

# **EXHIBIT D**

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May 30, 2014

Director, Office of Information Policy  
United States Department of Justice  
Suite 11050  
1425 New York Avenue  
Washington, DC 20530-0001

Re: Freedom of Information Act Appeal of Denial of Request 13-594

Dear Sir or Madam:

This is a formal appeal of denial of Request 13-594 (enclosed). This request sought a copy of a letter already publicly disclosed in the Complaint filed in *United States v. First Bank of Delaware* (enclosed). Paragraph 64 of that complaint quotes a May, 2010 letter from an official at the Federal Reserve to an Officer of First Bank of Delaware. The request for the document was rejected in the entirety under exception (b)(4). We request expedited hearing of the request because the publicly quoted content of the letter has been used in an ongoing litigation. It is quoted, among other places, in a brief filed by United States Senators Casey, Markey and Blumenthal and Congresswoman Schwartz, (enclosed, see page 16) in support of an appeal presently pending in the United States District Court for the Third Circuit.

Appellant appeals this rejection because by quoting the above information in a public complaint, any confidentiality was effectively waived, certainly as to the content of the information actually quoted and likely to the entire letter which was placed at issue. Also, the information sought is not "trade secrets and commercial or financial information obtained from a person and privileged or confidential" under (b)(4).

Appellant is willing to accept a redacted version of the letter containing the letterhead, addressee, date, text quoted in the Complaint, and signature block. The text quoted in First Bank of Delaware case reads:

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United States Department of Justice  
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[A] return rate of 10% (which is on its face significantly in excess of industry norms) would likely be regarded by bank supervisory agencies and/or law enforcement agencies as prima facie evidence that your bank knew or should have known that your [third-party payment processors and/or merchants] had engaged in fraudulent activities. Whether a return rate of 10% might expose your bank to potential liability is an issue that we urge you to consider carefully in consultation with your legal counsel.

Exception (b)(4) exempts “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” The quoted material is not in any way a trade secret or commercial or financial information obtained from a person. Rather, it is a statement of views by a Federal Reserve official. Nothing about it is secret or privileged because it is disclosed in a public filing. The letterhead of a person employed by the Federal Reserve, the signature block of the person writing the letter and the letter’s date are not in any way a “trade secret” or “commercial” or “financial” information. This is particularly so because the author is an employee of the Federal Reserve. The individual addressee, while not a “trade secret” or “commercial” or “financial” information may be redacted so long as the name of the bank (already disclosed as First Bank of Delaware) and its address remain.

Sincerely,



Howard Langer

HIL/gg  
Enclosures



No. 14-1228

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**REYNALDO REYES,**  
on behalf of himself and all others similarly situated,  
*Plaintiff/Appellant*

v.

**NETDEPOSIT,**  
**MP TECHNOLOGIES d/b/a MODERN PAYMENTS, ZIONS FIRST  
NATIONAL BANK, et al**  
*Defendants-Appellees*

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania

Case No. 10-345

The Honorable Juan R. Sanchez

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**BRIEF *AMICI CURIAE* BY UNITED STATES SENATORS  
EDWARD J. MARKEY, ROBERT CASEY, RICHARD BLUMENTHAL,  
AND  
UNITED STATES REPRESENTATIVE ALLYSON SCHWARTZ  
IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL**

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