



December 24, 2013

**VIA EMAIL AND CERTIFIED MAIL**

Ms. Carmen L. Mallon  
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Office of Information Policy  
Department of Justice  
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Washington, DC 20530-0001  
Email: DOJ.OIP.FOIA@usdoj.gov

**RE: Freedom of Information Act Request**

Dear Ms. Mallon:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Cause of Action hereby requests access to the following records of the U.S. Department of Justice (DOJ) from January 21, 2009 to the present:

1. All documents, including but not limited to email communications, referring or relating to Executive Order 13457, "Protecting American Taxpayers from Government Spending on Wasteful Earmarks."<sup>1</sup>
2. All documents, including but not limited to email communications between and among any political appointee, White House liaison, congressional liaison, and/or any employee of the White House,<sup>2</sup> referring or relating to any request to commit, obligate, or expend funds.
3. All documents evidencing the agency's decision to commit, obligate, or expend funds based upon a request from Congress or the White House.

**Request for public interest fee waiver**

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.

<sup>1</sup> Exec. Order No. 13,457, 73 Fed. Reg. 6,417 (Feb. 1, 2008).

<sup>2</sup> "White House" should be construed to include the President, the Vice President, their advisers and any employee or officer of the Executive Office of the President.

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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> In this instance, Cause of Action seeks disclosure of the requested records as a “watchdog” of government spending. As discussed below, the request meets the four-factor test used by the DOJ 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 the government,”<sup>5</sup> namely, the DOJ’s spending practices as well as how the Executive Branch and Congress shapes federal spending decisions committed to an agency’s discretion. Second, the requested information is “likely to contribute” to understanding the DOJ’s operations because the public is largely unaware of the manner in which funds are awarded and their susceptibility to politicization.<sup>6</sup>

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 media. Our 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. For example, Cause of Action recently published two reports on its website that reached a broad segment of the public via Twitter and email.<sup>8</sup> Fourth, disclosure is likely to “significantly” contribute to the public understanding, as the requested records are not readily available from any public sources.<sup>9</sup>

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<sup>3</sup> *Baltimore 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* 28 C.F.R. § 16.11(k) (DOJ FOIA requirements for waiver or reduction of fees under the “public interest” test).

<sup>5</sup> *Id.* § 16.11(k)(2)(i).

<sup>6</sup> *Id.* § 16.11(k)(2)(ii).

<sup>7</sup> *Id.* § 16.11(k)(2)(iii).

<sup>8</sup> *See* CAUSE OF ACTION, *GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM* (Sept. 23, 2013), <http://causeofaction.org/2013/09/23/greentech-automotive-a-venture-capitalized-by-cronyism-2/>; *see also* CAUSE OF ACTION, *POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I* (Aug. 2, 2013), <http://causeofaction.org/2013/08/02/political-profiteering-how-forest-city-enterprises-makes-private-profits-at-the-expense-of-americas-taxpayers/>.

<sup>9</sup> 28 C.F.R. § 16.11(k)(2)(iv).

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

Cause of Action does not seek the requested information to benefit commercially.<sup>10</sup> Cause of Action is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code. Our organization is committed to advancing public awareness of the activities of government agencies and ensuring the lawful and appropriate use of government funds by those agencies. Disclosure of the requested information would not significantly further any business, trade, or profit interest. Rather, Cause of Action intends to use the information to educate the public about DOJ's spending and its implementation of Executive Order 13457.<sup>11</sup> For the foregoing reasons, this request is not primarily in Cause of Action's commercial interest and Cause of Action is entitled to a waiver of any fees.

**Request for news media status**

For fee purposes, Cause of Action also 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 research, generate, 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 gleans the information that it regularly publishes from a wide variety of sources and methods, including whistleblowers/insiders, government agencies, universities, scholarly works, and FOIA requests. Cause of Action routinely and systematically disseminates information acquired from such sources to the public through various media. For example, Cause of Action distributes articles, blog posts, published reports, and newsletters about current events of interest to the general public through its website, which has been viewed just under 120,000 times in the past year alone.<sup>12</sup> Cause of Action also disseminates news to the public via social media platforms Twitter and Facebook, and provides news updates to subscribers via e-mail. As a result of these activities, federal agencies have repeatedly recognized Cause of Action's news media status in connection with its FOIA requests.<sup>13</sup>

**Record production and contact information**

In an effort to facilitate record production, please provide the responsive records in electronic format (*e.g.*, email, pdf). If a certain set of responsive records can be produced more

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<sup>10</sup> *Id.* § 16.11(k)(3)(i) (requiring that the request not be primarily in the commercial interest of the requestor to qualify for a fee waiver).

<sup>11</sup> *See* *Campbell v. U.S. Dep't of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

<sup>12</sup> *See* [www.causeofaction.org](http://www.causeofaction.org); Google Analytics for [www.causeofaction.org](http://www.causeofaction.org) (Jan. 1, 2013 – Dec. 20, 2013) (on file with author).

<sup>13</sup> *See, e.g.*, FOIA Request 14F-036, Health Res. and Serv. Admin. (Dec. 6, 2013); FOIA Request CFPB-2014-010-F, Consumer Fin. Prot. Bureau (Oct. 7, 2013); FOIA Request 2013-01234-F, U.S. Dep't of Energy (July 1, 2013); FOIA Request 2013-145F, Consumer Fin. Prot. Bureau (May 29, 2013); FOIA Request 2013-073, U.S. Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, U.S. Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, U.S. Dep't of the Interior (Feb. 17, 2012); U.S. Dep't of Commerce (Mar. 1, 2012); FOIA Request No. 12-00455-F., U.S. Dep't of Educ. (Jan. 20, 2012).

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readily, we request that those records be produced first and that the remaining records be produced on a rolling basis as circumstances permit.

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

  
ALLAN BLUTSTEIN  
SENIOR COUNSEL