

Exhibit F



1700 G Street NW, Washington, DC 20552

December 1, 2015

VIA Electronic Mail

Mr. Asher Hawkins
Frank LLP
275 Madison Avenue
Suite 705
New York, NY 10016

Re: Final Appellate Determination on FOIA Appeal No. CFPB-2015-296-A

Dear Mr. Hawkins:

This letter constitutes the final determination of the Consumer Financial Protection Bureau (the Bureau) regarding your appeal of the Bureau's decision on Freedom of Information Act (FOIA) Request No. CFPB-2015-296-F (the Request). For the reasons set forth below, the appeal is denied.¹

I. Background

On September 11, 2015, you filed FOIA Request No. 2015-296-F with the Bureau, seeking documents related to the Bureau's administrative enforcement proceeding against Encore Capital Group, *In re Encore Capital Group, Inc. et al.*, No. 2015-CFPB-0022 (Sept. 3, 2015). In particular, the Request sought "the documents in the Bureau's possession that the Bureau relied upon in identifying the[] approximately 35,600 lawsuits" in which Encore filed an affidavit with a representation that a debt could be assumed valid because the consumer failed to dispute under the FDCPA.

On September 30, 2015, the Bureau responded to the Request by letter (the Response) stating that a search of the Bureau's Office of Enforcement revealed that any responsive documents would be withheld in full pursuant to Exemption 4 of the FOIA. The Response further explained that Exemption 4 protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

On October 30, 2015, you filed this appeal, Appeal No. CFPB-2015-296-A (the Appeal). The Appeal argues that the Bureau failed to establish that the withheld documents were "confidential" or "commercial" for purposes of Exemption 4. The Appeal also argues that, even if

¹ The Bureau's FOIA regulations are codified at 12 C.F.R. § 1070.10 *et seq.* Pursuant to these regulations, the authority to determine FOIA appeals rests with the Bureau's General Counsel or her delegate. *See* 12 C.F.R. § 1070.21(e). The General Counsel has delegated to me the authority to determine the appeal of the Bureau's response to the Request. This letter therefore constitutes the Bureau's final response to the Request.

some portions of the requested documents were exempt from disclosure under Exemption 4, the Bureau failed to disclose the reasonably segregable portions that are subject to disclosure.

II. Appellate Determination

I have determined that the documents responsive to the Request are exempt from disclosure under FOIA Exemption 7. Given that determination, I do not address your arguments regarding Exemption 4.

Exemption 7 allows an agency to withhold “records or information compiled for law enforcement purposes” to the extent that their disclosure could have certain specified effects. 5 U.S.C. § 552(b)(7). Most relevantly here, Exemption 7(E) permits withholding of such records to the extent that their production “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E).

The documents that the Request seeks are exempt from disclosure under this Exemption. First, the documents are plainly “records or information compiled for law enforcement purposes.” The Request seeks documents that the Bureau compiled and relied upon in identifying a particular unlawful practice cited in a consent order resolving an enforcement action. Second, producing the requested documents would disclose “techniques and procedures” that the Bureau uses in its law enforcement investigations and prosecutions. In particular, the Request seeks the documents “that the Bureau relied upon” in identifying approximately 35,600 instances in which a particular unlawful practice occurred. Disclosing what the Bureau relied on to identify this unlawful practice, the scope of that practice, and the specific instances in which the practice occurred would necessarily reveal the Bureau’s technique or procedures for investigating violations like this one—a company’s filing of deceptive affidavits in debt-collection suits. It would also necessarily reveal a procedure that the Bureau uses to identify the scope of an unlawful practice when resolving an enforcement action through settlement. Keeping “confidential the procedures by which the agency conducted its investigation and by which it has obtained information” is “necessary for effective law enforcement.” *Frankel v. Securities & Exchange Comm’n*, 460 F.2d 813, 817 (2d Cir. 1972).

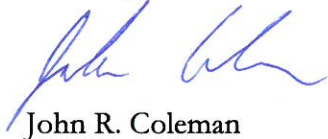
Under Exemption 7(E), documents that reveal “techniques and procedures” are categorically exempt from disclosure, whether or not their disclosure “could reasonably be expected to risk circumvention of the law.” *Allard K. Lowenstein Int’l Human Rights Prj. v. Dep’t of Homeland Security*, 626 F.3d 678, 681 (2d Cir. 2010). Nonetheless, I also find that disclosing the requested documents—and the techniques and procedures that would necessarily be revealed in the process—could also reasonably be expected to risk circumvention of the law. Disclosing the requested documents could give other entities (including subjects of other potential or ongoing investigations) notice of what kinds of materials the Bureau might request from them, which would enable them to suppress or fabricate evidence. *Cf., e.g., Juarez v. Dep’t of Justice*, 518 F.3d 54, 58 (D.C. Cir. 2008) (authorizing withholding documents where disclosure “could lead to destruction of evidence”); *Suzhou Yuanda Enter., Co. v. U.S. Customs & Border Protection*, 404 F. Supp. 2d 9, 14 (D.D.C. 2005) (approving withholding under Exemption 7(A) where disclosure “could inform the public of the evidence sought and scrutinized in this type of investigation”). Thus, even if it were necessary to show that disclosure could risk circumvention of the law (it is not), that requirement would be met here.

Because the requested documents are exempt from disclosure under Exemption 7(E), the Appeal is denied.

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If you are dissatisfied with the Bureau's final appellate determination, you may contact the OGIS, which offers mediation services to resolve disputes between FOIA requesters and federal agencies. Using OGIS services does not affect your right to judicial review. You may seek judicial review of this determination in the U.S. District Court for the district where you have your primary place of business, where the documents you seek are located, or in the District of Columbia.

Sincerely,



John R. Coleman
Assistant General Counsel