

# CENTER FOR AUTO SAFETY

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Director, Disclosure Services  
Treasury - Departmental Offices  
1500 Pennsylvania Avenue, NW  
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## **FOIA REQUEST**

Dear FOIA Officer:

The Center for Auto Safety (“CAS”) files this request pursuant to the Freedom of Information Act (“FOIA”). CAS is a nationwide nonprofit consumer advocacy organization established in 1970 by Consumers Union and Ralph Nader. CAS works toward improved safety, environmental responsibility, and fair dealing in the automotive industry and the marketplace.

### **I. DEFINITIONS**

For the purpose of this FOIA request, the following definitions apply:<sup>1</sup>

(a) The term “*document*”, “*record*” or any similar term, is used in its broadest possible sense and shall include, but not be limited to, the following: any written, printed, typed or other graphic matter of any kind or nature; all mechanical, magnetic or electrical sound records, or transcripts thereof; and retrievable data, information, or statistics contained on any

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<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meaning set forth in the Report.

memory device or other information retrieval system (whether recorded, taped or coded, electrostatically, electromagnetically or otherwise); and also without limitation, files agreements, correspondence, letters, telegrams, reports, charts, diagrams, graphs, reproductions, films, proposals, working papers, notes, notebooks, ledgers, diaries, journals or other books of accounts, photocopies, memoranda, interoffice communications, minutes, minutes of meetings, instructions, records, telephone call slips, transcripts or any other reconstructions of telephone conversations, facsimile transmissions, financial statements, financial records, financial memoranda, purchase orders, bills of sale, invoices, receipts, notes, summaries, checks, compilations, and worksheets in your possession, custody, or control wherever located. The term “*document*” or any other similar term shall also mean all copies of documents, by whatever means made, including but not limited to, carbon, handwritten typewritten, microfilmed, photostatic or xerographic copies, facsimile transmissions and all nonidentical copies, whether different from the original because of any alternations, notes, comments or other materials contained thereon or attached thereto, or otherwise. The term “*document*” or any other similar term, shall also include any attachment thereto or enclosure therewith. The term “*document*”, “*record*” or any other similar term shall also include any and all data compilations from which information can be obtained. **For avoidance of doubt, the term “documents” includes (i) any and all information, data, emails, and other electronic or digital communications or compilations of data which are located or stored on hard drives, disks, or any computer readable media and (ii) all documents within the possession of the following persons: Christy L. Romero, Bruce S. Gimbel, Simon Galed, Jonathan Lebruto, Eric Mader, John Poirier, and Samuel Withers.**

(b) The term “*GM*” refers to General Motors Corporation, including Old GM and/or New GM.

(c) The term “*New GM*” refers to GM on or after July 10, 2009 following the acquisition of certain assets of Old GM in the chapter 11 bankruptcy case of Old GM.

(d) The term “*Old GM*” refers to GM on or before July 10, 2009.

(e) The term “*products liability*” means all liabilities to third parties for death, personal injury, or other injury to persons or damage to property caused by motor vehicles designed for operation on public roadways or by the component parts of such motor vehicles and, in each case, manufactured, sold or delivered by Old GM, which arise directly out of accidents, incidents or other distinct and discreet occurrences that happen on or after the Closing Date and arise from such motor vehicles’ operation or performance.

(f) The terms “*relating to*” and “*referring to*” as used herein shall mean mentioning, discussing, including, summarizing, displaying, describing, reflecting, memorializing, demonstrating, referencing, containing, relating to, depicting, connected with, embodying, exhibiting, evidencing, constituting, concerning, reporting, and involving (or purporting to involve) an act, occurrence, event, transaction, fact, thing, or course of dealing.

(g) The term “*Report*” shall mean that certain report issued by SIGTARP dated August 15, 2013 from The Honorable Christy L. Romero to The Honorable Jacob J. Lew discussing the U.S. Department of the Treasury’s role in the decision for the General Motors Corporation to top up the pension payments to certain Delphi Corporation hourly employees.

(h) The term “*SIGTARP*” shall mean the Special Inspector General for the Troubled Asset Relief Program.

## **II. DOCUMENTS TO BE PRODUCED**

1. Documents relating to the statement by Old GM's CFO Young, as reported at p. 19 of the Report, that "[w]e put forward recommendations, but at the end of the day, the purchaser makes the decision."

2. Documents relating to the statement by a Treasury Auto Team official, as reported at p. 19 of the Report, that "[w]e approve technically everything because we don't have to do the DIP [bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP."

3. Documents relating to the deposition(s) of the Treasury Auto Team official who testified therein, as reported at p. 19 of the Report, about (a) the leverage Treasury had with Old GM because Treasury was the only buyer for Old GM's assets and (b) Treasury's "considerable" leverage because the alternative was "catastrophic," adding that he meant liquidation.

4. Documents relating to the deposition(s) in which a Treasury Auto Team official testified, as reported at p. 19 of the Report, that (a) the 363 bankruptcy sale allowed New GM and the Treasury Auto Team to assume Old GM's assets and "cherrypick" the liabilities that a "commercial buyer" would want and New GM would need, (b) "[i]t is up to the purchaser to exclude or assume liabilities," and (c) "[i]t is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on.

5. Documents relating to the statement a Treasury Auto Team official to SIGTARP, as reported at p. 19 of the Report, that "our general perspective, and in general the right way to

do a 363 sale as a buyer, is to assume all assets unless explicitly excluded, and to reject all – to leave behind all liabilities unless explicitly assumed.”

6. Documents relating to the statement by Old GM’s CFO Young to SIGTARP, as reported at p. 19 of the Report, that Old GM and the Treasury Auto Team went down Old GM’s balance sheet (including pensions and the supplier base), going over some line items in great detail.

7. Documents relating to any review the Treasury Auto Team of the products liability claims of Old GM.

8. Documents relating to the treatment of the products liability claims in the 363 bankruptcy sale.

9. Documents relating to the decision by the Treasury Auto Team, as reported at p. 20 of the Report, to not assume the products liability claims in the 363 bankruptcy sale.

10. Documents relating to the deposition(s) in which a Treasury Auto Team official testified, as reported at p. 20 of the Report, that the Treasury Auto Team requested that Old GM identify “politically sensitive” liabilities.

11. Documents relating to the statement by Old GM’s CFO Young, as reported at p.20 of the Report, that (a) the exercise to identify “politically sensitive liabilities” was about identifying liabilities that might present a public relations challenge if New GM did not assume them and (b) assumption of these liabilities by New GM conflicted with taking a strictly commercial approach because New GM could operate without them.

12. Documents relating to the deposition(s) of the Treasury Auto Team official in which he testified, as reported at p. 20 of the Report, that the Treasury Auto Team concluded that it was not commercially necessary for New GM to assume product liabilities.

13. Documents related to the statement, at p. 20 of the Report, that New GM assumed certain products liability claims because, according to a Treasury Auto Team official, failure to assume them would impact consumers' confidence in GM's products, which the Treasury Auto Team official said was a commercial basis.

14. Documents relating to the statement, at p. 33 of the Report, that in February 2009, the President designated the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to four primary officials who were part of a Treasury Auto Team ("Auto Team"), three of whom worked at Treasury from February 2009 to the summer of 2009, led by Steven Rattner, who was called the "car czar."

15. Documents relating to the statement, at p. 33 of the Report, that the existence of the Treasury Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs.

16. Documents relating to the statement, at p. 33 of the Report, that four Auto Team officials played a direct role in Old GM's decisions and operations up to and through the bankruptcy case of Old GM, which was one of the largest and fastest bankruptcies in our nation's history.

17. Documents relating to the statement, at p. 33 of the Report, that as Old GM's only lender and later as GM's largest investor, Treasury, through its Auto Team, had significant leverage and influence on Old GM's decisions leading up to and through the bankruptcy.

18. Documents relating to the statement, at p. 33 of the Report, that before and after Old GM submitted its restructuring plan to Treasury, the Treasury Auto Team had been assessing bankruptcy, and in February was planning (but not discussing with Old GM) a GM bankruptcy that would sell assets to a buyer, leaving behind many of its liabilities.

19. Documents relating to the statement, at p. 34 of the Report, that the Treasury Auto Team first exerted their significant influence on Old GM by replacing Old GM's CEO Rick Wagoner (who adamantly opposed bankruptcy) with Treasury's choice, Fritz Henderson.

20. Documents relating to the statement, at p. 34 of the Report, that the replacement of Rick Wagoner with Fritz Henderson was a move that Old GM's Board of Directors viewed as Treasury usurping their power.

21. Documents relating to the statement, at p. 34 of the Report, that Mr. Henderson told SIGTARP that the Treasury Auto Team's decision to replace Mr. Wagoner with their selection sent a message to Old GM executives and was an early indicator that Treasury, as the main investor in Old GM, would have significant influence over Old GM's decisions and operations.

22. Documents relating to the statement, at p. 34 of the Report, that although the Treasury Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP Loan Agreement, in practice it was more than advisory.

23. Documents relating to the statement, at p. 34 of the Report, that SIGTARP found that the Treasury Auto Team used their leverage as Old GM's largest lender to influence and set the parameters for Old GM to make decisions in areas that did not require Treasury consent.

24. Documents relating to the statement, at p. 34 of the Report, that one Auto Team official described Treasury as Old GM's "only lifeline."

25. Documents relating to the statement, at p. 34 of the Report, that the Treasury Auto Team exerted the influence that came with that position.

26. Documents relating to all interviews of Auto Team and Old GM officials, as reported at p. 34 of the Report, regarding the Treasury Auto Team's "persistently pressing" and

“push[ing]” Old GM to take more significant actions than Old GM would have done on its own, actions in line with Treasury’s preferences.

27. Documents relating to the statement, at p. 34 of the Report, that although the Treasury Auto Team did not tell Old GM which dealerships to close, Old GM made the decision to accelerate the dealership closings with significant Treasury influence.

28. Documents relating to the statement, at p. 34 of the Report, that Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation on the top-up, and although Old GM knew about the top-up, “the focus was on getting the deal done.”

29. Documents relating to the statement, at p. 34 of the Report, that a Treasury Auto Team official told SIGTARP that “There was a feeling that the Treasury Auto Team had to carefully manage Old GM, which would have given away Treasury’s money without blinking.”

30. Documents relating to the statement, at p. 34 of the Report, that a Treasury Auto Team official explained to SIGTARP that Treasury did not want to start running the company, but when dealing with taxpayer resources, “We, the Government, were ultimately holding that purse string,” and Treasury reserved the right to tell Old GM that they would not back them.

31. Documents relating to the statement, at pp. 34-35 of the Report, that a third Auto Team official told SIGTARP that they did not cram down decisions on Old GM, “but we were investing a lot of money, and we had the opportunity to disagree.” There was no need for ultimatums.

32. Documents relating to the statement, at p. 35 of the Report, that one Auto Team official told SIGTARP, “GM realized that there was no other available source of money.”

33. Documents relating to the statement, at p. 35 of the Report, that a Treasury Auto Team official was asked by SIGTARP how the Treasury Auto Team conveyed their preference

or nudged Old GM to see things the way the Treasury Auto Team saw them, given that ultimately Old GM could do its own thing, and he responded, “Well, they could, but then they couldn’t exist. I mean, as I said, as the lender we had a fair amount of leverage.”

34. Documents relating to the statement, at p. 35 of the Report, that driven by broader concerns about the auto industry, Treasury’s Auto Team directed Old GM’s restructuring efforts toward filing for bankruptcy.

35. Documents relating to the statement, at p. 35 of the Report, that the Treasury Auto Team took steps to signal to Old GM their strong preference for bankruptcy and bring significant influence over Old GM’s decision to file bankruptcy.

36. Documents relating to the statement, at p. 35 of the Report, that the Treasury Auto Team’s replacement of Old GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Treasury Auto Team’s preference for bankruptcy and directed Old GM’s restructuring efforts toward bankruptcy.

37. Documents relating to the statement, at p. 35 of the Report, that Treasury’s Auto Team did not believe that the bond exchange alone would make Old GM viable and asserted their leverage as the primary financial support of Old GM.

38. Documents relating to the statement, at p. 35 of the Report, that in the first week of April 2009, the Treasury Auto Team “highly suggested” to Old GM that they felt “pretty strongly” that a Section 363 bankruptcy was the “best approach.”

39. Documents relating to the statement, at p. 35 of the Report, that the Treasury Auto Team opposed Old GM’s decision to proceed with the bond exchange and communicated to Old GM their preference that 90% of the bondholders participate in the exchange, a “level of acceptance” that was “very high,” making bankruptcy more likely, according to Henderson.

40. Documents relating to the statement, at p. 35 of the Report, that Treasury's Auto Team created a condition on funding Old GM's bankruptcy that would serve as pressure on Old GM and would drive pre-bankruptcy negotiations and decisions.

41. Documents relating to the statement, at p. 35 of the Report, that Treasury conditioned giving Old GM \$30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences.

42. Documents relating to the statement, at p. 36 of the Report, that Treasury's influence over Old GM deepened after Treasury decided to fund Old GM's bankruptcy and become the majority owner of New GM.

43. Documents relating to the statement, at p. 36 of the Report, that with its leverage as the purchaser of Old GM's assets in bankruptcy, Treasury's Auto Team had significant influence on Old GM to make specific decisions that were in keeping with Treasury's preferences.

44. Documents relating to the statement, at p. 36 of the Report, that Old GM's then-CFO Young told SIGTARP, "[w]e put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision."

45. Documents relating to the statement, at p. 36 of the Report, that One Auto Team official told SIGTARP that "[w]e approve technically everything because we don't have to do the DIP [debtor-in-possession bankruptcy loan].

46. Documents relating to the deposition(s) in which a Treasury Auto Team official testified, as reported at p. 36 of the Report, that (a) the leverage Treasury had with Old GM was

that Treasury was the only buyer for Old GM's assets and (b) Treasury's leverage was "considerable" because the alternative was "catastrophic," adding that he meant liquidation.

47. Documents relating to the statement, at p. 36 of the Report, that one reason why the Treasury Auto Team had chosen a 363 bankruptcy sale was the ability to "cherry-pick" assets and liabilities that New GM would take on.

48. Documents relating to the deposition(s) in which a Treasury Auto Team official testified, as reported at p. 36 of the Report, that "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on.

49. Documents relating to the statement, at p. 40 of the Report, that "[t]here are two important lessons to be learned from the role that Treasury's Auto Team played. First, the Treasury Auto Team's deep involvement and significant influence on Old GM's decisions leading up to and through Old GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government."

50. Documents relating to the statement, at p. 40 of the Report, that Auto Team officials attempted to view top-ups as a private investor.

51. Documents relating to the statement, at p. 40 of the Report, that a Treasury Auto Team official told SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

52. Documents relating to the statement, at p. 40 of the Report, that Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent Old GM from failing, concerned about financial stability in the auto industry.

53. Documents relating to the statement, at p. 40 of the Report, that although the Treasury Auto Team tried to view issues through a “commercially reasonable” lens like a private investor, they often did not act as a private investor, nor should they have.

54. Documents relating to the statement, at p. 40 of the Report, that without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns.

55. Documents relating to the statement, at p. 40 of the Report, that Treasury decided not to move GM’s headquarters to save costs out of concerns over the impact on the city of Detroit.

56. Documents relating to the statement, at p. 40 of the Report, that Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry.

57. Documents relating to the statement, at p. 41 of the Report, that one Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held.

58. Documents relating to the statement, at p. 41 of the Report, that SIGTARP found that additional leverage was given by Treasury.

59. Documents relating to the statement, at p. 41 of the Report, that the Treasury Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to Old GM’s bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days.

60. Documents relating to the statement, at p. 41 of the Report, that Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having

leverage because they did not have current employees at Old GM and therefore could not hold up Old GM's bankruptcy.

61. Documents relating to the statement, at p. 41 of the Report, that it is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities.

62. Documents relating to the statement, at p. 41 of the Report, that Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy.

63. Documents relating to the statement, at p. 41 of the Report, that an important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

64. Documents relating to the official written response provided by Treasury to SIGTARP in its letter dated August 9, 2013.

65. Documents relating to the rigorous quality control system, as stated at p. 42 of the Report, that is alleged to have been designed by SIGTARP to ensure that audits are performed and reports are issued in accordance with professional standards and legal and regulatory requirements.

66. Documents relating to the review, as stated at p. 42 of the Report, of SIGTARP's quality control system as part of the Council of the Inspectors General on Integrity and Efficiency external peer review program and assignment to it of the highest rating.

67. Documents relating to any deposition of, interview with, or statement by any member of the Treasury Auto Team (including, without limitation, Dr. Larry Summers, Timothy Geitner, Steven Rattner, Ron Bloom, Harry Wilson, and Matthew Feldman) in respect of their participation in the events leading up to the Old GM Bankruptcy or to the acquisition of certain assets of Old GM by New GM.

68. Documents relating to the treatment of product liability claims against Old GM in connection with the acquisition of certain assets of Old GM by New GM.

### **III. FEES**

Pursuant to 5 U.S.C. § 552(a)(4)(A) and U.S. Treasury regulations set forth at 31 C.F.R. § 1.7, CAS requests, and Treasury should grant, a waiver and/or reduction of fees for processing this FOIA request, including search, review, and duplication charges, for the reasons given below.

31 C.F.R. § 1.7 provides that a fee is not to be charged for the first two hours of search time or the duplication of the first 100 pages, unless the records are requested for commercial use. In addition, 31 C.F.R. § 1.7 (d) states “Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information 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. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.”

FOIA requires agencies to waive fees associated with copying responsive records where, as is the case with the CAS request, “disclosure of the information is in the public interest” and “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 31 C.F.R. § 1.7(d)(1). As to whether disclosure of the requested records is also “in the public interest,” the statute makes clear that a requester satisfies this criterion where the records are “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); see also 31 C.F.R. § 1.7(d)(1).

The Department of Justice has in turn instructed agencies to use four factors to determine whether a request meets the statutory public interest test:

- 1) **The subject of the request:** Whether the subject of the requested records concerns “the operations or activities of the government”;
- 2) **The informative value of the information to be disclosed:** Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;
- 3) **The contribution to an understanding of the subject by the general public likely to result from disclosure:** Whether disclosure of the requested information will contribute to “public understanding”; and
- 4) **The significance of the contribution to public understanding:** Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

There is little question that the subject of the current FOIA concerns the “operations or activities of government.” Treasury has previously acknowledged as much in response to a previous FOIA request covering similar subject matter.<sup>2</sup> As shown below, the CAS request

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<sup>2</sup> See March 2, 2011 Letter from Mark Vugrinovich, Treasury FOIA Manager, <http://www.autosafety.org/sites/default/files/Treasury%20Bankruptcies%20RESPONSE.pdf>

easily satisfies each of the remaining three criteria.

A. **Disclosure of Government Records Regarding The Auto Bankruptcies Is Likely To Contribute To An Understanding Of Government Operations.**

CAS seeks records related to SIGTARP's review of the Chrysler and GM restructuring specifically to improve understanding of the government's role in negotiating the terms of the bankruptcies. Compared to the information that is publicly available through other sources, records involving key government officials would provide a far greater understanding of the government's role leading up to the bankruptcies.

Indeed, the CAS FOIA request is precisely the kind that qualifies for a fee waiver, because it seeks to increase understanding of how the government responded to a specific problem and how the auto industry – and other policy considerations – may have influenced the government's decisions. See Judicial Watch, Inc. v. O. Rossotti, 326 F.3d at 1312 (finding that a fee waiver is appropriate where the requester has articulated a specific problem or issue that the records will help people understand); see also Manley v. Dep't of Navy, Civ. No. 1:07-cv-721, 2008 WL 4326448 (S.D. Ohio Sept. 22, 2008) (finding plaintiff's explanation that "the underlying factual data concerning the actual implementation of the Honor Concept [at a naval academy] will help the public better and more fully understand how the Honor Concept actually works and is implemented in practice" was "reasonably specific," and therefore weighed in favor of a public interest fee waiver).

In amending FOIA in 1986 to expand the fee waiver provision, Senator Leahy explained:

The requirement that the disclosure be "likely to contribute significantly to public understanding of the operations of the Government" is to be liberally construed in favor of noncommercial requesters. We do not mean that waivers are appropriate only for items of compelling public interest at a given

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time, such as articles that are being prominently covered in the news media. Nor are we saying that the information sought must, standing alone, provide a complete and thorough understanding of the issue. Rather, we intend that agencies will grant fee waivers when they receive requests for many categories of information that contribute to public understanding in any meaningful way, even if the request covers only one facet of an issue. As one court put it, “a single document can substantially enrich the public domain.”

132 Cong. Rec. at 14,298 (quoting Eudley v. CIA, 478 F. Supp. 1175, 1178 (D.D.C. 1978))

(emphasis added).

Records that reveal the use of government moneys, the policy decisions that drive an agency to take a particular action, and the influence of outside groups on the government, are classic examples of records that are likely to contribute to an understanding of government operations. See, e.g., Forest Guardians v. Dep’t of the Interior, 416 F.3d at 1179 (“The use of public funds to facilitate the collateralization of grazing permits on public land is certainly important to the public’s understanding of the BLM. An understanding of how [an agency] makes policy decisions, including the influence of any outside groups on this process, is also important to the public’s understanding of the BLM.” (emphasis added)); Rossotti, 326 F.3d at 1314 (holding that records concerning whether “key IRS decisions are free from the taint of conflict of interest” are likely to contribute to an understanding of government operations (emphasis added)); see also CREW v. Dep’t of Educ., 593 F. Supp. 2d 261, 271 (D.D.C. 2009) (finding that plaintiff’s aim to shed light on “the role of commercial publishers” in the government’s operation of a reading program through “research, analy[sis] and disseminat[i]on to the public” would contribute to an understanding of the government, and thereby help achieve Congress’s goal of an “open and accountable government” under the FOIA fee waiver provision); Natural Res. Def. Council v. EPA, 581 F. Supp. 2d 491, 498-99 (S.D.N.Y. 2008) (finding that requests seeking to

uncover “[h]ow government agencies interact with private concerns as the agencies set policy affecting the public interest” warrant a public interest fee waiver (emphasis added)).

The subject of the CAS FOIA request concerns specific problems – the fact that the Department of Treasury used public funds and made policy decisions to restructure the auto companies in a way that left personal injury victims without any legal recourse against New Chrysler and New GM. Information garnered from this FOIA request will help people understand the functions of government more clearly than the publicly available information on this subject. Accordingly, a fee waiver is appropriate. See, e.g., Physicians’ Comm. For Responsible Med. v. HHS, 480 F. Supp. 2d 119, 123-24 (D.D.C. 2007) (finding that “PCRM’s description of a specific problem – the composition of [a committee’s] membership – and its impact on [the committee’s] ability to fulfill a specific statutory mandate” satisfies the “reasonably specific” standard, “which is all that FOIA requires” (internal quotation marks omitted)); Prison Legal News v. Lappin, 436 F. Supp. 2d 17, 26 (D.D.C. 2006) (holding that a request for information regarding specific events in particular facilities would provide insight about how federal prisons were being managed and how tax dollars were being spent).

The CAS request is analogous to the one at issue in CREW v. HHS, a case in which Judge Kollar-Kotelly found that the advocacy organization Citizens for Responsibility and Ethics in Washington (“CREW”) was entitled to a public interest fee waiver. 481 F. Supp. 2d 99 (D.D.C. 2006). There, based on news reports that a government agency used public affairs firms to promote its policies, CREW sought copies of the contracts between the agency and firms. Id. at 108. The court found that plaintiff’s “reference to recent public interest” in the subject matter of the request, which, as is also true here, was not disputed by the government, “provide[d] the context for why the documents sought would reveal meaningful information about the activities of the government.” Id. at 109 (emphasis added). Attachment A is a very

small selection of the many recent newspaper articles and other materials that make continued reference to the problems arising out of the auto bankruptcies. These materials without question display a widespread public interest in the Chrysler and GM bankruptcies that continues to this day.

Therefore, as in CREW v. HHS, CAS has requested records concerning a specific subject and has explained the context in which the information will provide “meaningful information about the activities of the government.” 481 F. Supp. 2d at 109. In particular, CAS has expressed a concern about the Department of Treasury’s use of public funds to help pay off secured creditors of the auto companies, and the ultimate decision of the government to restructure the auto companies in a way that left personal injury victims with pending class actions, lemon lawsuits, or personal injury lawsuits without any financial recourse whatsoever against New Chrysler and New GM. Therefore, the production of documents pertaining to communications amongst key government officials and the auto industry will undoubtedly shed light on how the government came to adopt a position that allowed the publicly financed bailouts to proceed in a way that permitted the auto industry to avoid its liability to consumers who are injured by its defective products.

In the 2009 CAS request to Treasury for emails related to the Chrysler and GM restructuring under SIGTARP, Treasury found that CAS has no “overriding commercial interest in the records,” and that the records concern “the operations or activities of the government.” That finding should apply to this FOIA request as well, given the similarities in the types of records at issue in our 2009 FOIA request. Accordingly, CAS has adequately demonstrated that production of records responsive to its request will increase understanding of a specific problem that is of great public concern, and thus it easily fulfills the

“informative value” factor of the public interest test. Dep’t of Justice, Fee Waiver Guidance (factor 2).

**B. CAS Has Amply Proven Its Ability To Disseminate The Information To The Public Via Congressional Testimony, Its Use Of Technology, Publication Of A Legal Text, And Its Contacts With Major Print Media.**

CAS likewise satisfies the requirement that disclosure of the requested information will contribute to the public’s understanding of the issue. 5 U.S.C. § 552(a)(4)(A)(iii); see also Dep’t of Justice, Fee Waiver Guidance (factor 3). In evaluating this factor, courts look to whether the requester has the capacity to disseminate the information to parties outside of the organization. See, e.g., FedCURE v.Lappin, 602 F. Supp. 2d 197, 203 (D.D.C. 2009) (“a requester must demonstrate an intention to effectively convey the requested information to the public” (internal citations and quotation marks omitted)); Judicial Watch v. Dep’t of Justice, 185 F. Supp. 2d 54, 62 (D.D.C. 2002) (“In assessing this factor, a court must consider the requester’s ability and intention to effectively convey or disseminate the requested information to the public.” (internal citations and quotation marks omitted)).

With the advent of the internet, organizational websites, and email, most public interest requester organizations like CAS easily demonstrate that they have this ability. D.C. Technical Assist. Org. v. HUD, 85 F. Supp. 2d 46, 49 (D.D.C. 2000) (“In this Information Age, technology has made it possible for almost anyone to [disseminate information].”); The CAS fee waiver request is supported not only by the organization’s proven ability to disseminate information through its website and broader presence on the internet, but also by its use of Congressional testimony, its publication of a legal text and involvement in academic conferences, its active participation in coalitions of organizations, and its consistent, ongoing engagement with the news media. CAS staff are recognized as leading experts on motor

vehicle safety topics and regularly appear in the press, and CAS actively participates in coalitions that allow it to disseminate information to approximately 100,000 advocates for motor vehicle safety. In fact, CAS Executive Director Clarence Ditlow was called before the House Judiciary Committee in 2009 to testify on the auto industry bankruptcies. The CAS website is specifically administered to disseminate such information to members, news media, and the public. On the CAS website appears the “Chrysler and GM Bailouts & Bankruptcies” webpage, which chronicles bankruptcy events and presents a selection of important documents and news related to the bankruptcies. Additionally CAS publishes the legal text Automobile Design Liability, which contains a section dedicated to the auto bankruptcies and their ramifications for consumers.

Indeed, other courts have found that far less public dissemination network is sufficient to demonstrate the requisite ability to share information with the public for purposes of a fee waiver. For example, in Forest Guardians v. U.S. Dep’t of the Interior, the Tenth Circuit found the existence of an online newsletter and plans to establish an interactive website sufficient to demonstrate the organization’s ability to disseminate information. 416 F.3d at 1180. See also CREW v. HHS, 481 F. Supp. 2d at 114-15 (finding that the organization’s description of the mechanisms it uses to disseminate information to the public, plus specific examples, sufficed for purposes of this factor, and stating that a website alone would be enough to demonstrate public dissemination). In a recent case in this court, Judge Friedman found that “one self-generated newspaper article, and interviews that have not aired,” were adequate to prove a requester’s ability to disseminate information, in part because the newspaper article appeared in The New York Times, “one of the most circulated newspapers in the United States.” Clemente v. FBI, 741 F. Supp. 2d 64, 76-77 (D.D.C. 2010). Here,

likewise CAS has demonstrated its unique ability to disseminate information to the public through the print media, including The New York Times, and other widely read publications and widely viewed news shows. Attachment B contains a selection of articles from a variety of media sources, local and national, in which CAS staff have been quoted in the past two months.

Courts have also found that publication of a single legal journal sufficed to demonstrate an organization's ability to disseminate information to the public. Prison Legal News v. Lappin, 436 F. Supp. 2d 17, 26-27 (D.D.C. 2006). Here, the CAS publishes an entire legal text, Automobile Design Liability, on Westlaw, which is supplemented yearly with new information on the auto industry and the government's role in regulation.

In fact, CAS has the means to disseminate information in ways that are far more expansive than any one of the approaches that other courts found sufficient to require a public interest waiver. Thus, by providing evidence of "multiple means of dissemination" – including, but not limited to, its website, appearance in major newspapers, and its publication of a legal text CAS has unquestionably demonstrated that release of the records will undoubtedly increase the public's ability to understand the government's role in the Chrysler and GM bankruptcies. See Community Legal Servs., Inc. v. Dep't of Housing and Urban Development, 405 F. Supp. 2d 553, 558 (E.D. Pa. 2005) (finding leaflets and brochures, communication with media and public officials, law training sessions, and a website with "informative links and community education section" constitute "multiple means of dissemination" which amply meet the test).

CAS's ability to disseminate information to the public is further strengthened by its stature as the premiere auto safety organization in the nation. Thus, in FedCURE v. Lappin,

602 F. Supp. 2d 197 (D.D.C. 2009), Judge Walton held that the information provided about the number of website hits and subscribers “coupled with the estimated subscriber base who receive [the organization’s] newsletter . . . represents a strong case for treating FedCURE’s dissemination efforts as an effective means for distributing the requested information to a broad group of interested persons.” Id. at 204 (citing Prison Legal News, 436 F. Supp. 2d 17) (emphasis added). Judge Walton added that “FedCURE’s stature as the largest advocacy group for federal inmates lends credence to its position that a substantial number of individuals have and will continue to access its newsletters, [listserv] and daily news updates.” Id. at 205(emphasis added). Likewise, for more than forty years, Congress, the American people, and major news media have looked to CAS for objective information on auto safety and consumer protection issues.

Therefore, because the CAS “has described several methods it uses to make information available to the public, it has a record of conveying to the public information obtained through FOIA requests, and it has stated its intent to do so,” it is clearly entitled to a public interest fee waiver. Judicial Watch v. Dep’t of Justice, 185 F. Supp. 2d at 62.

**C. Disclosure Of These Records Is Likely To Contribute Significantly To Public Understanding Of The Government’s Involvement In Restructuring And Refinancing Chrysler And GM.**

The CAS request likewise meets the final factor in the public interest fee waiver test – whether the documents will result in a “significant” contribution to public understanding of the government’s operations or activities – because the requested records will shed light on the negotiations over the bankruptcies and bailouts that occurred primarily out of the public view. See Dep’t of Justice, Fee Waiver Guidance (factor 4). For purposes of this factor, significance is determined by “comparing the public understanding with and without

potential disclosure.” CREW v. HHS, 481 F. Supp. 2d at 116 (citing Judicial Watch, 185 F. Supp. 2d at 62). Here, there has been no “threshold level of public dissemination” whatsoever of the information that CAS seeks – none of the records requested have been disclosed to the public. Release of the documents will unequivocally make a significant contribution in public understanding of the government’s role in saving these failed companies. FedCURE v.Lappin, 602 F. Supp. 2d at 205. Moreover, because the government rarely concerns itself with the intimate details of bankruptcy and refinancing of private auto companies, very little is known [even] about how the government operates in similar situations, or has historically conducted such activities.

Therefore, because public knowledge about the government’s inside role during the bankruptcy and refinancing negotiations of these two companies is limited, and because the government has not shown that the documents are publicly available, CAS is clearly entitled to a statutory fee waiver. See FedCURE v.Lappin, 602 F. Supp. 2d at 205; Judicial Watch v. Dep’t of Justice, 365 F.3d 1108, 1126-27 (D.C. Cir. 2004); see also Campbell v. Dep’t of Justice, 164 F.3d 20, 36 (D.C. Cir. 1998) (holding that the government must demonstrate that the information sought “has met a threshold level of public dissemination [and thus] will not further ‘public understanding’ within the meaning of the fee waiver provisions” to justify a decision denying a fee waiver).

#### **IV. CONCLUSION**

Because CAS has shown that disclosure of the government email correspondence requested is “likely to contribute to a significant public understanding of government operations or activities,” 5 U.S.C. § 552(a)(4)(A)(iii), Treasury should process the CAS FOIA

request without requiring CAS to pay a processing fee. Should Treasury deny the waiver of fees, CAS asks that Treasury obtain authorization from CAS before delivery of any materials. If the agency refuses access to any of the requested records, please describe the materials it wishes to withhold and specify the statutory justifications for the refusal. Also, please state separately any reasons for failing to invoke discretionary powers to release the materials in the public interest.

CAS believes that the requested records are likely to be located within the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP). If you have any questions about the scope of this request, or if you believe there are any ambiguities in the way CAS has framed its request, please contact CAS via phone at (202) 328-7700 or email [mbrooks@autosafety.org](mailto:mbrooks@autosafety.org). An online copy of this request is available at the following URL: [http://www.autosafety.org/sites/default/files/imce\\_staff\\_uploads/SIGTARPREQUEST.pdf](http://www.autosafety.org/sites/default/files/imce_staff_uploads/SIGTARPREQUEST.pdf)

CAS looks forward to a response within twenty working days, as required under the FOIA, and will interpret any delay in response as a denial of this request. Thank you for your very prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'm/brooks', written in a cursive style.

Michael Brooks  
Staff Attorney

Attachment(s): 2

## **Attachment A –Continued Widespread Public Interest in Auto Bankruptcies**

### **Newspaper Articles**

Former GM CEO Wagoner to answer recall questions – June 3, 2015

<http://www.detroitnews.com/story/business/autos/general-motors/2015/06/02/former-gm-ceo-wagoner-answer-recall-questions/28391001/>

Judge puts GM suits on hold pending appeal – May 27, 2015

<http://www.detroitnews.com/story/business/autos/general-motors/2015/05/27/gm-suit-hold/28049333/>

Will Criminal Charges Bring Justice for GM Victims? - May 27, 2015

<http://nlpc.org/stories/2015/05/27/will-criminal-wrongdoing-verdict-gm-bring-justice-victims>

GM Car Owners to Fight On for Billions After Bankruptcy Ruling - April 17, 2015

<http://www.bloomberg.com/news/articles/2015-04-17/gm-car-owners-to-fight-on-for-billions-after-bankruptcy-ruling>

GM Can't Be Sued for Making Faulty Switches – April 15, 2015

<http://www.bloomberg.com/news/articles/2015-04-15/gm-judge-says-customers-can-sue-over-some-post-bankruptcy-acts>

Judge Weighs Challenge to GM Bankruptcy Shield - February 17, 2015

<http://www.wsj.com/articles/judge-weighs-challenge-to-gm-bankruptcy-shield-1424213316>

Obama aides 'quietly urged' Bush auto bailout - February 10, 2015

<http://www.detroitnews.com/story/business/autos/2015/02/10/obama-aides-quietly-urged-bush-auto-bailout/23187179/>

GM faces \$2B hit if bankruptcy protection provision fails - November 6, 2014

<http://www.autoblog.com/2014/11/06/gm-faces-2b-hit-bankruptcy-protection-fails/>

GM Judge Says Hiding Switch Defect Would Have Been Fraud - July 2, 2014

<http://www.bloomberg.com/news/articles/2014-07-02/gm-judge-says-hiding-switch-defect-would-have-been-fraud>

### **Video**

GM shielded from ignition lawsuits by bankruptcy rule - April 15, 2015

<http://money.cnn.com/2015/04/15/news/companies/gm-bankruptcy/>

GM recall: Lawmakers, families condemn government bailout immunity – March 26, 2014

<http://www.cbsnews.com/news/gm-recall-lawmakers-families-condemn-government-bailout-immunity/>

## **Attachment B – Recent CAS Staff Quotes on Auto Safety Issues**

Watchdog's warning: Safety inspectors can't spot the next major vehicle problem - June 23, 2015

<http://www.latimes.com/business/la-fi-vehicle-safety-inspectors-20150623-story.html>

Auto safety regulators, lashed by blistering audit, vow to do better - June 22, 2015

<http://www.consumeraffairs.com/news/auto-safety-regulators-lashed-by-blistering-audit-vow-to-do-better-062215.html>

Check to see if your vehicle is affected by Takata air bag recall - June 17, 2015

<http://www.clickondetroit.com/news/check-to-see-if-your-vehicle-is-affected-by-takata-air-bag-recall/33635056>

NHTSA admits faults in GM investigation - June 5, 2015

<http://www.detroitnews.com/story/business/autos/general-motors/2015/06/05/gm-nhtsa-report/28540239/>

Fiat Chrysler Tells US It Missed Deadlines in 5 Recalls - June 4, 2015

<http://www.nytimes.com/aponline/2015/06/04/business/ap-us-fiat-chrysler-recalls.html>

After bruising safety crisis, US car watchdog shows its bite - May 24, 2015

<http://www.reuters.com/article/2015/05/26/autos-takata-nhtsa-idUSL1N0YE0EG20150526>

One in seven U.S. cars just got recalled. Here's what to do if one of them is yours - May 20, 2015

<http://www.washingtonpost.com/blogs/the-switch/wp/2015/05/20/one-in-seven-u-s-cars-just-got-recalled-heres-what-to-do-if-one-of-them-is-yours/>

Unfixed recalls affect many Maryland cars - May 20, 2015

<http://www.wbalv.com/news/unfixed-recalls-affect-many-maryland-cars/33084424>

Analyzing the largest U.S. consumer product recall - May 19, 2015

<http://www.cbsnews.com/videos/analyzing-the-largest-u-s-consumer-product-recall/>

Is danger lurking in junkyards? - May 11, 2015

<http://www.autonews.com/article/20150511/OEM11/305119949/is-danger-lurking-in-junkyards?>

Will Do-Not-Rent Recall Bill Finally Become Law? - May 7, 2015

<http://www.nbcnews.com/business/autos/will-do-not-rent-recall-bill-finally-become-law-n355436>