

EXHIBIT

42



A 501(c)(3) Nonprofit Corporation
September 14, 2015

VIA EMAIL

Terri Garner and/or FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Avenue
Little Rock, AR 72201
clinton.library@nara.gov

Re: Freedom of Information Act Request

Dear Ms. Garner:

I write on behalf of Cause of Action, a strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. Pursuant to the Freedom of Information Act (“FOIA”), Cause of Action hereby requests access to the following records from the time period of January 1, 2012 until March 1, 2013:

1. All records, including but not limited to email communications, from Terri Garner (or the current Clinton Library Director) to Hillary Clinton and/or any of her agents or representatives. Any search for “agents or representatives” should be interpreted to include but not be limited to any attorney (*e.g.*, David Kendall), any employee or contractor of an entity for which Mrs. Clinton serves on the board (*e.g.*, Clinton Foundation employee Huma Abedin), or any employee or contractor of the United States Department of State (“State Department”) during Mrs. Clinton’s tenure (*e.g.*, Cheryl Mills).
2. All records, including but not limited to email communications, from Terri Garner (or the current Clinton Library Director) to any employee of the National Archives and Records Administration (“NARA”) referring or relating to the records of Hillary Clinton.

Request for Expedited Processing

Pursuant to FOIA and applicable regulations, Cause of Action hereby requests expedited processing of this request.¹ One of the bases that qualifies a request for expedited processing is when the “matter [is] of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government’s integrity.”² The exclusive use by former Secretary Clinton of a private email system to conduct her official State Department activities and the question of whether and to what extent she maintained possession, custody, or

¹ See 5 U.S.C. § 552(a)(6)(E); 36 C.F.R. § 1250.28.

² 36 C.F.R. § 1250.28(a)(4).

control of federal records during and after her tenure as Secretary of State is “a breaking news story of general public interest.”³ In addition, this issue and the documents requested herein relate to the question of federal government integrity since they are of relevance to whether NARA, the State Department, and Mrs. Clinton’s properly complied with federal records management laws.

This request therefore meets the test for expedited processing. Appropriately, Cause of Action has been granted expedited processing for previous FOIA requests related to this subject.⁴

Request for Public Interest Fee Waiver

Cause of Action requests a public interest waiver of all applicable fees.⁵ Regulations provide 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 understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”⁶

The requested records would unquestionably shed light on the “operations or activities of the government,” namely the steps NARA, the State Department, and Mrs. Clinton did or did not take to preserve and handle Mrs. Clinton’s records as required by law upon her departure from the State Department. In addition, 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 and 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 a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation.⁷ 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.⁸

³ See, e.g., Catherine Herridge & Pamela Browne, *Source: FBI ‘A-team’ leading ‘serious’ Clinton server probe, focusing on defense info*, FOXNEWS.COM (Aug. 28, 2015), <http://goo.gl/Cv5xEk>; Josh Gerstein, *Hillary Clinton email certification released*, POLITICO.COM (Aug. 10, 2015), <http://goo.gl/FHWxEEn>; Massimo Calabresi, *The Legal Question Over Hillary Clinton’s Secret Emails*, TIME.COM (July 29, 2015), <http://goo.gl/Qqdcbl>; Josh Gerstein, *New lawsuit tests Hillary Clinton’s claim private email system was legal*, POLITICO.COM (July 8, 2015), <http://goo.gl/ATgHgB>.

⁴ See Email from Joseph A. Scanlon, FOIA & Privacy Officer, Nat’l Archives & Records Admin. to Cause of Action (Mar. 30, 2015) (granting expedited processing on Request No. NGC15-159) (on file with Cause of Action); Letter from Requester Commc’ns Branch, Office of Info. Programs & Servs., Dep’t of State to Cause of Action (Apr. 14, 2015) (granting expedited processing on Request No. F-2015-4785) (on file with Cause of Action).

⁵ 5 U.S.C. § 552(a)(4)(A)(iii).

⁶ *Id.*; 36 C.F.R. § 1250.56. See also *Cause of Action v. Fed. Trade Comm’n*, No. 13-5335, 2015 U.S. App. LEXIS 14934, at *15-24 (D.C. Cir. Aug. 25, 2015) (discussing proper application of public-interest fee waiver test).

⁷ See 36 C.F.R. § 1250.56(b)(4) (providing that one factor is the requestor’s “expertise or understanding of the requested records”).

⁸ See *Cause of Action*, 2015 U.S. App. LEXIS 14934, at *15-24 (holding public interest advocacy organizations may partner with others to disseminate their works).

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.⁹ 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.¹⁰ Cause of Action 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.¹¹ Although it is not required by the statute, 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.¹² These distinct works are distributed to the public through various media, including Cause of Action’s website, which has been viewed just under 100,000 times in the past year alone.¹³ Cause of Action also disseminates news both directly to the public via Twitter, Facebook, news updates to subscribers via email, and indirectly through partnerships with other members of the news media.

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.”¹⁴ In light of the foregoing, numerous federal agencies have appropriately recognized Cause of Action’s news media status in connection with its FOIA requests.¹⁵

⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 36 C.F.R. § 1250.54(b); 36 C.F.R. § 1250.3(q). *See also Cause of Action*, 2015 U.S. App. LEXIS 14934, at *24-44 (discussing proper application of “representative of the news media” test). Cause of Action notes that NARA’s definition of “representative of the news media” (36 C.F.R. § 1250.3(q)) is in conflict with the statutory definition and controlling case law. NARA 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. *Id.* at *30 (“Congress, however, omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007.”).

¹⁰ *Cause of Action*, 2015 U.S. App. LEXIS 14934, at *31.

¹¹ Cause of Action notes that the agency’s definition of “representative of the news media” at 36 C.F.R. § 1250.3(q) is out of date, and in conflict with both the statutory definition and controlling court precedent. *See Cause of Action*, 2015 U.S. App. LEXIS 14934, at *43 (“[T]here is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”).

¹² *See, e.g., Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; 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>.

¹³ *Google Analytics* for <http://www.causeofaction.org> (on file with Cause of Action).

¹⁴ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁵ *See, e.g.,* 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 2015-0SEC-04996-F, Dep’t of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, U.S. Dep’t of Interior (Aug. 3, 2015); FOIA Request No. 15-05002, Sec. & Exch. Comm’n (July 23, 2015); FOIA Request No. 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.

Record Preservation Requirement

Cause of Action requests the disclosure officer responsible for the processing of this request issue an immediate hold on any and 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 Cause of Action's request and any possible administrative remedies for appeal have been exhausted.¹⁶

Litigation Hold

To the extent that the Clinton Library disagrees with the Record Preservation Requirement above, Cause of Action requests that the disclosure officer issue an immediate hold on any and all records responsive to or potentially responsive to this request, as Cause of Action anticipates litigation in this matter arising under FOIA, the Administrative Procedure Act, or the Federal Records Act.¹⁷

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 that the remaining records be produced on a rolling basis as circumstances permit.

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 20150009F, 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).

¹⁶ 36 C.F.R. § 1250.14 ("Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA."); *id.* § 1230.3(b) (stating "*Unlawful or accidental destruction (also called unauthorized destruction)* means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and 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."); *see also Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

¹⁷ *See, e.g.*, 44 U.S.C. § 2911; 36 C.F.R. pt. 1236 (Electronic Records Management); *see generally* 44 U.S.C. §§ 2904, 3101, 3102, & 3105; OMB Circular A-130 (Management of Federal Information Resources).

If you have any questions about this request, please contact us by telephone at (202) 499-4232 or at james.valvo@causeofaction.org. Thank you for your attention to this matter.



R. JAMES VALVO, III
COUNSEL & SENIOR POLICY ADVISOR

Ryan Mulvey

From: foia@nara.gov
Sent: Wednesday, September 16, 2015 8:28 AM
To: James Valvo
Subject: FOIA Request NARA-NGC-2015-000613 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: NARA-NGC-2015-000613
- Requester Name: R. James Valvo, III
- Date Submitted: 09/14/2015
- Request Status: Submitted
- Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.

Ryan Mulvey

From: foia@nara.gov
Sent: Wednesday, September 23, 2015 11:56 AM
To: James Valvo
Subject: FOIA Expedited Processing Disposition Reached for NARA-NGC-2015-000613

Your request for Expedited Processing for the FOIA request NARA-NGC-2015-000613 has been granted. Additional details for this request are as follows:

- Request Created on: 09/14/2015
- Expedited Disposition Reason: N/A
- Request Long Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.

Ryan Mulvey

From: foia@nara.gov
Sent: Wednesday, September 23, 2015 11:57 AM
To: James Valvo
Subject: FOIA Fee Waiver Disposition Reached for NARA-NGC-2015-000613

Your request for Fee Waiver for the FOIA request NARA-NGC-2015-000613 has been fully granted. Additional details for this request are as follows:

- Request Created on: 09/14/2015
- Request Long Description: 1. All records, including but not limited to email communications, from Terri Garner to Hillary Clinton and/or any of her agents or representatives. Any search for "agents or representatives" should be interpreted to include but not be limited to any attorney, any employee or contractor of an entity for which Mrs. Clinton serves on the board, or any employee or contractor of the United States Department of State during Mrs. Clinton's tenure. 2. All record, including but not limited to email communications, form Terri Garner to any employee of the National Archives and Records Administration (NARA) referring or relating to the records of Hillary Clinton.



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

October 15, 2015

VIA E-MAIL

Terri Garner and/or FOIA Coordinator
Clinton Presidential Library
1200 President Clinton Avenue
Little Rock, AR 72201
clinton.library@nara.gov

The Honorable David S. Ferriero
Archivist of the United States
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
foia@nara.gov

Re: Freedom of Information Act Request: NARA-NGC-2015-613

Dear Ms. Garner and Mr. Ferriero:

On September 14, 2015, Cause of Action sent a Freedom of Information Act (“FOIA”) request to the Clinton Presidential Library (“the Library”) seeking, *inter alia*, communications between the Library and former Secretary of State Hillary Clinton during her tenure.¹ On September 16, 2015, the National Archives and Records Administration (“NARA”) acknowledged receipt of the request and assigned it control number NARA-NGC-2015-613.² On September 23, 2015, NARA granted Cause of Action’s request for expedited processing and a public interest fee waiver.³ Cause of Action has not received any other communication or any production of documents from NARA or the Library.

Under FOIA, an agency is required to make a final determination within twenty business days of receipt of a FOIA request.⁴ As of today, twenty business days have elapsed since NARA acknowledged Cause of Action’s request and yet neither NARA nor the Library has made a final determination or produced any responsive documents.

¹ Letter from Cause of Action to Terri Garner, Dir., Clinton Presidential Library (Sept. 14, 2015).

² Email from Nat’l Archives & Records Admin. to Cause of Action (Sept. 16, 2015).

³ Email from Nat’l Archives & Records Admin. to Cause of Action (Sept. 23, 2015) (11:56 AM email granting expedited processing); Email from Nat’l Archives & Records Admin. to Cause of Action (Sept. 23, 2015) (11:57 AM email granting fee waiver).

⁴ 5 U.S.C. § 552(a)(6)(A)(i).

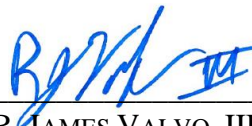
October 15, 2015

Page 2

Further, NARA granted Cause of Action expedited processing but has failed to provide it. According to NARA's regulations, one of the bases that qualifies a request for expedited processing is when the "matter [is] of widespread and exceptional media interest in which there exist possible questions that affect public confidence in the Government's integrity."⁵ Cause of Action's FOIA request meets that standard and NARA appropriately granted the requested expedited processing.

Once an agency grants expedited processing it must move the request "to the front of the agency's processing queue"⁶ and process it "as soon as practicable."⁷ Agencies do not have "unfettered discretion to determine when to process expedited requests[.]"⁸ An agency that "violates the twenty-day deadline applicable to standard FOIA requests presumptively also fails to process an expedited request 'as soon as practicable.' That is, a *prima facie* showing of agency delay exists when an agency fails to process an expedited FOIA request within the time limit applicable to standard FOIA requests."⁹ This presumption is rebuttable by an agency showing of "credible evidence that disclosure within such time period is truly not practicable."¹⁰ In none of NARA's communications with Cause of Action, however, has it invoked any of the "unusual circumstances" under which the statute allows for a delayed response,¹¹ nor has it or the Library justified the failure to make a final determination within the presumptive twenty-day period applicable to the expedited processing of FOIA requests. Therefore, NARA and the Library have failed to provide expedited processing and otherwise are in violation of their statutory obligations to make a final determination within twenty business days.

Please contact me as soon as possible to arrange for a final determination on this request and for the production of responsive records. My email address is james.valvo@causeofaction.org and my telephone number is (202) 417-3576. Thank you for your attention to this matter.



R. JAMES VALVO, III
COUNSEL & SENIOR POLICY ADVISOR

⁵ 36 C.F.R. § 1250.28(a)(4).

⁶ *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 259 (D.D.C. 2005).

⁷ 5 U.S.C. § 552(a)(6)(E)(iii).

⁸ *Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 38 (D.D.C. 2006).

⁹ *Id.* at 39; *see also Elec. Frontier Found. v. Office of the Dir. of Nat'l Intelligence*, 542 F. Supp. 2d 1181, 1186 (N.D. Cal. 2008); *Gerstein v. Cent. Intelligence Agency*, No. 06-4643, 2006 U.S. Dist. LEXIS 89883, *9 (N.D. Cal. Nov. 29, 2006).

¹⁰ *Elec. Privacy Info. Ctr.*, 416 F. Supp. 2d at 39.

¹¹ *See* 5 U.S.C. § 552(a)(6)(B)(iii)(III).



October 16, 2015

R. James Valvo, III
Counsel & Senior Policy Advisor
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC

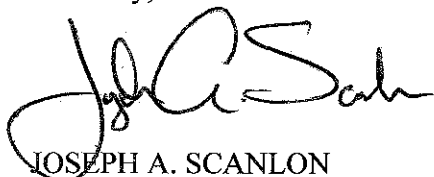
Re: NARA Case No. NGC15-364

Dear Mr. Valvo:

We have received your letter dated October 15, 2015, in connection with the above-referenced Freedom of Information (FOIA) request. Your September 14, 2015 request has been assigned the above internal FOIA case number in addition to the *FOIAonline* case number NARA-NGC-2015-000613.

As you are aware, we have granted your request for expedition. As a result, we do plan to give your request priority for processing more quickly than would otherwise occur in the absence of expedition. However, please be advised that your request has been placed behind two older FOIA requests for which we have previously granted expedited processing. We will process your request as soon as practicable when it rises to the top of our expedited request queue.

Sincerely,



JOSEPH A. SCANLON
FOIA Officer
Office of General Counsel
(301) 837-0583
joseph.scanlon@nara.gov

NATIONAL ARCHIVES *and*
RECORDS ADMINISTRATION

8601 ADELPHI ROAD
COLLEGE PARK, MD 20740-6001

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