IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

___________________________________________

CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendant.

___________________________________________)

COMPLAINT

1. Plaintiff Cause of Action Institute ("CoA Institute") brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, seeking access to records maintained by Defendant United States Department of Justice ("DOJ").

2. The records at issue in this case include communications between DOJ components—viz., the Office of Information Policy ("OIP") and the Office of Legislative Affairs ("OLA")—and other federal government entities, including Congress, the White House, and twelve other federal agencies. These communications pertain to the proper treatment of records exchanged between Executive Branch agencies and Congress for purposes of the FOIA.

3. CoA Institute submitted its request in the wake of reports that Representative Jeb Hensarling, Chairman of the United States House of Representatives Committee on Financial Services, had sent a letter to agencies under the Committee’s jurisdiction directing them to treat all records exchanged with the Committee as "congressional records" not subject to the FOIA. See, e.g., Mary Ann Georgantopoulos, These Federal Agencies Agreed To Conceal Some Of Their

4. The troubling implications of Chairman Hensarling’s directive for agency compliance with the FOIA are self-evident. See Ryan Mulvey, The next front in the FOIA War: Congress blocking disclosure of its dealings with the Executive Branch, The Hill, May 8, 2017, http://bit.ly/2tIyBsF. The requested records at issue will shed light on the DOJ’s awareness of, or potential involvement in, developing Chairman Hensarling’s directive, as well as the DOJ’s coordination of responses to that directive by the relevant federal agencies.

5. By failing to provide a determination on CoA Institute’s request or to produce non-exempt portions of responsive records in a timely manner, the DOJ has withheld records to which CoA Institute has a right and that serve the public interest in transparent, accountable government.

JURISDICTION AND VENUE


PARTIES

8. CoA Institute is a 501(c)(3) non-profit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. 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. It regularly requests access under the FOIA to the public records of federal agencies, entities, and offices, including the DOJ, and disseminates its findings, analysis, and commentary to the general public.
9. The DOJ is an agency within the meaning of 5 U.S.C. § 552(f)(1). DOJ components have possession, custody, or control of records to which CoA Institute seeks access and which are the subject of this Complaint.

FACTS

10. By letter, dated May 18, 2017, CoA Institute submitted a FOIA request to the DOJ seeking access to records from OIP and OLA relating to Representative Hensarling’s directive to treat all records exchanged with the Committee on Financial Services as “congressional records” for purposes of the FOIA. See Ex. 1 at 1–2.

11. CoA Institute identified the time period for the first item of its request as “March 10, 2017 to the present” and the time period for the second item of its request as “January 20, 2017 to the present.” Id. at 2.

12. For purposes of its request, CoA Institute indicated that “the term ‘present’ should be construed as the date on which the agency begins its search for responsive records.” Id. at 1 n.5 (citing Pub. Citizen v. Dep’t of State, 276 F.3d 634 (D.C. Cir. 2002)). CoA Institute further indicated that “[t]he term ‘record’ means the entirety of the record any portion of which contains responsive information.” Id. (citing Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review, 830 F.3d 667, 677–78 (D.C. Cir. 2016)).

13. For fee purposes, CoA Institute requested a public interest fee waiver and classification as a representative of the news media. Id. at 3–4.

14. By letter, dated June 22, 2017, the DOJ acknowledged that it had received CoA Institute’s FOIA request on May 24, 2017 and assigned the request two tracking numbers: DOJ-2017-004333 (OIP) and DOJ-2017-004398 (OLA). Ex. 2 at 1.
15. The DOJ also cited “unusual circumstances” and accordingly “extend[ed] the time limit to respond to [CoA Institute’s] request beyond the ten additional days provided by the statute.” *Id.* The DOJ assigned CoA Institute’s request to the agency’s “complex track” for FOIA processing. *Id.*

16. The DOJ did not issue determinations on CoA Institute’s requests for a public interest fee waiver and categorization as a representative of the news media, but instead indicated that the DOJ “will do so after [it] determine[s] whether fees will be assessed[.]” *Id.* at 2.

17. To date, the DOJ has failed to provide any update on its processing of CoA Institute’s FOIA request. The agency has yet to issue an interim response, final determination, or production of any responsive records.

**COUNT I**

**Violation of the FOIA: Failure to Comply with Statutory Requirements**

18. CoA Institute repeats all of the above paragraphs.

19. The FOIA requires an agency to accept and process any request for access to agency records that (a) “reasonably describes such records,” and (b) “is made in accordance with published rules stating the time, place, fees, . . . and procedures to be followed[.]” 5 U.S.C. § 552(a)(3)(A).

20. The FOIA further requires an agency to respond to a valid request within twenty (20) business days or, in “unusual circumstances,” within thirty (30) business days. *Id.* § 552(a)(6)(A)–(B). If an agency requires additional time, the FOIA mandates that the agency provide the requester “an opportunity to arrange with the agency an alternative time frame for processing the request[.]” *Id.* § 552(a)(6)(B)(ii).

21. CoA Institute’s May 18, 2017 FOIA request seeks access to agency records maintained by the DOJ, reasonably describes the records sought, and otherwise complies with the FOIA and applicable DOJ regulations.
22. More than thirty (30) business days have passed since the DOJ received CoA Institute’s FOIA request on May 24, 2017.

23. The DOJ has failed to issue a final determination on or produce records responsive to CoA Institute’s FOIA request within the applicable FOIA time limits.


RELIEF REQUESTED

WHEREFORE, CoA Institute respectfully requests and prays that this Court:

a. Order the DOJ to process CoA Institute’s May 18, 2017 FOIA request and to issue a determination on that request within twenty (20) business days of the date of the Order;

b. Order the DOJ to produce all responsive records promptly upon issuing its final determination on the May 18, 2017 FOIA request;

c. Award CoA Institute its costs and reasonable attorney fees incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and

d. Grant such other relief as the Court may deem just and proper.
Dated: July 18, 2017

Respectfully submitted,

/s/ Ryan P. Mulvey
Ryan P. Mulvey
D.C. Bar No. 1024362
Lee A. Steven
D.C. Bar No. 468543

CAUSE OF ACTION INSTITUTE
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ryanj.mulvey@causeofaction.org
lee.steven@causeofaction.org

Counsel for Plaintiff CoA Institute
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendant.

Civil Action No. 1:17-cv-1423

EXHIBIT 1 TO COMPLAINT
May 18, 2017

VIA CERTIFIED MAIL

U.S. Department of Justice
Office of Information Policy
ATTN: Laurie Day, Chief, Initial Request Staff
1425 New York Avenue, N.W., Ste. 11050
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Ms. Day:

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 investigative and legal tools to educate the public about the importance of government transparency and accountability.

According to recent reports, Representative Jeb Hensarling, Chairman of the United States House of Representatives Committee on Financial Services, sent a letter to various agencies under his Committee’s jurisdiction that directed them to treat all records exchanged with the Committee as “congressional records” not subject to the FOIA. 2 Specifically, Chairman Hensarling claimed that any communications with an agency, and any “documents created or compiled [by an agency] . . . in connection with any responses” to a congressional inquiry, could not qualify as “agency records,” regardless of whether they included a “legend” indicating how they could be used.3 Chairman Hensarling also argued that all such records would be “subject to the absolute protections of the Speech or Debate Clause of the Constitution.”4

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, CoA Institute hereby requests access to the following records:

1. All communications between or among the Department of Justice’s (“DOJ”) (i) Office of Information Policy or (ii) Office of Legislative Affairs, and any of the following agencies concerning or relating to Representative Jeb Hensarling’s directive to treat all records exchanged with the Committee on Financial Services as “congressional records” for purposes of the FOIA:

   a. Department of the Treasury;

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1 See CAUSE OF ACTION INST., About, www.causeofaction.org/about/ (last accessed May 18, 2017).
2 Mary Ann Georgantopoulos, These Federal Agencies Agreed To Conceal Some Of Their Communications From The Public, BUZZFEED NEWS (May 8, 2017), http://bzfd.it/2rihpcY; Mary Ann Georgantopoulos & Daniel Wagner, A House Committee Doesn’t Want You To See Its Correspondence With Government Officials, BUZZFEED NEWS (May 4, 2017), http://bzfd.it/2ruLXFO.
3 See, e.g., Letter from Jeb Hensarling, Chairman, U.S. H.R. Comm. on Fin. Servs., to Steven Mnuchin, Sec’y, Dep’t of the Treasury (Apr. 3, 2017) (attached as Exhibit 1).
4 Id.
2. All communications between or among the DOJ’s (i) Office of Information Policy or (ii) Office of Legislative Affairs, and any of the following entities or individuals concerning or relating to the treatment under the FOIA of records exchanged between Executive Branch agencies and Congress (i.e., congressional committees, Members, and/or congressional staff):

   a. White House Office, including the Office of the White House Counsel;
   b. United States House of Representatives Office of General Counsel;
   c. United States House of Representatives Committee on Ways and Means;
   d. United States House of Representatives Committee on Financial Services;
   e. Representative Jeb Hensarling, or any member of Representative Hensarling’s staff;
   f. Representative Maxine Waters, or any member of Representative Waters’s staff.

   The time period for this item of the request is January 20, 2017 to the present.\(^5\)

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\(^5\) 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 the record any portion of which contains responsive information. See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review, 830 F.3d 667, 677–78 (D.C. Cir. 2016) (admonishing agency for withholding information as
Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. The FOIA and relevant regulations provide that the DOJ 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 primarily in the commercial interest of the requester.” In this case, the requested records would shed light on the “operations or activities of the government,” namely, the DOJ’s communications with Congress and other agencies concerning the treatment of certain types of records under the FOIA.

Disclosure is likely to “contribute significantly” to public understanding of these matters because, to date, the records that CoA Institute seeks have not been made publicly available. CoA Institute intends to educate the public about the DOJ’s involvement with Chairman Hensarling’s controversial FOIA directive, and the DOJ’s efforts, if any, to advise other agencies as to how they should respond to that directive. The definition of an “agency record,” particularly vis-à-vis records concerning Congress, is a pressing issue for the requester community. Significant media coverage of this issue demonstrates that the requested records likely would contribute to public understanding of the “congressional records” determination and to the ongoing debate over the good government and transparency implications of Chairman Hensarling’s directive.

CoA Institute has the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant 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 a regularly published online newsletter, memoranda, reports, or press releases. CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code and, accordingly, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee purposes, CoA Institute qualifies as a “representative of the news media.” As the D.C. Circuit held, the “representative of the news media” test is properly focused on the requestor, not the specific request at issue. CoA Institute satisfies this test because it gathers information of

7 See Cause of Action Institute Signs Coalition Letter Opposing Congressional Interference with the FOIA (May 10, 2017), available at http://coainst.org/2qV87qc; see also Mary Ann Georgantopoulos, Government Watchdog Groups Say Congressman’s FOIA Letters Set “A Troubling Precedent,” BUZZFEED NEWS (May 9, 2017), http://bzfd.it/2qA5uUY.
9 See Cause of Action, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).
11 See Cause of Action, 799 F.3d at 1121.
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. Although it is not required by the statute,
CoA 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 product, including articles, blog posts,
investigative reports, newsletters, and congressional testimony and statements for the record.12
These distinct works are distributed to the public through various media, including the Institute’s
website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a “representative of the news media” contemplates that
organizations such as CoA Institute, which electronically disseminate information and publications
via “alternative media[,] shall be considered to be news-media entities.”13 In light of the foregoing,
numerous federal agencies, including DOJ components, have appropriately recognized CoA
Institute’s news media status in connection with its FOIA requests.14

12 See, e.g., Cause of Action Testifies Before Congress on Questionable White House Detail Program (May 19, 2015), available at
http://coainst.org/2aJ8UAA; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015),
available at http://coainst.org/2as0f88a; Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com (Sept. 8, 2014),
available at http://coainst.org/2aJ8sm5; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE
TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at http://coainst.org/2aFWxUZ; COA INSTITUTE,
GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at
http://coainst.org/2apTwqP; COA INSTITUTE, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES
PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at
http://coainst.org/2aJh901.
14 See, e.g., FOIA Request 2016-11-008, Dep’t of the Treasury (Nov. 7, 2016); FOIA Requests OS-2017-00057 & OS-
2017-00060, Dep’t of Interior (Oct. 31, 2016); FOIA Request 2017-00497, Office of Personnel Management (Oct. 21, 2016);
FOIA Request 092320176031, Centers for Medicare & Medicaid Services (Oct. 17, 2016); FOIA Request 17-
00054-F, Dep’t of Educ. (Oct. 6, 2016); FOIA Request DOC-OS-2016-001753, Dept. of Commerce (Sept. 27, 2016);
FOIA Request 2016-09-101, Dep’t of the Treasury (Sept. 21, 2016); FOIA Request DOC-OIG-2016-001732, Dept. of
Commerce OIG (Sept. 15, 2016); FOIA Request OS-2016-00435, Dep’t of the Interior (Aug. 31, 2016); FOIA Request
2016-366-F, Consumer Fin. Prot. Bureau (Aug. 11, 2016); FOIA Request F-2016-09406, Dept. of State (Aug. 11, 2016);
FOIA Request 2016-08-070, Dep’t of the Treasury (Aug. 10, 2016); FOIA Request 2016-00896, Bureau of Land Mgmt.,
Dep’t of the Interior (Aug. 10, 2016); FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep’t of Justice (Aug.
2, 2016); 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. 8, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm’n (Feb. 13, 2015);
Comm’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 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-
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.15

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) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org. Thank you for your attention to this matter.

Sincerely,

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RYAN P. MULVEY
COUNSEL

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15 See 28 C.F.R. § 16.9 (“Records shall not be disposed of or destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); 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).
EXHIBIT

1
April 3, 2017

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

Dear Secretary Mnuchin:

Re: Committee Intent to Control Congressional Records

I write on behalf of the Committee on Financial Services of the U.S. House of Representatives ("Committee") to inform you and the Department of the Treasury ("Agency") of the Committee’s practices and procedures during the 115th Congress.

As you may be aware, the Committee has legislative and oversight jurisdiction over the Agency, pursuant to U.S. House of Representatives Rule X.1(h). Accordingly, the Committee’s Members and staff may communicate with you and your Agency in connection with various legislative, oversight, and investigative matters. Because of the often sensitive and confidential nature of such communications, and in order to ensure the unfettered flow of information necessary to assist the Committee in performing its important legislative and oversight functions, the Committee intends to retain control of all such communications, and will be entrusting them to your agency only for use in handling those matters. Likewise, any documents created or compiled by your agency in connection with any responses to such Committee communications, including but not limited to any replies to the Committee, are also records of the Committee and remain subject to the Committee’s control.

All such documents and communications constitute congressional records, not “agency records,” for purposes of the Freedom of Information Act, and remain subject to congressional control even when in the physical possession of the Agency. As such, they should be segregated from agency records, and access to them should be limited to Agency personnel who need such access for purposes of providing information or assistance to the Committee. Additionally, such congressional records are subject to the absolute protections of the Speech or Debate Clause of the Constitution, U.S. Const. art. I, § 6, cl. 1.
Accordingly, the Committee expects that the Agency will decline to produce any such congressional records in response to a request under the Freedom of Information Act or any other provision of law or agreement, on the grounds that such documents (i) are not the Agency's documents to produce, and (ii) are constitutionally privileged, in addition to any other grounds the Agency may assert.

It is the Committee's policy to include a legend on its legislative, oversight, and investigative correspondence to the Agency reflecting its intent to retain control of all such communications and responsive documents. The legend is included as a matter of best practice, but accidental failure to include the legend on a particular legislative, oversight, or investigative communication is immaterial, because the Committee intends to retain control over all such communications and any documents created or compiled in response thereto.

To ensure that the Agency and the Committee efficiently communicate in the future regarding the maintenance, confidentiality, and disposition of the Committee's congressional records, by no later than May 1, 2017, please respond to the Committee in writing to confirm that your Agency will decline to produce any congressional records in response to a request under the Freedom of Information Act or any other provision of law or agreement, that your Agency will discuss said request with the Committee, that your Agency has policies and procedures in place to address this issue, and that these policies and procedures have been shared with appropriate Agency personnel. If you have any questions regarding this request, please have your staff contact Brett Sisto of the Committee staff at (202) 225-7502. We look forward to working with them in the future.

Sincerely,

[Signature]

JEB HENSAARLING
Chairman

cc: The Honorable Maxine Waters, Ranking Member
The Honorable Richard Berner, Director, Office of Financial Research
The Honorable Michael T. McRaith, Director, Federal Insurance Office
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530,

Defendant.

EXHIBIT 2 TO COMPLAINT
Mr. Ryan Mulvey  
Cause of Action Institute  
1875 Eye Street, NW  
Suite 800  
Washington, DC  20006  
ryan.mulvey@causeofaction.org

Dear Mr. Mulvey:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) request dated May 18, 2017, and received in this Office on May 24, 2017, in which you requested (1) communications between the Office of Information Policy (OIP) or the Office of Legislative Affairs (OLA) and twelve listed federal entities, concerning or relating to Representative Jeb Hensarling’s directive to treat all records exchanged with the Committee on Financial Services as “congressional records” for the purposes of the FOIA, dating from March 10, 2017 and (2) communications between OIP or OLA and six listed entities and individuals, concerning or relating to the treatment under the FOIA of records exchanged between Executive Branch agencies and Congress, dating from January 20, 2017. This response is made on behalf of the Offices of Information Policy and Legislative Affairs.

The records you seek require a search in another Office, and so your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your request. At this time we have assigned your request to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your request to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located; or you may wish to await the completion of our records search to discuss either of these options. You may also contact the Office of Government Information Services (OGIS) of the National Archives and Records Administration to inquire into the FOIA mediation services they provide. OGIS can be contacted at the following:
We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request.

I regret the necessity of this delay, but I assure you that your request will be processed as soon as possible. If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your request, you may contact me by telephone at the above number or you may write to me at the Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001. Lastly, you may contact our FOIA Public Liaison at the telephone number listed above to discuss any aspect of your request.

Sincerely,

James M. Smith
Attorney-Advisor
I. (a) PLAINTIFFS

**CAUSE OF ACTION INSTITUTE**

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: **11001 (DC)**

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Ryan P. Mulvey  
Cause of Action Institute  
1875 Eye Street, N.W., Suite 800  
Washington, D.C. 20006

II. BASIS OF JURISDICTION

(PLACE AN x IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of this State  
- Citizen of Another State  
- Citizen or Subject of a Foreign Country  

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

- A. Antitrust
- B. Personal Injury/Malpractice
- C. Administrative Agency Review
- D. Temporary Restraining Order/Preliminary Injunction
- E. General Civil (Other)
- F. Pro Se General Civil

**Real Property**

- 210 Land Condemnation  
- 220 Foreclosure  
- 230 Rent, Lease & Ejectment  
- 240 Torts to Land  
- 245 Tort Product Liability  
- 290 All Other Real Property  

**Personal Property**

- 370 Other Fraud  
- 371 Truth in Lending  
- 380 Other Personal Property Damage  
- 385 Property Damage Product Liability  

**Bankruptcy**

- 422 Appeal 27 USC 158  
- 423 Withdrawal 28 USC 157  

**Prisoner Petitions**

- 535 Death Penalty  
- 540 Mandamus & Other  
- 550 Civil Rights  
- 555 Prison Conditions  
- 560 Civil Detainee – Conditions of Confinement  

**Property Rights**

- 820 Copyrights  
- 830 Patent  
- 835 Patent – Abbreviated New Drug Application  
- 840 Trademark  

**Federal Tax Suits**

- 870 Taxes (US plaintiff or defendant)  
- 871 IRS-Third Party 26 USC 7609  

**Forfeiture/Penalty**

- 625 Drug Related Seizure of Property 21 USC 881  
- 690 Other

**Other Statutes**

- 375 False Claims Act  
- 376 Qui Tam (31 USC 3729(a))  
- 400 State Reapportionment  
- 430 Banks & Banking  
- 450 Commerce/ICC Rates/etc.  
- 460 Deportation  

- 462 Naturalization Application  
- 465 Other Immigration Actions  
- 470 Racketeer Influenced & Corrupt Organization  
- 480 Consumer Credit  
- 490 Cable/Satellite TV  
- 850 Securities/Commodities/Exchange  
- 896 Arbitration  
- 899 Administrative Procedure Act/Review or Appeal of Agency Decision  
- 950 Constitutionality of State Statutes  
- 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
<table>
<thead>
<tr>
<th>G. Habeas Corpus/2255</th>
<th>H. Employment Discrimination</th>
<th>I. FOIA/Privacy Act</th>
<th>J. Student Loan</th>
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<tr>
<td>530 Habeas Corpus – General</td>
<td>442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)</td>
<td>X 895 Freedom of Information Act</td>
<td>152 Recovery of Defaulted Student Loan (excluding veterans)</td>
</tr>
<tr>
<td>510 Motion/Vacate Sentence</td>
<td><em>(If pro se, select this deck)</em></td>
<td>890 Other Statutory Actions (if Privacy Act)</td>
<td><em>(If pro se, select this deck)</em></td>
</tr>
<tr>
<td>463 Habeas Corpus – Alien Detainee</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>K. Labor/ERISA (non-employment)</th>
<th>L. Other Civil Rights (non-employment)</th>
<th>M. Contract</th>
<th>N. Three-Judge Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>710 Fair Labor Standards Act</td>
<td>441 Voting (if not Voting Rights Act)</td>
<td>110 Insurance</td>
<td>441 Civil Rights – Voting (if Voting Rights Act)</td>
</tr>
<tr>
<td>720 Labor/Mgmt. Relations</td>
<td>443 Housing/Accommodations</td>
<td>120 Marine</td>
<td></td>
</tr>
<tr>
<td>740 Labor Railway Act</td>
<td>440 Other Civil Rights</td>
<td>130 Miller Act</td>
<td></td>
</tr>
<tr>
<td>751 Family and Medical Leave Act</td>
<td>445 Americans w/Disabilities – Employment</td>
<td>140 Negotiable Instrument</td>
<td></td>
</tr>
<tr>
<td>790 Other Labor Litigation</td>
<td>446 Americans w/Disabilities – Other</td>
<td>150 Recovery of Overpayment &amp; Enforcement of Judgment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>160 Stockholder’s Suits</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>190 Other Contracts</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>195 Contract Product Liability</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>196 Franchise</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>V. ORIGIN</th>
<th>VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original Proceeding</td>
<td>FOIA, 5 U.S.C. § 552 (Failure to Comply with Statutory Deadlines)</td>
</tr>
<tr>
<td>Removed from State Court</td>
<td></td>
</tr>
<tr>
<td>Remanded from Appellate Court</td>
<td></td>
</tr>
<tr>
<td>Reinstated or Reopened</td>
<td></td>
</tr>
<tr>
<td>Transferred from another district (specify)</td>
<td></td>
</tr>
<tr>
<td>Multi-district Litigation</td>
<td></td>
</tr>
<tr>
<td>Appeal to District Judge from Mag. Judge</td>
<td></td>
</tr>
<tr>
<td>Multi-district Litigation – Direct File</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>VII. REQUESTED IN COMPLAINT</th>
<th>VIII. RELATED CASE(S), IF ANY</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23</td>
<td>(See instruction)</td>
</tr>
<tr>
<td>DEMAND $</td>
<td>YES</td>
</tr>
<tr>
<td>JURY DEMAND:</td>
<td></td>
</tr>
</tbody>
</table>

DATE: 07/18/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Ryan P. Mulvey

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.

III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.

IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.

VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.

VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION INSTITUTE

v.
U.S. DEPARTMENT OF JUSTICE

SUMMONS IN A CIVIL ACTION

To: (Defendant’s name and address)

UNITED STATES DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Ryan P. Mulvey
CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 07/18/2017

Signature of Clerk or Deputy Clerk
PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) __________________________________________ was received by me on (date) _______________________.

☐ I personally served the summons on the individual at (place) __________________________________________ on (date) _______________________; or

☐ I left the summons at the individual’s residence or usual place of abode with (name) ________________________, a person of suitable age and discretion who resides there, on (date) _______________________, and mailed a copy to the individual’s last known address; or

☐ I served the summons on (name of individual) __________________________________________, who is designated by law to accept service of process on behalf of (name of organization) ________________________, on (date) _______________________; or

☐ I returned the summons unexecuted because ___________________________________________; or

☐ Other (specify):

My fees are $ __________ for travel and $ __________ for services, for a total of $ __________.

I declare under penalty of perjury that this information is true.

Date: ____________________________

__________________________________________________________________________

Server’s signature

__________________________________________________________________________

Printed name and title

__________________________________________________________________________

Server’s address

Additional information regarding attempted service, etc:
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION INSTITUTE
Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE
Defendant

SUMMONS IN A CIVIL ACTION

To: (Defendant’s name and address)

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Ryan P. Mulvey
CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 07/18/2017

Signature of Clerk or Deputy Clerk
PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) ________________________________

was received by me on (date) ______________________.

☐ I personally served the summons on the individual at (place) ________________________________

on (date) ______________________; or

☐ I left the summons at the individual’s residence or usual place of abode with (name) ________________________________

______________________________ , a person of suitable age and discretion who resides there,

on (date) ______________________ , and mailed a copy to the individual’s last known address; or

☐ I served the summons on (name of individual) ________________________________ , who is
designated by law to accept service of process on behalf of (name of organization) ________________________________

______________________________ on (date) ______________________; or

☐ I returned the summons unexecuted because ________________________________ ; or

☐ Other (specify):

My fees are $ _________ for travel and $ _________ for services, for a total of $ _________ 0.00.

I declare under penalty of perjury that this information is true.

Date: ______________________

______________________________

Server’s signature

______________________________

Printed name and title

______________________________

Server’s address

Additional information regarding attempted service, etc:
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION INSTITUTE

Plaintiff

v.

U.S. DEPARTMENT OF JUSTICE

Defendant

Civil Action No. 17-cv-1423

SUMMONS IN A CIVIL ACTION

To: )

(Defendant’s name and address)

Civil Process Clerk
U.S. ATTORNEY’S OFFICE
555 Fourth Street, N.W.
Washington, D.C. 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

Ryan P. Mulvey
CAUSE OF ACTION INSTITUTE
1875 Eye Street, N.W., Suite 800
Washington, D.C. 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: 07/18/2017

Signature of Clerk or Deputy Clerk
PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) ____________________________________________________________
was received by me on (date) ____________________________.

☐ I personally served the summons on the individual at (place) ___________________________________________________
on (date) ____________________________; or

☐ I left the summons at the individual’s residence or usual place of abode with (name) ____________________________,
   a person of suitable age and discretion who resides there,
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   who is designated by law to accept service of process on behalf of (name of organization) ____________________
on (date) ____________________________; or

☐ I returned the summons unexecuted because ______________________________________________________________; or

☐ Other (specify):

My fees are $ ____________ for travel and $ ____________ for services, for a total of $ ____________.

I declare under penalty of perjury that this information is true.

Date: ____________________________

Server’s signature

Printed name and title

Server’s address

Additional information regarding attempted service, etc: