

CENTER FOR AUTO SAFETY

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Freedom of Information Appeal
Disclosure Services
DO
Department of the Treasury
Washington, DC 20220

RE: Freedom of Information Act Appeal - 2009-06-169

Dear Disclosure Services:

Please consider this letter an appeal from the March 2, 2011 denial of the request for a fee waiver in the Freedom of Information Act (FOIA) request I made to the Department of the Treasury on behalf of the Center for Auto Safety (CAS) on June 8, 2009. That request sought access to "e-mail correspondence since January 1, 2009, in any way related to the Chrysler and General Motors bankruptcies, the events preceding those bankruptcies, and the federal government's roles in and deliberations concerning those matters. This includes, but is not limited to, all such e-mails generated and/or received by the Department of the Treasury and the following individuals:

Brian Deese
Ed Montgomery
Ron Bloom
Steven Rattner
Matthew Feldman
Timothy Geithner."

In the request, CAS requested a waiver of fees under 5 U.S.C. § 552(a)(4)(A)(iii) because release of the records is likely to contribute significantly to the public's understanding of the operations or activities of the government and is not in CAS's commercial interest.

By letter dated March 2, 2011 and signed by Mark Vugrinovich, FOIA Manager, Office of Financial Stability, the agency denied the request for a fee waiver, stating that "[a]lthough the records you seek concern the operations or activities of the government, and you do not appear to have an overriding commercial interest in the records, you have not met your burden to show that any other necessary factors are satisfied." A copy of the fee waiver denial is enclosed with this appeal.

CAS would like to point out that our request specifically asks for emails, which could feasibly be transmitted to us electronically. In such case the estimated duplication fee for responsive documents should be mooted. Presumably, the emails could be placed on a CD for little, if any cost.

FOIA provides that fees shall be waived or reduced "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." 5 U.S.C. § 552(a)(4)(A)(iii). The Department of the Treasury evaluates fee waiver requests according to the guidance issued by the Department of Justice. See 31 C.F.R. § 1.7. That guidance sets forth six factors to consider in determining whether to grant a fee waiver. As explained in detail below, CAS's request meets all six of these factors.

A. The Request Is Likely to Contribute Significantly to Public Understanding of the Operations or Activities of the Government

The first four factors relate to whether the request would contribute significantly to public understanding of the operations or activities of the government. Release of the requested information would do so here.

1) The records pertain to the operations or activities of the Federal Government.

As Mr. Vugrinovich recognized, the records CAS requested concern the operations or activities of the federal government. In particular, CAS requested agency communications about the GM and Chrysler bankruptcies, in which the government played an extremely active role. See generally *In re Chrysler, LLC*, 405 B.R. 84, 104 (Bkrtcy. S.D.N.Y. 2009) (discussing the U.S. government's involvement in and funding of the sale transaction in the Chrysler bankruptcy); *In re General Motors Corp.*, 407 B.R. 463, 477-82 (Bkrtcy. S.D. N.Y. 2009) (discussing U.S. government's financing of G.M. both before and as part of the bankruptcy process).

2) Disclosure of the records is likely to contribute to an understanding of government operations or activities.

The records that would be released through the FOIA request will be informative to the public regarding the government's involvement in the Chrysler and G.M. bankruptcies. In particular, the records sought will provide a far greater understanding of the government's role in negotiating the terms of the bankruptcies.

The sheer number of responsive documents (31,000 non-duplicative, responsive documents totaling 170,000 pages) detailing email correspondence underscores the significance of the deliberations that took place. Much of the information currently available to the public consists of bankruptcy court filings which detail very little of the government's role in negotiating the terms of the bankruptcies. Records of correspondence involving key government officials would provide a far greater understanding of the government's role leading up to the bankruptcies.

3) Disclosure of the requested records will contribute to the understanding of the public at large.

Disclosure of the requested records will contribute to the public at large's understanding of the government's involvement in the Chrysler and G.M. bankruptcies. To begin with, the Chrysler and G.M. bankruptcies, and the government's role in financing the companies that emerged from the bankruptcies, garnered extensive public attention. A sample of major news outlets and articles concerning the bankruptcies may be found here <http://www.autosafety.org/chrysler-gm-bailouts-bankruptcies>. There is little question that the bankruptcies were of great significance to the public as well as to Congress, which held multiple hearings on the issue.

The Center for Auto Safety (CAS) has the ability to understand and synthesize the information in the records and to release the information in the records broadly. CAS is a nonprofit research and advocacy organization founded by in 1970 to provide consumers with a voice for auto safety and quality in Washington, DC. CAS has approximately 20,000 members across the United States and is nationally recognized as a leader in the areas of automobile safety and consumer protection.

A key pillar of CAS's mission is actively to disseminate the information it gathers to the public and law-makers so that they are better informed about motor vehicle safety issues. CAS has a website, autosafety.org, which is specifically administered to disseminate such information to our members, news media and the public. CAS also publishes *Automobile Design Liability*, a legal text which is supplemented yearly with new information on the auto industry and the government's role in regulation. CAS also works in coalitions with other leading individual and organizational advocates for motor vehicle safety, and it encourages these safety leaders to disseminate the information gathered and produced by CAS to their memberships and contacts as well.

In addition, because CAS's staff members are recognized as experts in motor vehicle safety issues, they regularly appear on television, radio, and at conferences, and are quoted in the print media.¹ CAS staff also regularly appears before congressional committees on auto safety issues.²

¹ See, e.g. http://www.nytimes.com/2011/04/03/automobiles/03COPYRIGHT.html?_r=3,
http://www.latimes.com/business/la-fi-toyota-recall-20110225.0.6731783_story?page=2,
<http://abcnews.go.com/Blotter/playing-rental-car-roulette/story?id=12993478>,
http://www.msnbc.msn.com/id/23715862/ns/business-consumer_news,
http://www.washingtonpost.com/business/nhtsas-previous-car-pedal-safety-efforts-died-stalled-amid-industry-opposition/2011/02/11/ABaVjrO_story.html.

² Statement of CAS Executive Director Clarence Ditlow On Auto Industry Bankruptcies Before the House Judiciary Committee - 5/21/09
Statement of Clarence M. Ditlow, Executive Director, Center for Auto Safety, On S. 3302, The Motor Vehicle Safety

CAS has been very involved in analyzing and disseminating information about the Chrysler and G.M. bankruptcies. CAS' Executive Director Clarence Ditlow testified before the House Judiciary Committee on May 21, 2009, regarding the auto industry bankruptcies. CAS has dedicated substantial time to researching the bankruptcies and disseminating news through our website <http://www.autosafety.org/chrysler-gm-bailouts-bankruptcies>.

4) The contribution to public understanding will be significant.

The rarity of the type of government action seen in these bankruptcies means that very little is known about how the government operates in similar situations, or has historically conducted such activities. To date, the United States has taken a similar action only once, in the Chrysler Corporation Loan Guarantee Act of 1979. Disclosure of records pertaining to this unique situation is crucial to an understanding of the government's role in such a rare event. The email correspondence requested would allow the public to see the role that the Treasury Department plays in supporting the nation's industries. Additionally, it would provide the public with insight into the terms of the final negotiated bankruptcy terms, many of which have proved to be problematic for owners of vehicles produced by G.M. and Chrysler prior to the bankruptcies.

B. The Request is not in CAS's Commercial Interest

The final two factors relate to whether the request is in the requester's commercial interest. As Mr. Vugrinovich acknowledged, these factors, as well, weigh in favor of granting a fee waiver.

1) CAS has no commercial interest that would be furthered by the requested disclosure.

CAS is a non-profit organization research and advocacy organization that works to promote the public interest. It has no business, trade, or profit interest in the requested records.

Act of 2010, Before the Senate Commerce, Science & Transportation Committee - 5/19/10

Summary of Clarence M. Ditlow, Executive Director, Center for Auto Safety, On Proposed Motor Vehicle Safety Act of 2010, Before the Subcommittee on Commerce, Trade, and Consumer Protection, House Energy and Commerce Committee - 5/6/10

Statement of Clarence M. Ditlow, Executive Director, Center for Auto Safety, On Toyota Sudden Unintended Acceleration Before the Senate Commerce, Science & Transportation Committee - 3/2/10

Statement of Clarence M. Ditlow, Executive Director, Center for Auto Safety, On Toyota Sudden Unintended Acceleration Before the House Oversight & Government Reform Committee - 2/24/10

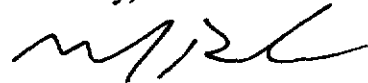
2) **Disclosure is not "primarily in the commercial interest of the requester."**

CAS has no commercial interest in the requested records. In contrast, as described above, there is a substantial public interest in disclosure. As a 501(c)(3) non-profit organization, CAS has absolutely no commercial interest in this matter.

Because disclosure of the requested records will contribute significantly to the public's understanding of the operations or activities of the government and is not primarily in CAS's commercial interest, CAS qualifies for a fee waiver under 5 U.S.C. § 552(a)(4)(A)(iii).

Thank you for your attention to this matter. I will expect a response within 20 working days, as provided by law. Should you have any questions regarding this appeal, please feel free to contact me at (202)328-7700.

Sincerely,



Michael Brooks
Staff Attorney

Enclosures



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

MAR - 2 2011

Re: 2009-06-169

MV:ALB

Mr. Michael Brooks
Center for Auto Safety
1825 Connecticut Ave. NW, Suite 330
Washington, DC 20009

Dear Mr. Brooks,

This is the Department of the Treasury's response to your Freedom of Information Act (FOIA) request dated June 8, 2009, in which you requested copies of "all email correspondence since January 1, 2009 in any way related to the Chrysler and General Motors bankruptcies, the events preceding those bankruptcies and the federal government's roles in and deliberations concerning those matters . . . generated and/or received from Brian Deese, Ed Montgomery, Ron Bloom, Steven Rattner, Matthew Feldman, and Timothy Geithner." I regret the considerable delay in responding to your request.

Due to the broad scope of your request, we employed an outside contractor to conduct a search of Treasury's files for responsive documents. As a result of this effort, we have identified at least 31,000 non-duplicative, responsive documents totaling approximately 170,000 pages. Please note that the cost of duplication is twenty cents per page. See 31 C.F.R. § 1.7(g)(1)(i). Accordingly, the estimated duplication fee for your request is \$33,980.00.

Regarding your request for a waiver of fees, I note as an initial matter that you qualify as an "other requester" for fee category purposes. See 31 C.F.R. § 1.5(b)(2)(v) (2010). As such, you are entitled to two hours of free search time and 100 free pages of records. See *id.* at § 1.7(a)(4).

The statutory standard for evaluating fee waiver requests provides that fees shall be waived or reduced "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." 5 U.S.C. § 552(a)(4)(A)(iii). The requester bears the burden of providing information that supports his fee waiver request. See, e.g., *In Def. of Animals v. NIH*, 543 F. Supp. 2d 83, 97 (D.D.C. 2008) (noting that "requester bears initial burden" of meeting two-prong statutory test for fee waivers).

In accordance with Treasury's regulations, I have considered the six factors set forth in the Department of Justice's fee waiver guidance issued on April 2, 1987, to determine whether you have satisfied this standard. See 31 C.F.R. § 1.7(d)(1) (incorporating by reference the

Department of Justice's fee waiver guidance). The first four of these factors concern the "public interest" requirement; the fifth and six factors concern whether your interest in the records is primarily commercial. On the basis of all of the information available to me, I am denying your request for a waiver of fees. Although the records you seek concern the operations or activities of the government, and you do not appear to have an overriding commercial interest in the records, you have not met your burden to show that any other necessary factors are satisfied.

Specifically, in support of your fee waiver request, you merely reiterate the legal standard for public interest fee waivers and state that your request "is of a very limited and highly specific nature." The case law is well-established that a requester is not entitled to a fee waiver where, as in this case, the only justification offered is a conclusory statement that disclosure of the requested records will serve the public interest. See, e.g., Ogelsby v. U.S. Dept' of the Army, 920 F.2d 57, 66 n.11 (D.C. Cir. 1990) (determining that requester's statement that "[t]he information requested is beneficial to the public interest" was conclusory and insufficient to support a fee waiver); Jarvick v. CIA, 495 F. Supp. 2d 67, 73 (D.D.C. 2007) (stating that a conclusory statement that information "will improve Government efficiency and culpability" will not support a fee waiver claim) (internal citations omitted); Judicial Watch, Inc. v. DOJ, 133 F. Supp. 2d 52, 54 (D.D.C. 2000) (same).

If you remain interested in pursuing your request, you must make an advance payment of the current estimated duplication fee of \$33,980.00 before the agency continues to process your request. See 31 C.F.R. § 1.7(f)(3) (permitting collection of advance payments where costs exceed \$250). Please make your check or money order payable to the "Treasury of the United States" and send it to the following address: Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, Washington, D.C. 20220. Once your payment is received, the agency will continue to process your request. Alternatively, you may choose to reformulate your request in order to meet your needs at a lower cost.

If we do not receive full payment of the estimated duplication fee of \$33,980.00, or an amended request within 20 days from the date of this letter, we will assume that you are no longer interested in your request and consider it withdrawn.

If you are dissatisfied with my action on your request, you may appeal within 35 days of the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. Your appeal should be addressed to: Freedom of Information Appeal, Disclosure Services, DO, Department of the Treasury, Washington, D.C. 20220.

Sincerely,


 Mark Vugrinovich
 FOIA Manager
 Office of Financial Stability