BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

September 21, 2020

Mr. Austin Evers
American Oversight
1030 15th Street, NW
Suite B255
Washington, D.C. 20005

Re: *Reconsideration of Freedom of Information Act Request No. F-2020-00128*

Dear Mr. Evers:

This is in response to your letter dated and received by the Board's Information Disclosure Section ("IDS") on June 19, 2020, in which you appeal, pursuant to 12 C.F.R. § 261.13(i), the determination of the Deputy Secretary of the Board ("Deputy Secretary") that no responsive documents exist in response to your request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

By facsimile dated March 4, 2020, and received by IDS on March 5, you sought the following information from January 28, 2020, through the date of the search:[1]

> The outbreak of the novel coronavirus, SARS-CoV-2, and the disease it causes, COVID-19, has been declared a public health emergency at both the national and international levels. Since late 2019, the virus has spread to dozens of countries, sickened tens of thousands of people, and resulted in thousands of deaths. This is a rapidly evolving situation that is demanding coordinated attention and action across the federal government. Yet the Trump administration has so far failed to ensure timely availability of testing kits for healthcare providers, prevented health experts from speaking about the growing crisis, and removed information on the spread of the virus from public health resources. … American Oversight seeks records with the potential to shed light on this matter. [Specifically, you sought:]

[1] Please be advised that the date staff initiated their search, March 10, 2020, was used as the cut-off date for your request.

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> All final talking points or background materials prepared for any congressional briefings or hearings or press engagements by the leadership officials [Chairman Jerome Powell and Vice Chairman Richard H. Clarida] at [the Federal Reserve Board] … regarding the ongoing coronavirus outbreak.

By letter dated May 28, 2020, the Deputy Secretary informed you that staff had searched Board records and consulted with knowledgeable staff but had not located any documents responsive to your request. The Deputy Secretary advised you that as your request stated that you are interested in receiving records with the potential to shed light on whether the Trump administration "failed to ensure [the] timely availability of testing kits …, prevented health experts from speaking about the growing crisis, and removed information on the spread of the virus from public health resources," only final talking points or background materials prepared for congressional briefings, hearings, or press engagements that were intended to convey updates on health issues related to the spread of the coronavirus outbreak were considered to be responsive to the request.

By letter dated and received by IDS on June 19, 2020, you appeal the Deputy Secretary's determination that no responsive records exist and question the adequacy of the search for such documents. You state that the Board "[imposed] a subject matter limitation that American Oversight had not included in its request language" by "[limiting] its search to records providing 'updates on health issues related to the spread of the coronavirus outbreak.'" You further assert that the Board "has not shown that it has conducted an adequate search."

As you have clarified the subject matter of your request, I am treating your appeal as a request for reconsideration of your original FOIA request. *See* 12 C.F.R. § 261.13(i)(5).

Accordingly, Board staff conducted a search of Board records and consulted with knowledgeable staff about your request. Based on information provided in your June 19 letter, staff searched for any talking points or background materials prepared for Chair Powell or Vice Chair Richard Clarida for any type of speaking engagement regarding any issues related to the coronavirus outbreak. Staff located documents responsive to your request. One document is a speech prepared for Vice Chair Clarida that he presented at the 36th Annual NABA Economic Policy Conference on February 25, 2020, which can be found on the Board's public website: https://www.federalreserve.gov/newsevents/speech/clarida20200225a.htm. The remaining documents responsive to your request consist of internal intra-agency communications, which discuss recommendations and deliberative analyses prepared by Board staff. This information is subject to withholding and will be withheld from you under the authority of exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5). I have also determined that the information should be withheld because it is reasonably foreseeable

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that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b). The responsive documents have been reviewed under the requirements of subsection (b), but no reasonably segregable nonexempt information was found. Accordingly, approximately 146 pages of information will be withheld from you in full.

Your request, therefore, is granted in part and denied in part for the reason stated above. If you believe you have a legal right to the information that is being withheld, you may appeal this determination by writing to Board of Governors of the Federal Reserve System, Attn: FOIA Appeals, 20th Street & Constitution Avenue NW, Washington, DC 20551; by facsimile to 202-872-7565; or electronically to FOIA-Appeals@frb.gov. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.[2]

Very truly yours,

Michele Taylor Fennell
Assistant Secretary of the Board

[2] As an alternative to an administrative appeal, you may also contact the Board's FOIA Public Liaison, Ms. Candace Ambrose, at 202-452-3684 for further assistance. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of the Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770 or toll free at 1-877-684-6448; or facsimile at 202-741-5769.

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