November 27, 2017

VIA E-MAIL

Consumer Financial Protection Bureau
Ms. Raynell D. Lazier, FOIA Manager, Operations Division/Chief FOIA Officer
1700 G Street, NW
Washington, DC 20552
E-mail: CFPB_FOIA@consumerfinance.gov

Re: Freedom of Information Act Request

Dear Ms. Lazier:

I write on behalf of Cause of Action Institute (CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.1 In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. To that end, we are examining the process by which Leandra English was named Deputy Director of the CFPB and under what legal authority she is claiming to be Acting Director, despite the President appointing Mick Mulvaney as Acting Director. CoA Institute is concerned that a dispute in leadership at the agency could frustrate political accountability of the CFPB.

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, CoA Institute hereby requests access to the following records for the time period May 27, 2017 to the present:2

All records reflecting communications—including, but not limited to, e-mails, memoranda, letters, text messages, call logs, and hand-written notes—between

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1 See CAUSE OF ACTION INSTITUTE, About, www.causeofaction.org/about/.
2 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, 830 F.3d 667, 677-78 (D.C. Cir. 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”).
Leandra English and/or Richard Cordray and ANY of the following: Leandra English, Richard Cordray, Senator Elizabeth Warren or her staff, the CFPB Office of General Counsel, the White House Counsel’s Office, the Executive Office of the President, the Office of Management and Budget, Gupta Wessler PLLC, Deepak Gupta, Matthew Wessler, and Daniel Townsend that contain ANY of the following terms or reasonable variants thereof: “acting director,” “legal authority,” “Mulvaney,” “Trump,” “appointee,” “resignation,” “resign,” “lawsuit,” “temporary restraining order,” “TRO,” “preliminary injunction,” or “PI.”

**Request for Expedited Processing**

CoA Institute hereby requests expedited processing of its request because (1) CoA Institute is “primarily engaged in disseminating information” and (2) the requested records pertain to “actual or alleged Federal government activity,” about which there exists an “urgency to inform the public.”

As discussed below, CoA Institute is primarily engaged in dissemination information because it qualifies as a news media organization. CoA Institute gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The requested records relate to the current and critical dispute over who is the Acting Director at CFPB. As of the time of this FOIA request, two individuals have shown up for work and claimed the post, with one filing a lawsuit in federal court. It is critical that the public be immediately informed of the decision-making process Ms. English went through to follow this course of action, so there can be political, congressional, and, possibly, judicial accountability. This FOIA is the perfect example of one that requires expedited processing.

**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

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3 Please do not include the punctuation marks in the keyword search.


6 Renae Merle, *At the CFPB, two acting directors show up to take command; one brings doughnuts, the other well-wishes*, WASH. POST, Nov. 27, 2017, http://coainst.org/2ABjm9j.

7 *Id.*
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.” In this case, disclosure is in the public interest as it will significantly contribute to the public understanding of CFPB’s dispute over who, Mulvaney or English, is the proper and legal Acting Director. It is essential for an agency such as the CFPB to be accountable to the public and political process, and disclosure of these records will immediately increase awareness of the current structure of the agency.

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. In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

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

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA. As the D.C. Circuit held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue. 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 products, including articles, blog posts, investigative reports, newsletters,

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9 *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).


11 *See Cause of Action*, 799 F.3d at 1121.
and congressional testimony and statements for the record. 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

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entities.”13 In light of the foregoing, numerous federal agencies—including the CFPB—have appropriately recognized the Institute’s news media status in connection with its FOIA requests.14

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.\(^\text{15}\)

Record Production and Contact Information

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

If you have any questions about this request, please contact me by telephone at (202) 470-2396 or by e-mail at eric.bolinder@causeofaction.org. Thank you for your attention to this matter.

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Eric R. Bolinder
Counsel

\(^{15}\) 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).