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WASHINGTON, DC 20510

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The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

It is my understanding the Treasury Department is withholding thousands of pages of emails discussing “carbon” from an office whose purview includes a possible “carbon tax,” requested under the Freedom of Information Act (FOIA) by the Competitive Enterprise Institute. I am particularly troubled by the claims Treasury is making to avoid releasing these public records and the lack of transparency with regards to “potential” tax dollars.

Treasury acknowledges at least 7,300 emails from this year discussing “carbon” were sent to or from the Office of Environment and Energy. This new quasi-agency appears to have been established in anticipation of Congress granting the authority to regulate carbon dioxide either through a carbon cap-and-trade program or a carbon tax. As you know, the cap-and-trade scheme failed in 2009, and now discussions have escalated on possibly enacting a carbon tax.

This particular office is part of Treasury’s Office of International Affairs, and as you know, in just one week the administration will participate in talks in Doha, Qatar, centering on its 2009 promise to participate in a \$100 billion annual fund from certain developed countries to others in the name of climate change.¹ This is, to say the least, highly controversial. Although I am interested to ascertain how Treasury plans on finding the lion’s share of an additional \$100 billion, to give away to foreign nations while we continue to run deficits in excess of \$1 trillion, that is not the entire purpose of this letter.

Treasury’s stated position for withholding these public records is that disclosure of extensive discussion of “carbon” by this particular office, presumably often with outside interests, would not significantly inform the public about operations or activities of government. A plan to tax carbon would inevitably be a tax on the public, so, by definition, every responsive record would on its face significantly inform the public.

¹ See, e.g., “Remarks by the President at the Morning Plenary Session of the United Nations Climate Change Conference, Bella Center, Copenhagen, Denmark”, December 18, 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-morning-plenary-session-united-nations-climate-change-conference>. See also, e.g., “One of the main outcomes from COP18/CMP8 that CAN will be pushing for is an agreement from countries to commit up to \$15 billion for the Green Climate Fund from 2013-15, as the first steps to establishing a \$100 billion annual fund by 2020.” <http://www.cop18.qa/News/SingleStory.aspx?ID=44>.

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I am concerned by the specifics of Treasury's position to withhold these many records. Particularly, I understand that Treasury is needlessly and improperly demanding a large sum of money (at minimum \$1,400.00) from a non-profit organization to photocopy electronic records that were requested in electronic format and thereby require no photocopying.

As you surely know, FOIA was aimed in large part at promoting active oversight of government agencies by watchdog groups, and there is precedent against forcing payment to discourage a request. See *Better Government Ass'n v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986). As such, Congress enacted FOIA clearly intending that "fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." See *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D.Mass 1984), citing Conf. Comm. Rep., H.R. Rep. No. 1380, 93d Cong., 2d Sess. 8 (1974) at 8. Such groups "routinely make FOIA requests that potentially would not be made absent a fee waiver provision" (*Better Gov't v. State*, 780 F.2d at 88-89). FOIA reflects a "Congressional determination that such constraints should not impede the access to information for" such parties (*Id.* at 93).²

Employing such tactics to force a not-for-profit group into an expensive and time-consuming (transparency-delaying) process, keeping public records of obvious public interest and policy relevance from scrutiny, is patently without merit. In short, I am deeply concerned that Treasury is employing such tactics, avoiding its obligations under the federal government's most important "transparency" statute in order to delay disclosure of information the public is owed. The executive branch should especially make the information publicly available during the ongoing tax debate.

However, while Treasury eschews transparency on this matter, I ask for some specific information that should be little burden to answer. Specifically, the following:

1. Please provide Treasury's most recent analysis of the regressive nature or impact of energy taxes, specifically of a carbon tax if you produced one, and in particular the impacts on the poor, minority communities and single parents near or below the poverty line.

² "Congress explicitly recognized the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals when it enacted the 'public benefit' test for FOIA fee waivers. This waiver provision was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups. Congress made clear its intent that fees should not be utilized to discourage requests or to place obstacles in the way of such disclosure, forbidding the use of fees as "toll gates" on the public access road to information." *Better Gov't*, 780 F. 2d at 94. It cannot be implemented in a way so as to "chill" the ability and willingness of their organizations to engage in activity that is not only voluntary, but that Congress explicitly wished to encourage." *Id.*

"The legislative history of the fee waiver provision reveals that it was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,' in particular those from journalists, scholars and nonprofit public interest groups." *Better Government Association v. State*, citing to *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D.Mass. 1984); SEN. COMM. ON THE JUDICIARY, AMENDING THE FOIA, S. REP. NO. 854, 93rd Cong., 2d Sess. 11-12 (1974)).

2. Please provide a list of all outside organizations, both non-governmental organizations and private companies, that Treasury has engaged or received input from regarding a carbon tax in 2012.
3. Please provide all proposals for obtaining and distributing the \$100 billion committed in the 2009 Copenhagen, Denmark, discussions.
4. Please provide economic impact analysis on what regions of the United States, and specific industries that would be most impacted by a carbon tax.
5. In implementing a carbon tax, has Treasury done any work to ascertain how businesses will pass on the costs of such a tax?
6. Please provide all analysis Treasury has done on the economic competitiveness the United States would anticipate from unilaterally implementing a carbon tax, particularly in relation to Brazil, Russia, India and China.

With all the work that has been done at Treasury on this matter, I am hopeful that a detailed response will be expedited. I request it on a rolling basis, e.g., as questions 1 or 3 should have answers immediately at hand, please provide the requested information as you compile, e.g., the response to question 2, and so forth. I find it highly doubtful that there will be any significant or binding agreement in the upcoming talks at Doha; however I have noticed the new standard deployed by our friends at these talks, beginning in Copenhagen, of U.S. promises being "politically binding". Regardless, it would be prudent for American citizens to know what the Treasury Department is working to commit the American taxpayer to in this exercise, as well as the basic expectations, obviously the subject of extensive discussion at Treasury, for a carbon tax.

Sincerely,



David Vitter
U.S. Senator