

# Exhibit 5



November 3, 2015

**VIA E-MAIL**

Dr. James Holzer, Director  
Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road, Room 2510  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)

**Re: Department of the Treasury FOIA Request No. 2013-06-131**

Dear Dr. Holzer:

I write on behalf of Cause of Action, 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 uses various investigative and legal tools to educate the public about the importance of government transparency and accountability, including the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. This letter is a request for the assistance of the Office of Government Information Services (“OGIS”) in contacting the Department of Treasury (“Treasury”) with respect to a substantially overdue FOIA request.

More than twenty-eight months ago, on June 25, 2013, Cause of Action submitted a FOIA request to Treasury seeking four categories of records related to Treasury’s process for reviewing “sensitive information” in response to FOIA requests.<sup>2</sup> Notwithstanding an acknowledgment letter dated July 1, 2013,<sup>3</sup> the agency has failed to issue any further update, let alone a final determination. Following countless e-mail and telephone inquiries that went unanswered or otherwise produced no substantive update, last month, in a further attempt to alert the agency to its non-responsiveness and obligations under FOIA, Cause of Action sent a letter requesting a final determination and prompt production of responsive records.<sup>4</sup> That letter remains unacknowledged.

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<sup>1</sup> See CAUSE OF ACTION, [www.causeofaction.org](http://www.causeofaction.org) (last accessed Nov. 3, 2015).

<sup>2</sup> Letter from Cause of Action to Hugh Gilmore, Dir. of Disclosure Servs., Dep’t of the Treasury (June 25, 2013) (attached as Exhibit 1).

<sup>3</sup> Letter from Hugh Gilmore, Dir. of Disclosure Servs., Dep’t of the Treasury, to Cause of Action (July 1, 2013) (attached as Exhibit 2).

<sup>4</sup> Letter from Cause of Action to Ryan Law, Dir. of Disclosure Servs., Dep’t of the Treasury (Oct. 6, 2015) (attached as Exhibit 3).

It has been 861 days since the submission of Cause of Action's FOIA request. Despite repeated attempts to contact Treasury's Disclosure Office to receive an update on the processing of the request, Cause of Action's attempts have proved futile. Indeed, we last spoke to an actual Treasury employee in or around April 2014. Treasury's non-responsiveness is entirely unacceptable.

As you know, FOIA requires that an agency issue a determination on any request within twenty working days of receiving it,<sup>5</sup> or in the case of unusual circumstances, within thirty working days.<sup>6</sup> In this case, Treasury invoked an automatic extension for unusual circumstances.<sup>7</sup> But it is hard to imagine that Cause of Action's request is so complicated, or potentially responsive records so voluminous, as to justify a delay of over two years. At the least, Treasury should respond to Cause of Action's repeated attempts to secure an update on the processing of its request and to receive an estimated date of completion – information that an agency is *statutorily required* to provide.<sup>8</sup>

Considering the significant delay in the processing of the FOIA request, Cause of Action seeks to have Treasury issue a final determination forthwith and to produce promptly any responsive records. Additionally, Treasury should contact Cause of Action to provide an estimated timeline for these actions and to provide other available details on the processing of the request. It is Cause of Action's hope that OGIS will be able to provide mediation services in this regard.

In accordance with the Privacy Act of 1974, as amended, Cause of Action hereby authorizes OGIS to make inquiries on Cause of Action's behalf, including the right to review all documentation that OGIS deems necessary in connection with Cause of Action's request for assistance regarding the aforementioned FOIA request. Cause of Action understands that any documents provided to OGIS may be copied and forwarded to officials at Treasury as part of the mediation/resolution process. Cause of Action also authorizes any Federal department, agency, or component to release to OGIS information and records related to Cause of Action's request.

Thank you for your immediate attention to this matter. Please feel free to contact me by e-mail at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org) or by telephone at (202) 499-4232.

Sincerely,

  
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RYAN P. MULVEY  
COUNSEL

Encl. (3)

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<sup>5</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>6</sup> *Id.* § 552(a)(6)(B)(i).

<sup>7</sup> Gilmore Letter, *supra* note 3.

<sup>8</sup> 5 U.S.C. § 552(a)(7)(B)(ii).

**EXHIBIT**  
**1**



**VIA FACSIMILE AND ELECTRONIC FILING**

June 25, 2013

Hugh Gilmore  
Director, Disclosure Services  
FOIA Request  
Department of the Treasury  
Washington, DC 20220  
Facsimile: (202) 622-3895

**RE: Freedom of Information Act Request**

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests access to the following records pertaining to the Department of the Treasury's process for reviewing "sensitive information" in response to FOIA requests:

1. Cover e-mails, cover sheets, and memoranda that have been provided by FOIA personnel to Treasury's sensitive review committee since December 31, 2009;
2. Processing metrics for the sensitive FOIA requests since December 31, 2009;
3. Agendas for all sensitive review committee meetings since December 31, 2009; and
4. E-mail from October 1, 2009 through December 31, 2009, between or among employees of Office of the Executive Secretary, Office of the General Counsel, Office of Legislative Affairs, Office of Public Affairs, the Office of the Deputy Assistant Secretary for Privacy, Transparency, and Records (including Disclosure Services), and the Office of Financial Stability pertaining to the sensitive review process.

**Cause of Action Is Entitled to News Media Status**

For fee purposes, Cause of Action qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii)(II). Cause of Action is organized and operated, inter alia, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, [www.causeofaction.org](http://www.causeofaction.org). Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates

Mr. Hugh Gilmore  
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regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."<sup>1</sup>

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news and journalism. As a result, federal agencies have continually recognized Cause of Action as a representative of the media in connection with its FOIA requests.<sup>2</sup>

#### **Cause of Action Is Entitled to a Public-Interest Fee Waiver**

Additionally, Cause of Action requests a waiver of any and all applicable fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), which provides that requested records shall be furnished 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." As discussed below, Cause of Action satisfies the statutory standard for a fee waiver.

A. *Disclosure of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.*

As an initial matter, we note that "obtaining information to act as a 'watchdog' of the government is a well-recognized public interest in the FOIA."<sup>3</sup> It is for this reason that Cause of Action seeks disclosure of the requested records. In this instance, the request meets the four-factor test used by Treasury to determine whether disclosure of the requested information is in the public interest.<sup>4</sup> First, the requested records concern identifiable "operations or activities of

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<sup>1</sup> Newsletters, Cause of Action, available at <http://causeofaction.org/newsletters/>.

<sup>2</sup> See, e.g., FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request HQ-2013-00940-F, Dep't of Energy (Apr. 26, 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); Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

<sup>3</sup> *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Ctr. to Prevent Handgun Violence v. U.S. Dep't of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) ("This self-appointed watchdog role is recognized in our system.").

<sup>4</sup> See 31 C.F.R. 1.7(d) (2012) (incorporating the fee waiver policy guidance issued by the Department of Justice on April 2, 1987, available at [http://www.justice.gov/oip/foia\\_updates/Vol\\_VIII\\_1/viii1page2.htm](http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm)).

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the government,”<sup>5</sup> specifically Treasury’s formal but heretofore secret practice of applying extra scrutiny to certain FOIA requests. Second, the requested information is “likely to contribute”<sup>6</sup> to the understanding of the Treasury’s FOIA operations because the requested information is not already in the public domain and will meaningfully inform the public about Treasury’s FOIA process. Third, disclosure will contribute to “public understanding,” as opposed to the understanding of the requester or a narrow segment of interested persons.<sup>7</sup> We note in this context that Cause of Action has both the intent and ability to make the results of this request available to the public in various medium forms. Our staff has a combined forty-five (45) years of 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. Fourth, and lastly, disclosure is likely to contribute “significantly” to the public understanding of Treasury’s sensitive review FOIA process, because the requested records will shed light on its origins, breadth, and purpose -- and such information is not readily available from other sources.<sup>8</sup>

*B. Disclosure of the requested information is not primarily in the commercial interest of Cause of Action.*

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under § 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. Rather, this information will be used to further the knowledge and interests of the general public regarding how the Internal Revenue Service evaluates applicants for nonprofit, 501(c)(4) status. In the event the disclosure of this information creates a profit motive, that is not dispositive for the commercial interest test; media or scholars may have a profit motive as long as the dissemination of the information is in their professional capacity and would further the public interest.<sup>9</sup> Therefore, Cause of Action also satisfies this statutory standard.<sup>10</sup>

**Production of Information and Contact Information**

In an effort to facilitate record production and to mitigate the cost of duplication, Cause of Action requests the production of records in electronic format (*e.g.*, e-mail, pdf). If a certain set of responsive records can be produced more readily, we respectfully request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*


<sup>8</sup> *Id.*

<sup>9</sup> See *Campbell v. U.S. Dep’t of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>10</sup> See 5 U.S.C. § 552(a)(4)(A)(iii).

Mr. Hugh Gilmore  
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If you have any questions about this request, please contact me by e-mail at [robyn.burrows@causeofaction.org](mailto:robyn.burrows@causeofaction.org) or by telephone at (202) 499-4232. Thank you for your attention to this matter.

  
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Robyn Burrows  
Staff Attorney



# EXHIBIT

2



**DEPARTMENT OF THE TREASURY**  
WASHINGTON, D.C. 20220

July 1, 2013

RE: 2013-06-131

Ms. Robyn Burrows  
Cause of Action  
1919 Pennsylvania Ave., N.W.  
Washington, DC 20006  
**E-MAIL: [robyn.burrows@causeofaction.org](mailto:robyn.burrows@causeofaction.org)**

Dear Ms Burrows:

This concerns your Freedom of Information Act (FOIA) request submitted via FOIA OnLine on June 25, 2013, which was received in this office.

Every effort will be made in the Departmental Offices (DO) to provide you with a timely response. However, please be advised that unusual circumstances exist regarding a search and review of this information because two or more offices will need to be consulted to determine a response. In addition, the timeframe of the requested records have the potential of resulting in voluminous records. This will require an additional processing extension of ten (10) days.

Your request for a fee waiver will be addressed by the program office(s) assigned to the processing of your request. They will contact you directly. Your request may require further submissions, justifications, and or more reasonable descriptions.

Further inquiries concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202-622-3895 or mailed to:

FOIA Request  
Disclosure Services  
Department of the Treasury  
Washington, DC 20220

Sincerely,

Hugh Gilmore  
Director, Disclosure Services

# EXHIBIT

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Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

October 6, 2015

**VIA FACSIMILE**

Mr. Ryan Law  
Director, FOIA & Transparency  
Department of the Treasury  
FOIA & Transparency Office  
Washington, D.C. 20220  
Fax: (202) 622-3895

**Re: Freedom of Information Act Request No. 2013-06-131**

Dear Mr. Law:

More than twenty-seven months ago, on June 25, 2013, Cause of Action submitted a Freedom of Information Act ("FOIA") request to the Department of the Treasury seeking four categories of records related to the Department's process for reviewing "sensitive information" in response to FOIA requests.<sup>1</sup> Notwithstanding the Department's acknowledgment letter dated July 1, 2013, the agency has failed to issue any further correspondence, let alone a determination.<sup>2</sup>

It has been 833 days since the submission of Cause of Action's FOIA request. Despite repeated attempts to contact the Disclosure Office by telephone and e-mail to receive an update on the processing Cause of Action's FOIA request, Cause of Action's attempts have, by far, been unsuccessful. Indeed, Cause of Action employees last spoke to an actual Department employee in or around April 2014. Cause of Action's e-mails and phone messages have otherwise gone unanswered. The Department's response is substantially overdue.

As you know, FOIA requires that an agency issue a determination on any FOIA request within twenty working days of receiving it,<sup>3</sup> or in the case of unusual circumstances, within thirty working days.<sup>4</sup> In this case, the Department invoked the automatic statutory extension for unusual circumstances.<sup>5</sup> But it is hard to imagine that Cause of Action's request is so complicated, or potentially responsive records so voluminous, as to justify a further delay of over two years.

<sup>1</sup> Letter from Cause of Action to Hugh Gilmore, Dir. of Disclosure Servs., Dep't of the Treasury (June 25, 2013) (attached as Exhibit 1).

<sup>2</sup> Letter from Hugh Gilmore, Dir. of Disclosure Servs., Dep't of the Treasury, to Cause of Action (July 1, 2013) (attached as Exhibit 2)

<sup>3</sup> 5 U.S.C. § 552(a)(6)(A)(i).

<sup>4</sup> *Id.* § 552(a)(6)(B)(i).

<sup>5</sup> Gilmore Letter, *supra* note 2.

Considering the significant delay in the processing of Cause of Action's request, Cause of Action respectfully requests that the Department of Treasury issue a final determination and produce any responsive records forthwith.

Thank you for your immediate attention to this matter. If you have any questions, please contact me by email at [ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org) or by telephone at (202) 499-4232.

Sincerely,



RYAN P. MULVEY  
COUNSEL