present:
  - a. Gina McCarthy, former EPA Administrator;
  - b. Gretchen Goldman, Union of Concerned Scientists;
  - c. Yogin Kothari, Union of Concerned Scientists;
  - d. Michael Brune, Sierra Club;
  - e. Liz Perera, Sierra Club;
  - f. Elena Saxonhouse, Sierra Club.
5. All correspondence between Dr. Grifo and any of the following individuals for the period of May 5, 2017 to the present:
  - a. Ponisseril Somasundaran, Columbia University;
  - b. Courtney Flint, Utah State University;
  - c. Robert Richardson, Michigan State University;
  - d. Paula Olsiewski, Alfred P. Sloan Foundation;
  - e. Tammy Taylor, Pacific Northwest National Laboratory.
6. All correspondence between any employee or official of the Office of Scientific Integrity, including Dr. Grifo, and Congresswoman Bernice Johnson, or any member of Rep. Johnson's staff or the Minority staff for the U.S. House of Representatives Committee on Science, Space, and Technology. The time period for this item of the request is January 20, 2017 to the present.

#### **Request for a Public Interest Fee Waiver**

CoA Institute requests a waiver of any and all applicable fees. The FOIA and relevant regulations provide that the EPA shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>4</sup>

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<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1); see *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).

In this case, the requested records will shed light on the “operations or activities of the government,” namely, Dr. Grifo’s management of the Office of Scientific Integrity and her official correspondence with scientific stakeholders, environmental interest groups, federal legislators, government employees, and other third parties. These records may shed light on the truth of accusations of inappropriate politicization by Dr. Grifo. The records would also provide the public with insight into the organization of the EPA’s annual stakeholder meeting on scientific integrity.

Disclosure is likely to “contribute significantly” to public understanding of these matters because, to date, the records that CoA Institute seeks have not been made publicly available. CoA Institute intends to educate the public about its findings and contribute to widespread coverage of the apparent divide between career EPA employees and the scientific community, on the one hand, and the new Administration, on the other.<sup>5</sup> CoA Institute’s reporting would also cover Dr. Grifo’s correspondence, if any, with Democratic leadership on the House Science Committee.<sup>6</sup>

CoA Institute has 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 a regularly published online newsletter, memoranda, reports, or press releases.<sup>7</sup> CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and, accordingly, has no commercial interest in making this request.

### **Request To Be Classified as a Representative of the News Media**

For fee purposes, CoA Institute qualifies as a “representative of the news media.”<sup>8</sup> As the D.C. Circuit held, the “representative of the news media” test is properly focused on the requestor, not the specific request at issue.<sup>9</sup> 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. 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 product, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.<sup>10</sup>

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<sup>5</sup> See, e.g., Deborah Netburn, *Scientists are on alert after the latest changes at the EPA*, L.A. TIMES (May 9, 2017), <http://lat.ms/2syXq7D>; Robinson Meyer, *The Dismissed EPA Advisers Had Nothing to Do With Regulation*, THE ATL. (May 9, 2017), <http://theatl.tc/2rPkCAI>; Coral Davenport, *E.P.A. Dismisses Members of Major Scientific Review Board*, N.Y. TIMES (May 7, 2017), <http://nyti.ms/2rPCTh0>; see also Emily Flitter, *EXCLUSIVE – U.S. group Sierra Club seeks probe of EPA’s Pruitt over CO2 comments*, CNBC/REUTERS (Mar. 15, 2017), <http://cnb.cx/2rPDyix>.

<sup>6</sup> See Ed Yong, *The Transparency Bills That Would Gut the EPA*, THE ATL. (Mar. 15, 2017), <http://theatl.tc/2rPGpZ9>.

<sup>7</sup> See *Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 40 C.F.R. § 2.107(b)(6).

<sup>9</sup> See *Cause of Action*, 799 F.3d at 1121.

<sup>10</sup> See CAUSE OF ACTION INST., *Blog*, <http://www.causeofaction.org/media/blog> (last accessed June 6, 2016); see also, 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),

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."<sup>11</sup> In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute's news media status in connection with its FOIA requests.<sup>12</sup>

### **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.<sup>13</sup>

### **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

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*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/2apTwpP>; COA INSTITUTE, POLITICAL PROFITTEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), *available at* <http://coainst.org/2ajh901>.

<sup>11</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>12</sup> *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. Comm'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 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).

<sup>13</sup> *See* 40 C.F.R. § 2.106; 36 *see also* 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).

Environmental Protection Agency

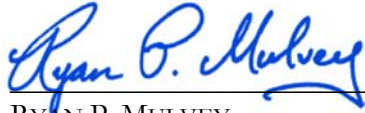
June 6, 2017

Page 5

produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

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

Sincerely,



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RYAN P. MULVEY  
COUNSEL