

EXHIBIT 4



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF THE
GENERAL COUNSEL

Stop 9612

July 30, 2014

Joseph Russello
Robbins Geller Rudman & Dowd LLP
58 South Service Road, Suite 200
Melville, NY 11747

Re: Appeal, Freedom of Information Act (FOIA) Request No. 2014-7357, designated on appeal as No. 2014-00370

Dear Mr. Russello:

I am responding to your July 8, 2014, Freedom of Information Act appeal of the decision of the FOIA/Privacy Act Officer, Securities and Exchange Commission, denying your request for certain investigative records relating to Lions Gate Entertainment Corp. On June 10, 2014, the FOIA Officer denied your request pursuant to FOIA Exemption 7(A). I have considered your appeal and it is denied.

I am satisfied that the FOIA Officer correctly asserted Exemption 7(A).¹ Staff responsible for this matter have confirmed that releasing the withheld information could reasonably be expected to interfere with an on-going enforcement proceeding, notwithstanding that the Commission has reached settlement with certain parties. *See, e.g., Solar Sources, Inv. v. United States*, 142 F.3d 1033, 1040 (7th Cir. 1998) (information compiled for an on-going investigation remains subject to Exemption 7(A) although some defendants had pled guilty); *New England Med. Ctr. Hosp. v. NLRB*, 548 F.2d 377, 381 (1st Cir. 1976) (holding Exemption 7(A) applicable when "the closed file is essentially contemporary with, and closely related to, the pending open case to which the records relate"); *Manna v. Dept. of Justice*, 51 F.3d 1158, 1164-65 (3rd Cir. 1995) (Exemption 7(A) applicable to materials if disclosure would interfere with prosecutions beyond ones that have been closed); *OKC Corp. v. Williams*, 489 F. Supp. 576 (N.D. Tex. 1980) (SEC is not required to disclose requested materials directly tied to a pending investigation); *National Public Radio v. Bell*, 431 F. Supp. 509, 514-15 (D.D.C. 1977) (Congress intended that Exemption 7(A) would apply where disclosure may impede any necessary investigation prior to

¹Exemption 7(A) authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. 552(b)(7)(A), 17 CFR 200.80(b)(7)(i).

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court proceedings); *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 232 (1978) (Congress intended that Exemption 7(A) would apply “whenever the Government’s case in court * * * would be harmed by the premature release of evidence or information.”); *Accuracy in Media, Inc. v. U.S. Secret Service*, C.A. No. 97-2108, 1998 U.S. Dist. Lexis 5798 at 11 (D.D.C. April 16, 1998) (affirmation that there is an active and on-going investigation is enough).

Further, under Exemption 7(A), an agency may withhold records if they come within categories of records whose disclosure would generally interfere with enforcement proceedings. *Robbins Tire*, 437 U.S. at 236; *see also Solar Sources*, 142 F.3d at 1038 (“the Government may justify its withholdings by reference to generic categories of documents”). The documents you seek come within categories whose disclosure would generally interfere with enforcement proceedings.

Should you have a continuing interest in this information, you may contact the FOIA Office within six months of the date of this letter to determine if the status of the on-going law enforcement proceeding has changed. As Exemption 7(A) precludes the release of the information at this time, no determination has been made concerning the applicability of any other FOIA Exemptions. The Commission reserves the right to review the information to assert any other exemption when Exemption 7(A) is no longer applicable. *See LeForce & McCombs, P.C. v. Dept. of Health and Human Services*, Case No. Civ-04-176-SH (E.D. Okla. Feb. 3, 2005) (an agency does not waive the right to invoke exemptions by not invoking such exemption during the administrative processing of a FOIA request); *Young v. CIA*, 972 F.2d 536, 538-39 (4th Cir. 1992) (“[A]n agency does not waive FOIA exemptions by not raising them during the administrative process.” (citing *Dubin v. Dept. of the Treasury*, 555 F. Supp. 408, 412 (N.D. Ga. 1981), *aff’d*, 697 F.2d 1093 (11th Cir. 1983)); *Frito-Lay v. EEOC*, 964 F. Supp. 236, 239 (W.D. Ky. 1997) (“[A]n agency’s failure to raise an exemption at any level of the administrative process does not constitute a waiver of that defense.”); *Farmworkers Legal Servs. v. Dept. of Labor*, 639 F. Supp. 1368, 1370-71 (E.D.N.C. 1986) (“The relevant cases universally hold that exemption defenses are not too late if initially raised in the district court.”).

Finally, on appeal, you suggest that the FOIA Officer’s response was insufficient. Under FOIA, a decision to deny access to records, in whole or part, must inform the requester of the reasons for the denial, of the right to appeal a denial, and of the name and title of the person responsible for the denial. 5 U.S.C. 552(a)(6)(A)(i), 17 CFR 200.80(d)(5)(iv). The FOIA Officer informed you of the specific exemption invoked and the reasons for the invocations. You were also informed that you could appeal this determination, how to file an appeal, and given the name and title of the officer responsible for the adverse determination. Thus, the FOIA Officer’s response fulfilled the statutory requirements. *See Judicial Watch, Inc. v. Clinton*, 880 F. Supp. 1, 11 (D.D.C. 1995) (“only statutory requirement applicable to an administrative agency under FOIA is that it inform the requester of its decision to withhold, along with the underlying reasons”).

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You have the right to seek judicial review of my determination with respect to Exemption 7(A) by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business. *See* 5 U.S.C. 552(a)(4)(B). Voluntary mediation services as a non-exclusive alternative to litigation are also available through the Office of Government Information Services (OGIS). For more information, please contact OGIS at ogis@nara.gov, www.archives.gov/ogis, or 1-877-684-6448. If you have any questions concerning my determination, please call Celia Jacoby, Senior Counsel, at 202-551-5158.

For the Commission
by delegated authority,

A handwritten signature in black ink, appearing to read 'R. Humes', is positioned above the printed name of the signatory.

Richard M. Humes
Associate General Counsel