

EXHIBIT 19



FDIC

Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429

Corporate Litigation Unit
Legal Division

May 8, 2013

**VIA EMAIL (mgeltner@gmail.com)
AND REGULAR MAIL**

Michael Geltner
Geltner & Associates, P.C.
105 North Virginia Avenue
Suite 305
Falls Church, VA 22046

Re: *FOIA Appeal No. 13-0014-A*
Original Request: FOIA Log No. 13-0214
Date of FOIA/Privacy Act Group (FOIA Group) Final Response: March 7, 2013
Date of Appeal Letter: March 27, 2013
Date of Appeal Extension Letter: April 24, 2013

Dear Mr. Geltner:

This is in response to your March 27, 2013 letter appealing the Federal Deposit Insurance Corporation's (FDIC's) response to your request for information pursuant to the Freedom of Information Act (FOIA).¹ You requested copies of any contract or order between Thacher Proffitt and Wood, LLP (Thacher) and the FDIC pertaining to work performed for Indymac Receivership. You also requested copies of any contract between Sonnenschein Nath and Rosenthal, LLP (Sonnenschein) and any documents relating to an order, modification, novation or assignment by which Sonnenschein came to replace Thacher as counsel to the FDIC in regards to Indymac receivership matters.

In a March 7, 2013 letter, FOIA Group staff released 13 pages of records, subject to certain redactions, responsive to your request. The thirteen pages consisted of a Legal Services Agreement between the FDIC and Sonnenschein, amendments thereto, and rate schedules (Legal Services Agreement). The material that was redacted was withheld pursuant to FOIA Exemptions 4 and 6. In addition, FOIA Group staff advised you that a three-page responsive document was withheld in its entirety pursuant to Exemption 5. In your appeal, you challenge the adequacy of the FDIC's search, and the redaction and withholding of material pursuant to Exemptions 4, 5 and 6.²

¹ 5 U.S.C. § 552

² Your appeal contains several references to the Federal Acquisition Regulations and novation regulations contained therein. The FDIC is not subject to the Federal Acquisition Regulations. *See Doing Business with the FDIC*, at 4, available at <http://www.fdic.gov/buying/goods/doingbusinessbrochure.pdf> (last visited April 22, 2013) ("The FDIC does not use appropriated funds, and is not subject to the Federal Acquisition Regulations (FAR) and other federal statutes such as the Competition in Contracting Act (CICA). FDIC works under separate and unique laws, and has established its own contracting policies and procedures for procuring its goods and services.").

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In response to your appeal, staff searched again for responsive materials and, as a result, identified four additional pages of records covered by your initial request. Specifically, staff located Sonnenschein's Amended Non-Litigation Budget for legal services pertaining to the Indymac failure with an accompanying three-page case plan (Sonnenschein Budget). As discussed further below, portions of the Sonnenschein Budget are being released to you with this correspondence.

In considering your appeal, we have also reviewed FOIA Group staff's disclosure determinations with respect to the material originally located in response to your FOIA request. In doing so, we conclude that staff properly invoked applicable FOIA exemptions except with respect to the three-page document withheld in its entirety pursuant to Exemption 5. Upon further review, we have determined that while portions of the record at issue -- an engagement letter between Thacher and the FDIC, dated July 11, 2008 (Thacher Engagement Letter) -- are protected from disclosure pursuant to Exemption 5, the remaining portions may be disclosed. Therefore, as explained below, we are releasing with this correspondence non-exempt portions of the Thatcher Engagement Letter.

For the reasons discussed below, information in the Thacher Engagement letter, the Sonnenschein Budget, and the Legal Services Agreement materials previously released to you has been withheld pursuant to FOIA Exemptions 5 and 6.³ We discuss each exemption in turn.

Exemption 5

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."⁴ Among the traditional privileges incorporated within Exemption 5 is the attorney-client privilege. This privilege protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice."⁵ The privilege applies to, among other things, facts provided by a client to his or her attorney, the attorney's opinions based upon these facts, and communications between attorneys concerning information provided by a client. Thus, to the extent that responsive materials in the enclosed Thacher Engagement letter and Sonnenschein Budget contain more than the general purpose of the retention and, instead, reveal specific areas of concern and anticipated issues for further research and/or action,

³ We also find that Thacher's taxpayer identification number was properly redacted, pursuant to Exemption 4, from the previously disclosed Legal Service Agreement. This type of information falls squarely within Exemption 4 which protects from disclosure commercial or financial information that is confidential. 5 U.S.C. § 552(b)(4).

⁴ 5 U.S.C. § 552(b)(5).

⁵ *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977).

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they reflect attorney-client communications that are protected from disclosure under FOIA Exemption 5.⁶

Exemption 6

Exemption 6 allows an agency to withhold information about individuals located in “personnel and medical files and similar files” where the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.”⁷ The primary purpose of Exemption 6 is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information.⁸ In making this determination, the individual’s privacy interests are balanced against the public’s interest in having the information disclosed.⁹

The threshold requirement of Exemption 6 is that information be contained in a personnel, medical or similar file. This has been construed by the Supreme Court to extend the coverage of the exemption to any agency records containing information about a particular individual that can be identified as applying to that individual.¹⁰ This requirement is met in this case.

In particular, the minority status of particular employees and non-business phone numbers were redacted from the Legal Service Agreement materials that were previously disclosed to you. The FDIC also redacts signatures as such information can be misused for identity theft or other purposes.¹¹

The second step of the Exemption 6 analysis is whether disclosure of the information would, in the language of the statute, “constitute a clearly unwarranted invasion of personal privacy.” “This second inquiry requires us to balance the privacy interest that would be

⁶ *Stanziale v. Vanguard Info-Solutions Corp.*, 2008 WL 1808318 (Bankr. D.N.J. 2008) (redacting in part and producing in part an engagement letter that disclosed more than merely the general purpose of the retention “and in fact reveals specific areas of concern and anticipated issues for further research and/or action.”).

⁷ 5 U.S.C. § 552(b)(6).

⁸ *United States Dept. of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982) (referencing the House and Senate Reports).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 600 finding that “[i]nformation such as place of birth, date of birth date of marriage, employment history, and comparable data is not normally regarded as highly personal, and yet ... such information ... would be exempt from any disclosure that would constitute a clearly unwarranted invasion of personal privacy.”; *People for the Am. Way Found. v. Nat’l Park Service*, 503 F. Supp.2d 284, 304, 306 (D.D.C. 2007) (stating that “[f]ederal courts have previously recognized a privacy interest in a person’s name and address” and concluding that “[g]enerally, there is a stronger case to be made for the applicability of Exemption 6 to phone numbers and addresses.”); *Kidd v. DOJ*, 362 F. Supp.2d 291, 296-97 (D.D.C. 2005) (home telephone number); *Barvick v. Cisneros*, 941 F. Supp. 1015, 1020-21 (D. Kan. 1996); *Kurdyukov v. U.S. Coast Guard*, 657 F. Supp.2d 248, 254 (D.D.C. 2009); *Holland v. CIA*, 1992 WL 233820 (D.D.C. 1992) (upholding redaction of signatures).

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compromised by disclosure against any public interest in the requested information.”¹² This balancing test first asks whether disclosure would result in a “more than minimal” invasion of personal privacy. If so, the inquiry turns to whether that privacy interest is outweighed by the public interest in disclosure.¹³

Here, we have determined that disclosure of personal phone numbers and minority/racial background would result in more than a minimal invasion of an individual’s personal privacy interest.¹⁴ Moreover, you have offered no explanation as to why any public interest in this purely personal information would outweigh the affected individuals’ privacy interests.


That similar information may be obtainable from other sources such as the internet does not change the analysis whether a privacy interest exists, because it is the information compiled and held by the agency, not information obtainable elsewhere, that is at issue. “Indeed, if the summaries [prepared by the agency] were ‘freely available,’ there would be no reason to invoke the FOIA to obtain access to the information they contain.”¹⁵ Because we find no public interest in disclosure of personal phone numbers, minority identifications, or personal signatures, the balance weighs in favor of the individual’s privacy interests.¹⁶ Disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy,” and thus that information is exempt under FOIA Exemption 6.

Conclusion

For the reasons discussed above, your appeal is granted in part and denied in part. Except as indicated above, I conclude that the initial decision in this matter was correct.

Because your FOIA appeal has been denied in part, you may seek judicial review under to 5 U.S.C. § 552(a)(4)(B).

Sincerely,



Barbara Sarshik
Senior Counsel

Enclosures

¹² *Multi Ag Media LLC v. Department of Agriculture*, 515 F.3d 1224, 1228 (D.C. Cir. 2008).

¹³ *Id.* at 1229-1230.

¹⁴ *See supra* at n.10.

¹⁵ *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989).

¹⁶ “[S]omething, even a modest privacy interest, outweighs nothing every time.” *National Ass’n of Retired Federal Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989).