

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

CAUSE OF ACTION INSTITUTE	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-1649
	)	
FEDERAL TRADE COMMISSION	)	
	)	
Defendant.	)	

---

**EXHIBIT 8 TO COMPLAINT**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of the General Counsel

David C. Shonka  
Principal Deputy General Counsel

January 21, 2015

JAN 26 2015

Patrick Massari  
Cause of Action  
1919 Pennsylvania Ave NW, Suite 650  
Washington, DC 20006

Re: Freedom of Information Act (FOIA) Request-2015-00110

Dear Mr. Massari:

This letter responds to your appeal, received in this office on December 19, 2014, of our November 20, 2014 denial of news media requester status for your FOIA request.<sup>1</sup> In your original FOIA request, received October 30, 2014, you sought access to all documents (including, but not limited to, communications via e-mail, text, or facsimile): (1) regarding Margaret (or Maggie) Lassack or Alain Sheer; and (2) reflecting communications with the House Committee on Oversight and Government Reform regarding the matter *In re: LabMD, Inc.*, from August 28, 2013 to present.

As you are likely aware, Cause of Action (COA) is currently appealing the summary judgment granted in *Cause of Action v. FTC*, 961 F. Supp. 2d 142 (D.D.C. 2013), a decision that affirmed this agency's denial of your organization's request for news media requester status. That case aside, however, an agency's determination of an individual requester's fee status category is dependent on the intended use of the information sought. Here, I find that COA has an obvious commercial purpose in requesting communications referencing the staff attorneys assigned to the *LabMD* matter, and with the House Committee on Oversight and Government Reform for the same matter. Although in your appeal letter you failed to mention your organization's role as opposing counsel in the Commission's pending litigation against LabMD, your organization's website prominently advertises that fact.<sup>2</sup> Further, I do not find credible the claim in your appeal letter that you made the request on your own behalf and not your client's. We could not distinguish your organization's website maintenance activities from its activities as counsel to LabMD, especially where we were unable to find a single mention of the case on your website that does not also mention COA's ongoing role as LabMD's counsel.

<sup>1</sup> A reply to your appeal dated January 15, 2015 regarding the same matter is forthcoming.

<sup>2</sup> See COA's public website at <http://causeofaction.org/related-documents-federal-trade-commission-v-labmd/>.

A FOIA request is in the commercial interest of the requester if it directly relates to its pending litigation against the agency. *See Rozet v. HUD*, 59 F. Supp. 2d 55, 57 (D.D.C. 1999) (finding commercial interest where requester sought documents to defend his corporations in civil fraud action, and discounting plaintiff's assertion that information was not of commercial interest where timing and content of requests in connection with other non-FOIA litigation conclusively demonstrated otherwise). In addition, although the news media status litigation is pending on appeal, the District Court expressly noted that one of the three requests at issue in that case was motivated by litigation rather than public good: "Even if the Court were to consider the commercial interest prong of the test, however, it would likely find COA's second request fails that as well, because of its nexus with the lawsuit plaintiff filed against the agency." *Cause of Action v. FTC*, 961 F. Supp. 2d at 159 n.4. Here, I find that your organization's intent to inform the public with the information released under this request is, at most, secondary to the commercial use of the information as counsel to LabMD. Therefore, I am denying your appeal.

As required by the FOIA, you are hereby advised that judicial review of this decision may be obtained under 5 U.S.C. § 552(a)(4)(B) in a United States District Court in the district where you reside, have your principal place of business, or in the United States District Court for the District of Columbia. You are also advised that I am the designated official responsible for this decision. Finally, I note that the 2007 FOIA amendments created the Office of Governmental Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requestors and Federal agencies as a non-exclusive alternative to litigation. See <https://ogis.archives.gov>. Using OGIS services does not affect your right to pursue litigation. OGIS's contact information is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001  
[ogis@nara.gov](mailto:ogis@nara.gov)  
phone: 202-741-5770, or toll-free 1-877-684-6448  
fax: 202-741-5769

Sincerely,



David C. Shonka  
Principal Deputy General Counsel