

# Exhibit 10



September 28, 2015

**VIA FACSIMILE**

Central Intelligence Agency  
Information & Privacy Coordinator  
Washington, D.C. 20505  
Fax: (703) 613-3007

**Re: Freedom of Information Act Request**

Dear Ms. Garner:

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.

On June 23, 2015, Senator Ron Johnson, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs (“HSGAC”), wrote to the Inspectors General (“IG”) of all Executive branch departments and agencies to request that they examine agency compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the extent to which political appointees may have been involved with agency FOIA processes.<sup>2</sup> IGs were requested to perform the required analyses and report back to HSGAC “within 60 days,” that is, before August 22, 2015.

Pursuant to FOIA, Cause of Action hereby requests access to a copy of any report or response, including attachments and exhibits, to the aforementioned letter from Senator Johnson.

**Request for a Public Interest Fee Waiver**

Cause of Action requests a waiver of any and 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 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 will unquestionably shed

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

<sup>2</sup> E.g., Memorandum Concerning the Evaluation of Involvement of Political Appointees in NRC’s FOIA Process (OIG-15-A-18) at 11-14 (Aug. 18, 2015) (Johnson Letter) (attached as Exhibit 1), available at <http://goo.gl/xtFrqN>.

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

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

light on the “operations or activities of the government,” namely, agency compliance with FOIA and the extent to which non-career officials may be involved in politicizing FOIA processes. Disclosure is likely to “contribute significantly” to the public’s understanding of FOIA operations because, to date, the public knows little about how agencies comply with FOIA, let alone how they avoid undue influence of political appointees in the review of FOIA requests and proposed productions. The Annual FOIA Reports that are publicly-available often lack the detailed analysis requested by HSGAC in this instance. Similar reports compiled and published by the Department of Justice Office of Information Policy also lack this information.

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, has no commercial interest in making this request. The requested information will be used solely to educate the general public about agency compliance with FOIA and the extent to which FOIA processes have been politicized, to the extent this can be demonstrated by responsive records.

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

For fee status purposes, Cause of Action also qualifies as a “representative of the news media” under FOIA.<sup>5</sup> 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.<sup>6</sup> 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. 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, newsletters, and Congressional testimony and statements for the record.<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.

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

<sup>6</sup> *Cause of Action*, 2015 U.S. App. LEXIS 14934 at \*30.

<sup>7</sup> *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>.

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

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 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 Ryan Mulvey by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org. Thank you for your attention to this matter.

#### **CAUSE OF ACTION INSTITUTE**

BY



RYAN P. MULVEY  
COUNSEL

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

<sup>10</sup> See, e.g., 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, U.S. 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, 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).