

# Exhibit 9



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

1875 Eye Street, Ste. 800 · Washington, DC 20006

May 20, 2016

**VIA CERTIFIED MAIL**

Ms. Rhonda O'Reilly  
IRS FOIA Request  
HQ FOIA  
Stop 211  
P.O. Box 621506  
Atlanta, GA 30362-3006

**Re: Freedom of Information Act Request**

Dear Ms. O'Reilly:

I write on behalf of Cause of Action Institute, a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.<sup>1</sup> In carrying out its mission, Cause of Action Institute 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 Institute hereby requests access to all communications between Douglas Shulman, Steven Miller, Daniel Werfel, or John Koskinen, and Andrew C. Strelka, Danielle C. Gray, or Boris Bershteyn. The time period for this request is January 2010 to June 2014. The scope of this request includes, but is not limited to, correspondence via e-mail, instant/text message, and formal letter, as well as work calendar entries, visitor logs, and meeting notes.

**Request for a Public Interest Fee Waiver**

Cause of Action Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the IRS 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

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<sup>1</sup> See CAUSE OF ACTION INSTITUTE, *About*, [www.causeofaction.org/about/](http://www.causeofaction.org/about/) (last accessed Apr. 26, 2016).

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primarily in the commercial interest of the requester.”<sup>2</sup> In this case, the requested records would disclose how the IRS interacted with the White House on matters pertaining to the processing of applications for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code. These sorts of communications have not been widely distributed, and their disclosure and dissemination would contribute to public understanding of the nature of the relationship between White House officials and political appointees at the IRS.

Cause of Action 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 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 the Institute’s regularly published online newsletter, memoranda, reports, or press releases.<sup>3</sup> In addition, as Cause of Action 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, Cause of Action Institute also qualifies as a “representative of the news media.”<sup>4</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>5</sup> Cause of Action 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.<sup>6</sup>

Although it is not required by the statute, Cause of Action 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.<sup>7</sup> These distinct works

<sup>2</sup> 5 U.S.C. § 552(a)(4)(A)(iii); 26 C.F.R. § 601.702(f)(2); *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).

<sup>3</sup> *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).

<sup>4</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II); 26 C.F.R. § 601.702(f)(3)(ii)(B).

<sup>5</sup> *See Cause of Action*, 799 F.3d at 1121.

<sup>6</sup> Cause of Action Institute notes that the IRS definition of “representative of the news media,” 26 C.F.R. § 601.702(f)(3)(ii)(B), is in conflict with the statutory definition and controlling case law. The agency 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. *See Cause of Action*, 799 F.3d at 1125 (“Congress . . . omitted the ‘organized and operated’ language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an ‘organized and operated’ requirement to the statutory definition.”). Yet, under either definition, Cause of Action Institute qualifies as news media requester.

<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*

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are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. Cause of Action Institute also 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 Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."<sup>8</sup> In light of the foregoing, numerous federal agencies have appropriately recognized the Institute's news media status in connection with its FOIA requests.<sup>9</sup>

### **Record Preservation Requirement**

Cause of Action 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.<sup>10</sup>

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*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> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</sup> *See, e.g.*, 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. Commc'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).

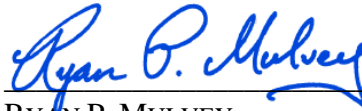
<sup>10</sup> *See* 26 C.F.R. § 601.702(e)(14); 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of 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).

**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, Cause of Action 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) 499-4232 or by e-mail at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org). Thank you for your assistance.

Sincerely,



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RYAN P. MULVEY  
COUNSEL