

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

VERN McKINLEY)	
20745 Ashburn Station Place)	
Ashburn, VA 20147,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	
BOARD OF GOVERNORS OF THE)	
FEDERAL RESERVE SYSTEM)	
20th St. and Constitution Ave., N.W.)	
Washington, DC 20551,)	
)	
Defendant.)	
_____)	

COMPLAINT

Plaintiff Vern McKinley brings this action against Defendant Board of Governors of the Federal Reserve System (“the Board”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Vern McKinley is a private citizen residing in Ashburn, Virginia. He is a former employee of the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Office of Thrift Supervision. Since 1999, he has served as a consultant, legal advisor, and regulatory policy expert on financial sector issues for central banks, deposit insurers and financial supervisors in more than two dozen

countries. In addition, Plaintiff is a Visiting Scholar at the George Washington University Law School and author of the 2012 book *Financing Failure: A Century of Bailouts*.

4. Defendant Board of Governors of the Federal Reserve System (“the Board”) is an agency of the United States Government and is headquartered at 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. Research undertaken by Ellis Tallman of the Federal Reserve Bank of Cleveland reveals a large increase in system-wide Federal Reserve discount window borrowing during the period 1918 to 1921 from roughly \$0.5 billion to \$3.5 billion. *See* Comments, “The Promise and Performance of the Federal Reserve as Lender of Last Resort 1914-33.”

6. Based on this research, on September 28, 2016, Plaintiff submitted a FOIA request to the Board seeking “individual institution level data for the underlying borrowing during this period” as well as “legal and operational documents regarding these borrowings.”

7. Plaintiff also informed the Board that, based on available sources, he is aware that National City Bank of New York and Chase National Bank received about 10 percent of these borrowings as both had over \$100 million in borrowing at the peak during these years. He further stated that if it makes the task more manageable, the Board should “first focus on New York banks as they seem to be the predominant borrowers [and] [t]hen the other borrowers could be addressed sequentially.”

8. By email dated October 4, 2016, the Board acknowledged receiving Plaintiff’s FOIA request on September 29, 2016 and advised Plaintiff that his request had been assigned FOIA Request Number F-2016-00329.

9. By email dated October 27, 2016, the Board, pursuant to 5 U.S.C. § 552(a)(6)(B)(i), notified Plaintiff that it was unilaterally extending the period of time for it to respond to Plaintiff's FOIA request until November 10, 2016.

10. By email dated December 5, 2016, the Board again notified Plaintiff that it required additional time to complete the processing of his FOIA request. The Board also informed Plaintiff that it anticipated completing the processing of his request by December 20, 2016.

11. By email dated December 23, 2016, the Board again notified Plaintiff that it required additional time to complete the processing of his FOIA request. The Board also informed Plaintiff that it anticipated completing the processing of his request by January 19, 2017.

12. By email dated January 24, 2017, the Board again notified Plaintiff that it required additional time to complete the processing of his FOIA request. The Board also informed Plaintiff that it anticipated completing the processing of his request by February 7, 2017.

13. As of the date of this Complaint, the Board has failed to: (i) produce the requested records or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records the Board intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

14. Plaintiff realleges paragraphs 1 through 13 as if fully stated herein.

15. Plaintiff is being irreparably harmed by reason of the Board's violation of FOIA, and Plaintiff will continue to be irreparably harmed unless the Board is compelled to comply with FOIA.

16. To trigger FOIA's administrative exhaustion requirement, the Board was required to determine whether to comply with Plaintiff's request within thirty (30) working days of receiving the request on September 29, 2016. Accordingly, the Board's determination was due on or about November 11, 2016. At a minimum, the Board was required to: (i) gather and review the requested documents; (ii) determine and communicate to Plaintiff the scope of any responsive records the Board intended to produce or withhold and the reasons for any withholdings; and (iii) inform Plaintiff that he may appeal any adequately specific, adverse determination. *See, e.g., Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 188-89 (D.C. Cir. 2013).

17. Because the Board failed to determine whether to comply with Plaintiff's request within the time period required by FOIA, Plaintiff is deemed to have exhausted its administrative appeal remedies. 5 U.S.C. § 552(a)(6)(C)(i).

WHEREFORE, Plaintiff respectfully requests that the Court: (1) order the Board to conduct searches for any and all records responsive to Plaintiff's FOIA request and demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA request; (2) order the Board to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and a Vaughn index of any responsive records withheld under claim of exemption; (3) enjoin the Board from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA request; (4) grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5

U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: February 8, 2017

Respectfully submitted,

/s/ Michael Bekesha

Michael Bekesha

D.C. Bar No. 995749

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