



June 26, 2015

**VIA E-MAIL**

U.S. Department of the Army  
Freedom of Information and Privacy Office  
Casey Building, Suite 150  
7701 Telegraph Road  
Alexandria, VA 22315-3905  
E-mail: DAFOIA@conus.army.mil

**Re: Freedom of Information Act Request**

Dear FOIA Officer:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that the regulatory process is transparent, fair, and accountable.<sup>1</sup> In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), Cause of Action requests access to all records of communications with any employee of the Executive Office of the President (e.g., “@omb.eop.gov,” “@ostp.eop.gov,” etc.), including but not limited to the Office of the White House Counsel (“@who.eop.gov”),<sup>2</sup> concerning telephone and/or video conferences hosted and/or arranged by the military. Responsive records would include any e-mail requesting that a conference line be opened, as well as any subsequent confirmation e-mail or related correspondence. The time period for this request is January 1, 2015 to the present.

**Request for Public Interest Fee Waiver**

Cause of Action requests a public interest waiver of all applicable fees.<sup>3</sup> This provision provides that agencies 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

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org).

<sup>2</sup> Cause of Action understands that the requested records may be maintained by the White House Military Office and/or the White House Communications Agency. These offices are located at the White House, but their records remain subject to FOIA. See 32 C.F.R. § 286.4(i)(7). To the extent this request implicates records under the control and possession of multiple DOD components, such as other branches of the military, then the Army FOIA Office should forward and/or refer this request, in relevant part, to those other components. *Id.* §§ 286.4(i), 286.23(g).

<sup>3</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

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understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”<sup>4</sup> In this case, the requested records would unquestionably shed light on the “operations or activities of the government,” namely, the manner in which agencies, the White House, and the military (as communications facilitator) conduct audio or visual conferences. This information is likely to contribute significantly to public understanding because, to date, the public knows very little about these conferences or the manner in which these communications are carried out.

Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. 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. Further, Cause of Action, a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, does not have a commercial interest in making this request. The requested information will be used to educate the general public about White House conferences and the military’s involvement with facilitating them.

### **Request to be Classified as a Representative of the News Media**

For fee status purposes, Cause of Action qualifies as a “representative of the news media” under FOIA.<sup>5</sup> Specifically, Cause of Action 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.<sup>6</sup> Cause of Action gathers the news it regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, and newsletters.<sup>7</sup> These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed approximately 100,000 times in the past year alone.<sup>8</sup> Cause of Action also disseminates news to the public via Twitter and Facebook, and it provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”<sup>9</sup> In light of the

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<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 32 C.F.R. § 286.28(e)(7)(i).

<sup>6</sup> Cause of Action notes that DOD’s definition of “representative of the news media” (32 C.F.R. § 286.28(e)(7)(i)) is in conflict with the statutory definition. DOD has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the Open Government Act of 2007. Under either definition, however, Cause of Action qualifies as a representative of the news media.

<sup>7</sup> See, e.g., *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; *Legal and Political Issues Raised by the Loss of Emails at the IRS*, CAUSE OF ACTION (July 8, 2014), available at <http://goo.gl/PaoEyi>; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

<sup>8</sup> *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

<sup>9</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

foregoing, numerous federal agencies have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.<sup>10</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 readily reproducible, the production should consist of load files that are compatible with Concordance® Evolution. If a certain portion of responsive records can be produced more readily, Cause of Action 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 at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your attention to this matter.

  
RYAN P. MULVEY  
COUNSEL

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<sup>10</sup> See, e.g., FOIA Request No. 145-FOI-13785, Dep't of Justice (June 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); Dep't of State, F-2014-21360 (Dec. 3, 2014); Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, U.S. Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, U.S. 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).