VIA E-MAIL

Export-Import Bank of the United States
Freedom of Information and Privacy Office
811 Vermont Ave., N.W.
Washington, D.C. 20571
E-mail: foia@exim.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Cause of Action Institute (“CoA Institute”), a 501(c)(3) nonpartisan
government oversight organization that uses investigative, legal, and communications tools to
educate the public about how government accountability, transparency, and the rule of law
protect individual liberty and economic opportunity.1

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

- A copy of the Export-Import Bank’s (“Ex-Im”) Vehicle Use Policy
- Ex-Im’s vehicle use log from January 1, 2017, to the present.2

Ex-Im referred to these documents in response to a 2016 report from the Office of Inspector
General.3

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. The 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

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”).

3 See generally OFFICE OF INSPECTOR GEN., EXPORT-IMPORT BANK OF THE UNITED STATES, EVALUATION OF
EXPORT-IMPORT BANK’S PROCUREMENT PROCESS FOR A VEHICLE LEASE (Sept. 2016), available at
primarily in the commercial interest of the requester.” In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they will reveal whether Ex-Im has implemented recommendations from the Office of Inspector General. Responsive records will contribute to public understanding because, to date, the Vehicle Use Policy and vehicle use logs have not been publicly released.

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**

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. 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, and congressional testimony and statements for the record. These distinct works are distributed to

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5 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).

6 See id. at 1121.

the public through various media, including CoA 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.”8 In light of the foregoing, numerous federal agencies have appropriately recognized CoA Institute’s news media status in connection with its FOIA requests.9

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

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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.10

**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) 499-2422 or by e-mail at kevin.schmidt@causeofaction.org. Thank you for your attention to this matter.

Kevin Schmidt
KEVIN SCHMIDT
DIRECTOR OF INVESTIGATIONS

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10 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).