

EXHIBIT

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CAUSE of ACTION

INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

January 9, 2018

VIA EMAIL

Mr. David Shonka, Acting General Counsel
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580
E-mail: FOIA@ftc.gov; dshonka@ftc.gov

Re: Freedom of Information Act Request re: *Federal Trade Comm'n, et al. v. Vylah Tec, et al.*, No. 2:17-cv-00228 (M.D. Fla.)

Dear Mr. Shonka:

I write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. To that end, we are examining the Federal Trade Commission’s (“FTC”) involvement in ongoing litigation, captioned *Fed. Trade Comm’n, et al. v. Vylah Tec, et al.*, No. 2:17-cv-00228 (M.D. Fla.). The District Court assigned a Receiver, Barry Mukamal, to the case. The Plaintiffs’ Motion for a Temporary Restraining Order also attached a declaration executed by Matthew Luongo.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and as further described below, CoA Institute hereby requests access to the following records for the time period January 1, 2014, to the present:²

1. All records, documents, and communications (including emails, text messages, and voicemails) sent by, between, or amongst FTC attorney Robin Rock and Receiver Barry Mukamal or his attorneys or employees, including, but not limited to, Frank Kessler, Benjamin Zuckerman and Charles Lichtman.

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/ (last visited Jan. 8, 2018).

² For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means the entirety of a record any portion of which contains responsive information. See *Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, 830 F.3d 667, 677 (D.C. Cir. 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

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2. All records, documents, and communications (including emails, text messages, and voicemails) sent by, between, or amongst FTC attorney Robin Rock and Matthew Luongo or anyone acting on behalf of Matthew Luongo.
3. All records, documents, and communications (including emails, text messages, and voicemails) sent by, between, or amongst FTC attorney Sana Chriss and Receiver Barry Mukamal or his attorneys or employees, including, but not limited to, Frank Kessler, Benjamin Zuckerman and Charles Lichtman.
4. All records, documents, and communications (including emails, text messages, and voicemails) sent by, between, or amongst FTC attorney Sana Chriss and Matthew Luongo or anyone acting on behalf of Matthew Luongo.

Record Preservation Requirement

CoA 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.³ Therefore, records within the scope of this FOIA request must be preserved; FTC's forty-five-day document destruction program is not a valid basis to delete or otherwise destroy documents responsive to this FOIA request.⁴

Litigation Hold

In the event FTC disagrees with the Record Preservation Requirement above, I request that the disclosure officer issue an immediate hold on any and all records responsive to or potentially responsive to this request as CoA Institute anticipates

³ See 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). See generally 44 U.S.C. § 3301 *et seq.* (requiring the FTC to retain documents that are "records" under the Federal Records Act).

⁴ See generally *FTC v. Lights of Am. Inc.*, No. SACV 10-1333 JVS, 2012 WL 695008, at *5 (C.D. Cal. Jan. 20, 2012) (discussing "FTC's 45-Dav Auto-Delete Policy").

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litigation arising under FOIA, the Administrative Procedure Act, or the Federal Records Act.⁵

Agreement to Pay Costs

CoA Institute agrees to pay up to \$5,000.00 in search fees, reproduction costs, and any other applicable costs for this request. If costs will exceed \$5,000.00, please contact me immediately.

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, CoA 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) 470-2396 or by e-mail at eric.bolinder@causeofaction.org. Thank you for your attention to this matter.



Eric R. Bolinder
COUNSEL

⁵ 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).