

EXHIBIT 18

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Freedom of Information Act/Privacy Act Group

January 21, 2013

Legal Division

FDIC

550 17th At. NW

Washington, DC 20429-9990

**RE: FREEDOM OF INFORMATION ACT REQUEST TO FOIA/Privacy Act
GROUP; APPEAL FROM PARTIAL DENIAL OF REQUEST—LOG NO. 13-0214**

Dear Foia/Pa Group General Counsel,

This is an appeal from the partial denial of a FOIA request for documents. The request was as follows, In July, 2008, IndyMac Bank, FSB, Pasadena, CA was seized or closed by FDIC, and, eventually, the bank or its assets were sold to another bank, OneWest Bank. The request sought contract documents under which FDIC was represented or advised by outside counsel in these transactions, specifically, FDIC was represented or advised by the law firm of Thacher Proffitt and Wood, LLP (“Thacher”) in connection with the seizure or sale of IndyMac Bank, and the request sought the contract and any orders given by FDIC to Thacher in connection with the IndyMac matter. In addition, Sonnenschein Nath and Rosenthal, LLP (“Sonnenschein”) came to replace Thacher, and the request also sought all documents reflecting the contract or order or modification or novation or assignment by which Sonnenschein came to replace Thacher as counsel to or advisor to FDIC, including especially any submissions or other documents of any kind that were provided to FDIC to support or justify the change of firms representing FDIC. The request noted that it was particularly important to us to receive any records of anything submitted or said by either Thacher or Sonnenschein or any representative of either to FDIC to get Sonnenschein to become the substitute contractor for FDIC.

In the response provided, we received *no* documents relating to Thacher and no documents reflecting a submission to obtain a novation of a Thacher contract to Sonnenschein. The contract we were provided, with Sonnenschein, does not refer to IndyMac Bank and doesn't appear to be a novation or modification of an earlier Thacher contract. We believe FDIC gave us the wrong contract. In addition, the partial denial letter of March 7, 2013 notes that it withheld 3 pages, and it states that you withheld additional pages.

In this appeal, we want the correct contract, as sought in the request, plus any modifications or novation documents, as well as [and most important], the submission to get the novation.

The partial denial cites to exemption (b)(4), but this exemption should not apply, as the documents sought should not contain either trade secrets or commercial or financial information which is confidential.

The background is that the Thacher firm was the FDIC contractor, and the contract was then novated to the Sonnenchein firm. Under the applicable Federal Acquisition Regulations, such a novation *must* be preceded by a submission seeking the novation [this is the document we seek]. See 48 C.F.R. 1200(a), setting out procedures for "Recognition of a successor in interest to Government contracts when contractor assets are transferred" and 1203 (a), setting procedures for novation requests and stating that, "If a contractor wishes the Government to recognize a successor in interest to its contracts or name change, the contractor must submit a written request to the responsible contracting officer." It is this written submission requesting or supporting novation of this contract that I'm seeking. Such a submission would have no reason to contain any trade secrets or confidential financial or commercial information, as the sole purpose of the regulations on successors in interest and novation of contracts is simply to determine whether the proposed new contractor is in fact a legitimate, legal successor in interest to the original contractor.¹

For those reasons, neither trade secrets nor confidential commercial or financial information would be germane to a novation submission, so I find it hard to believe the withheld information is privileged under exemption (b)(4).

In addition, there are no privacy interests involved, as Thacher and Sonnenchein are 2 companies with no privacy rights, not individuals, and, in either case, we don't seek private information, just information submitted to the FDIC contracting officer under the requirements of the regulations listed above.

The name of the requester is Michael E. Geltner, and the address and telephone number during business hours and emails and fax number of the requester are above.

I agree to pay the applicable fees. Please advise if an advance payment is required.

Please call or email if any additional information is needed to process this FOIA appeal.

Very truly yours,


Michael E. Geltner

¹ Under federal law, a federal contractor may not assign or transfer its contracts to another party. Federal Anti-Assignment Act, 41 U.S.C. §6305 (formerly §15). By regulations, the federal government treats novation to a legal successor in interest as permissible, because, the successor in interest is for all practical purposes the same party as its predecessor. 48 C.F.R. 42.1204(a). See generally, *Raytheon Co. v. United States*, 105 Fed. Cl. 236, 254-6 (2012) (explaining that, other than the novation process, "[g]enerally speaking, the Anti-Assignment Act, 41 U.S.C. §15 [now 6305] prohibits the transfer of a government contract.").