

CAUSE of ACTION INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

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 Institute²), 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

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."³

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."⁴

As discussed below, CoA Institute is primarily engaged in dissemination information because it qualifies as a news media organization.⁵ 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.⁶ 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.⁷ 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

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

⁴ 5 U.S.C. § 552(a)(6)(E)(v)(II); 12 C.F.R. § 1070.71(b)(2)(ii).

⁵ *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (referencing *Elec. Privacy Info., Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)).

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.”⁸ 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.⁹ 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.¹⁰ 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.¹¹ 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,

⁸ 5 U.S.C. § 552(a)(4)(A)(iii); 12 C.F.R. § 1070.22(e)(1)(iii) ; *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).

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).

¹⁰ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 12 C.F.R. § 1070.22(b)(1)(iv).

¹¹ *See Cause of Action*, 799 F.3d at 1121.

and congressional testimony and statements for the record.¹² 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

¹² See, e.g., CoA Institute, *Documents Reveal Special Interest Groups Lobbied HUD for Mortgage Settlement Funds* (Aug. 8, 2017), <http://coainst.org/2yLaTyF>; CoA Institute, *The GSA Has No Records on its New Policy for Congressional Oversight Requests* (July 26, 2017), <http://coainst.org/2eHooVq>; COA INSTITUTE, SENSITIVE CASE REPORTS: A HIDDEN CAUSE OF THE IRS TARGETING SCANDAL (Mar. 2017), <http://coainst.org/2y0fbOH>; CoA Institute, *Sec. Vilsack followed ethics guidelines when negotiating his future employment*, (Feb. 3, 2017), <http://coainst.org/2mJljJe>; COA INSTITUTE, INVESTIGATIVE REPORT: PRESIDENTIAL ACCESS TO TAXPAYER INFORMATION (Oct. 2016), <http://coainst.org/2d7qTRY>; James Valvo, *There is No Tenth Exemption* (Aug. 17, 2016), <http://coainst.org/2doJhBt>; COA INSTITUTE, MEMORANDUM: LEGAL ANALYSIS OF FORMER SECRETARY OF STATE HILLARY CLINTON'S USE OF A PRIVATE SERVER TO STORE EMAIL RECORDS (Aug. 24, 2015), <http://coainst.org/2eXhXe1>; CoA Institute, *CLA too busy for transparency* (Aug. 11, 2016), <http://coainst.org/2mtzhhP>; *Hearing on Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options Before the Subcomm. on Oversight, Agency Action, Fed. Rights & Fed. Courts of the S. Comm. on the Judiciary*, 114th Cong. (Aug. 5, 2015) (statement of Erica L. Marshall, Counsel, CoA Inst.), <http://coainst.org/2mJC8DH>; *Hearing on Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 114th Cong. (June 3, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2mrwHr1>; *Hearing on Ongoing Oversight: Monitoring the Activities of the Justice Department's Civil, Tax and Environmental and Natural Resources Divisions and the U.S. Trustee Program Before the H. Comm. on the Judiciary*, 114th Cong. (May 19, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2n7LxWG>; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), <http://coainst.org/2as088a>; *Hearing on Potential Reforms to the Freedom of Information Act (FOIA) Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Feb. 27, 2015) (statement of Daniel Z. Epstein, Exec. Dir., CoA Inst.), <http://coainst.org/2lLsph8>; *Hearing on IRS: TIGTA Update Before the H. Comm. on Oversight & Gov't Reform*, 114th Cong. (Feb. 26, 2015) (statement of Prashant K. Khetan, Chief Counsel, CoA Inst.), <http://coainst.org/2nn5iFJ>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), <http://coainst.org/2aj8sm5>; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENTS REQUESTERS (Mar. 18, 2014), <http://coainst.org/2aFWxUZ>; COA INSTITUTE, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), <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), <http://coainst.org/2aJh901>; CoA Institute, *Newsletters*, <http://causeofaction.org/media/news/newsletter/>.

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

¹³ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁴ FOIA Request CFPB-2017-361-F, Consumer Fin. Prot. Bureau (June 13, 2017); *see, e.g.*, FOIA Request 2016-11-008, Dep’t of the Treasury (Nov. 7, 2016); FOIA Requests OS-2017-00057 & OS-2017-00060, Dep’t of Interior (Oct. 31, 2016); FOIA Request 2017-00497, Office of Personnel Management (Oct. 21, 2016); FOIA Request 092320167031, Centers for Medicare & Medicaid Services (Oct. 17, 2016); FOIA Request 17-00054-F, Dep’t of Educ. (Oct. 6, 2016); FOIA Request DOC-OS-2016-001753, Dept. of Commerce (Sept. 27, 2016); FOIA Request 2016-09-101, Dep’t of the Treasury (Sept. 21, 2016); FOIA Request DOC-OIG-2016-001732, Dept. of Commerce OIG (Sept. 15, 2016); FOIA Request OS-2016-00435, Dep’t of the Interior (Aug. 31, 2016); FOIA Request 2016-366-F, Consumer Fin. Prot. Bureau (Aug. 11, 2016); FOIA Request F-2016-09406, Dept. of State (Aug. 11, 2016); FOIA Request 2016-08-070, Dep’t of the Treasury (Aug. 10, 2016); FOIA Request 2016-00896, Bureau of Land Mgmt., Dep’t of the Interior (Aug. 10, 2016); FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep’t of Justice (Aug. 2, 2016); FOIA Request 2016-HQFO-00502, Dept. of Homeland Security (Aug. 1, 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 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).

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.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.



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).