March 14, 2017

FOIA/PA Branch
Civil Rights Division
BICN, Room 3234
950 Pennsylvania Ave, N.W.
Washington, DC 20530
(202) 514-4209
CRT.FOIArequests@usdoj.gov

Re: Freedom of Information Act Request; Fee Waiver Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, et seq.), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public-interest group, to request access to and copies of the following documents:

1. Any inquiries, findings and conclusions, based on investigations under Title II or Title III of the Americans with Disabilities Act of any college, university, media entity,¹ or non-profit entity regarding accessibility of free online audio or video content made available to the public by such entities or their employees, agents or students.

2. Any inquiries, findings and conclusions, based on investigations under Title II or Title III of the Americans with Disabilities Act, of any individual regarding accessibility of free online audio or video content made available to the public by such individual.

3. Any records related to The United States’ Findings and Conclusions Based on its Investigation Under Title II of the Americans with Disabilities Act of the University of California at Berkeley, DJ No. 204-11-309.

¹ For purposes of this FOIA request, “media entity” does not include a video programming distributor covered by the captioning requirements of the Telecommunications Act of 1996 (requirements that typically apply to cable operators, satellite distributors, and broadcasters). This FOIA request’s reference to “content” includes, but is not limited to, content made available on YouTube, iTunes U, the college or university’s own web site or domain on the internet, and the web pages of its faculty, staff, and students. “College or university” includes a consortium consisting largely or entirely of colleges or universities. “Entities” include colleges, universities, media entities, and non-profit entities.
Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies. If the volume of records responsive to one item of records above is far greater than those responsive to other item(s), and takes more time to gather, please send the records responsive to the other item(s) as soon as they become available (for example, by making rolling productions), rather than waiting until all remaining records have been collected.

We request that your office waive charges pursuant to 5 U.S.C. § 552(a)(4)(iii) & 28 C.F.R. 16.11(d)(1) &(k)(2), 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 all the charges, as those provisions mandate, we request in the alternative that your office waive charges for the first 100 pages and first two hours of search time, pursuant to 28 C.F.R. 16.11(d)(3)&(k)(2).

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. This FOIA request is not for commercial use. In the past, CEI FOIA requests have generated data and other useful information that was of interest to the public, information

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2 Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.
featured in news articles and commentary.\textsuperscript{3} The Berkeley investigation that is the subject of this FOIA request is a matter of public interest, as is reflected in recent press coverage.\textsuperscript{4}

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,\textsuperscript{5} including federal civil-rights laws


\textsuperscript{5} CEI is widely quoted by the press and legal commentators, including about the very subject of this FOIA request. See, e.g., JulieAnn McKellogg, \textit{US Supreme Court Hears Massive Wal Mart Discrimination Case}, Voice of America, March 29, 2011 (quoting CEI’s Hans Bader about \textit{Wal-Mart} v. Dukes, a Supreme Court discrimination case) (available at 2011 WLNR 6155680); Scott H. Greenfield, \textit{UC Berkeley and the 20,000 Broken Promises}, Simple Justice, March 8, 2017, http://blog.simplejustice.us/2017/03/08/uc-berkeley-and-the-20000-broken-promises/ (legal commentator quotes CEI’s Hans Bader about DOJ’s Berkeley investigation, one of the subjects of this FOIA request); Walter Olson, \textit{The ADA takes Berkeley courses offline}, March 12, 2017,
such as the Americans with Disabilities Act, First Amendment and discrimination issues. CEI has previously written public commentary about one of the investigations covered by this FOIA request, which has been cited in other publications. The general and policy-oriented public will


CEI publishes about these and other issues in print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties,\(^\text{11}\) and thus qualifies as a press entity for purposes of FOIA.\(^\text{12}\) 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


\(^{11}\) See *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *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”).

\(^{12}\) See the attachment to this letter, a letter from EPA granting CEI a waiver of fees under FOIA.
days, (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute, (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 active 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, law reviews, and legal and scholarly publications.

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13 See, e.g., https://cei.org/blog (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).


17 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
As provided by FOIA, I look forward to hearing from you within twenty (20) days. 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.

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on March 14, 2017.

Sincerely,

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Hans Bader
Senior Attorney
Competitive Enterprise Institute
1310 L Street, NW, 7th Floor
Washington, D.C. 20005
(202) 331-2278
hans.bader@cei.org


May 10, 2010

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036

RE: Request Number HQ-FOI-01223-10

Dear Mr. Bader:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records referred to as the Kerry-Graham-Lieberman climate bill and any attachments or exhibits.

We have reviewed your submission and based on the information you provided, we are granting your fee waiver request. The US Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations, within the Office of the Administrator, will be responding to your information request for the Agency.

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,

[Signature]
Larry F. Gottesman
National FOIA Officer