

October 17, 2013

Ray Payton
FOIA Public Liaison
U.S. Department of Agriculture
355 E Street, SW, 10th Floor
Washington, DC 20024
Email: usdafoia@ocio.usda.gov

Re: Freedom of Information Act Request

Dear Mr. Payton (or whoever else may be in charge of handling FOIA requests):

This is a request under the Freedom of Information Act, seeking the documents described below related to the amount of union official time authorized by the U.S. Department of Agriculture (USDA) during the partial government shutdown in October 2013. I request that documents containing the following information be provided to me:

1. Names of USDA employees that conducted union activities on official time from October 1, 2013, to October 16, 2013;
2. Number of hours spent, per employee, conducting union activities on official time from October 1, 2013, to October 16, 2013;
3. Cost of each employee (salary and benefits) that spent time on official time from October 1, 2013, to October 16, 2013;
4. What activities were performed by USDA employees on union official time from October 1, 2013, to October 16, 2013; and
5. The number of full-time official time USDA employees that were not furloughed during the partial government shutdown from October 1, 2013, to October 16, 2013.

If possible, I request that responsive records be provided in electronic form, either in PDF or on unencrypted CDs or DVDs.

We request that your office waive charges pursuant to 5 U.S.C. § 552(a)(4)(iii) & 7 C.F.R. Part 1, Appendix A to Subpart A of Part 1, §§ 5(b)&(c) & 6(a), since, as is explained below, disclosure 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 requestor.

Even if you do not waive the charges pursuant to those provisions, we request in the alternative that your office waive charges for the first 100 pages and first two hours of search time.¹

We request this on the basis that CEI is a nonprofit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public's understanding of government operations, the shaping of public policy, and how taxpayer money is spent.² This FOIA request is not for commercial use.³

If our fee waiver is denied, we are willing to pay up to \$100.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought.)

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations,⁴ including union official time.⁵

¹ See, e.g., 7 C.F.R. Part 1, Appendix A to Subpart A of Part 1, § 5(d).

² See, e.g., 7 C.F.R. Part 1, Appendix A to Subpart A of Part 1, § 5(b) (providing for fee waivers for Educational and non-commercial scientific institution requesters).

³ Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

⁴ CEI is widely quoted in the press and other publications. See, e.g., George Will, *Obama's Speech Police*, Washington Post, May 26, 2013, at A17 (quoting CEI's Hans Bader about federal education mandates) (available in Westlaw at 2013 WLNR 12921146); Cathy Young, *Yet Another Governmental Overreach*, Newsday, May 28, 2013 (quoting CEI's Hans Bader); Ramesh Ponnuru, *Colleges: New Sexual Harassment Rules Defy Reason*, St. Paul Pioneer-Press, July 24, 2013, at A14 (quoting CEI's Hans Bader) (2013 WLNR 18241796); *Yet Another Federal Attack on Civil Liberties*, Cincinnati Enquirer, May 26, 2013, at F5 (quoting CEI's Hans Bader); JulieAnn McKellogg, *US Supreme Court Hears Massive Wal Mart Discrimination Case*, Voice of America, March 29, 2011 (quoting CEI's Hans Bader); Al Neuharth, *Why Bail Out Bosses Who Messed It Up*, USA Today, Nov. 21, 2008, at 23A (quoting CEI) (available at 2008 WLNR 22235170); Bill Shea, *Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan*, Crain's Detroit Business, May 17, 2010, at 3 (available in Westlaw) (citing CEI); William P. Hoar, *Bailing Out Scam Artists*, New American, October 13, 2008, at pg. 42 (quoting CEI's Bader); Mark Tapscott, *GM Named in Deceptive Advertising Complaint Filed With FTC*, Washington Examiner, May 4, 2010 (same); Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (same); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same).

⁵ For example, the author of this letter routinely writes about union official time. See, e.g., *Time for an official end to federal employee union subsidies*, Washington Examiner, June 5, 2013, (<http://washingtonexaminer.com/op-ed-time-for-an-official-end-to-federal-employee-union->

The general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely-published about these subjects.

CEI publishes about these and other issues in print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties,⁶ and thus qualifies as a press entity for purposes of FOIA.⁷ Those activities are in fulfillment of CEI's mission. The information received will be disseminated through one or more of the following: a) newsletters, (b) opinion pieces in newspapers or magazines, (c) CEI's web sites and blogs which receive approximately 80,000 monthly visitors (approximately 40,000 unique) and are published on most days,⁸ (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute,⁹ (f) local and syndicated radio programs dedicated to discussing public policy, (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the Federal and State Governments on the relevant issues. CEI is regularly cited in newspapers,¹⁰ law reviews,¹¹ and legal and scholarly publications.¹²

[subsidies/article/2531217](#)); *Government Office, Government Pay...Union Duties?*, U.S. News & World Report, February 28, 2013, (<http://www.usnews.com/opinion/articles/2013/02/28/government-employees-conducting-union-business-on-taxpayers-dime>); *Cut spending: Permanently furlough 'official time' workers*, The Washington Times, February 28, 2013, (<http://www.washingtontimes.com/news/2013/feb/28/patterson-and-kovacs-cut-spending-permanently-furl/>); *Official Time: Taxpayers paying for union work is officially a scam*, Capital Research Center, February 4, 2013, (<http://capitalresearch.org/2013/02/official-time-taxpayers-paying-for-union-work-is-officially-a-scam/>).

⁶ See *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (publisher of bi-weekly electronic newsletter qualified as the media, entitling it to fee waiver under FOIA); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

⁷ See the attachment to this letter, an EPA letter granting CEI a waiver of fees under FOIA. See also, e.g., 7 C.F.R. Part 1, Appendix A to Subpart A of Part 1, § 5(c) (also providing for fee waivers for media requesters).

⁸ See, e.g., www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

⁹ See, e.g., <http://www.examiner.com/scotus-in-washington-dc/hans-bader> (listing of about 1000 commentaries posted several times a week by CEI's Hans Bader at Examiner.com).

¹⁰ See, e.g., Greg Victor, *Subsidizing Madness*, Pittsburgh Post-Gazette, March 27, 2011, at E4 (citing Hans Bader of CEI about reach of federal law); Mona Charen, Creators Syndicate, *You Might Suppose That President Obama Has His Hands . . .*, Bismarck Tribune, June 10, 2009, at A8 (syndicated columnist quoted CEI's OpenMarket blog); Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); Washington Examiner, August 14, 2008, pg. 24, *Think-Tanking* (reprinting relevant commentary from CEI's OpenMarket); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news

As provided by FOIA, I look forward to hearing from you within twenty (20) days.¹³ If you deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption on which you are relying, and provide the name and address of the person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

If you have any questions regarding this FOIA request please contact me by email at tkovacs@cei.org. I may also be reached by phone at 202-331-1010.

Thank you in advance for your assistance.

Sincerely,

Trey Kovacs

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database at 2007 WLNR 23059349); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI's OpenMarket) (available in Westlaw).

¹¹ See, e.g., Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (citing Hans Bader of CEI); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same); Robert Hardaway, *The Great American Housing Bubble*, 35 University of Dayton Law Review 33, 34 (2009) (same).

¹² See, e.g., Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, *Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac*, 6 North Carolina Banking Institute 519, 527 (2002) (quoting CEI).

¹³ See 5 U.S.C. § 552(a)(6)(A)(i).