

# Exhibit 4



October 3, 2018

**VIA EMAIL TO: [FOIA@treasury.gov](mailto:FOIA@treasury.gov)**

FOIA Appeal, Departmental Offices,  
Assistant Director, Disclosure Services,  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

FOIA Request No.: 2018-06-192

**Subject: Freedom of Information Act Appeal**

To Whom It May Concern:

I represent National Public Radio, Inc. and NPR Correspondent Tim Mak (collectively, “NPR”). I hereby appeal on behalf of NPR from the U.S. Treasury’s (“Treasury”) denial of NPR’s May 14, 2018, Freedom of Information Act (“FOIA”) request for documents related to Alexander Torshin and Oleg Deripaska.

The basis of the appeal is that Treasury has failed to make a determination about the FOIA request within 20 working days under 5 U.S.C. § 552(a)(A)(i), and therefore has constructively denied it.

**I. Background**

On May 14, 2018, NPR submitted a FOIA request to the Treasury Department, which is attached hereto as Exhibit A. NPR requested the following records:

Alexander Torshin

1. Any and all written communications between the Treasury Department’s Office of Foreign Assets Control (“OFAC”) and other Treasury Department officials referring or relating to Alexander Torshin (“Torshin”);
2. Any and all documents reflecting communications, discussions or meetings referring or relating to Torshin as a potential candidate for sanctions designation;
3. Any and all documents reflecting or revealing communications between the Treasury Department (or any of its officials) and Torshin;
4. Any and all documents that constitute the evidentiary package used to support, or form the basis of, OFAC’s April 6, 2018 sanctions designation of Torshin; and
5. Any “talking points” or other written materials used in connection with OFAC’s April 6, 2018 announcement of its sanctions designation of Torshin;

Oleg Deripaska

6. Any and all written communications between the Treasury Department's Office of Foreign Assets Control ("OFAC") and other Treasury Department officials referring or relating to Oleg Deripaska ("Deripaska");
7. Any and all documents reflecting communications, discussions or meetings referring or relating to Deripaska as a potential candidate for sanctions designation;
8. Any and all documents reflecting or revealing communications between the Treasury Department (or any of its officials) and Deripaska;
9. Any and all documents that constitute the evidentiary package used to support, or form the basis of, OFAC's April 6, 2018 sanctions designation of Deripaska; and
10. Any "talking points" or other written materials used in connection with OFAC's April 6, 2018 announcement of its sanctions designation of Deripaska.

The request made clear that "this request does not seek copies of properly classified documents." It said "[i]f any of the foregoing documents have been classified pursuant to Executive Order, we ask that you review the information to determine whether they are properly classified or continue to warrant classification." Though NPR offered to pay reasonable duplication fees, as a representative of the news media seeking these records on behalf of NPR for dissemination to the public, NPR asked for a waiver of those fees. NPR requested that Treasury justify all deletions by reference to specific exemptions of FOIA.

On July 6, 2018, NPR received an acknowledgment letter from Treasury, which stated, "Treasury referred your request to its Office of Foreign Assets Control (OFAC) for processing on June 29, 2018." That acknowledgment stated that as a media requestor, NPR will be "charged for the cost of duplication only, excluding charges for the first 100 pages." The acknowledgement, stated the request was "moot" because the response would be processed in an electronic format and would thus be "de minimis." A copy of the July 6 2018, acknowledgement letter is attached hereto as Exhibit B.

In addition, NPR received a second letter from Treasury on July 16, 2018, informing NPR that Treasury determined that "other program offices within Departmental Offices (DO) should have also been assigned" the request. A copy of the acknowledgement letter is attached hereto as Exhibit C. Claiming "unusual circumstances," Treasury informed NPR that "an additional processing extension of 10 days is required to process" the request, and stated it would further review the request for a fee waiver. A copy of the July 16 2018, acknowledgement letter is attached hereto as Exhibit C.

## **II. Treasury Has Failed to Make a "Determination" Regarding the FOIA Request Within the Deadline FOIA Imposes**

Treasury's OFAC and Department Offices have failed to meet the response deadline required by FOIA. Under FOIA, "an agency must make and communicate its 'determination' whether to comply with a FOIA request — and communicate 'the reasons therefor' — within 20 working days of receiving the request, or within 30 working days" if it meets burden to claim 'unusual circumstances.'" *Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 182 (D.C. Cir. 2013) ("*CREW*") (quoting 5 U.S.C. § 552(a)(6)(A)(i) & (a)(6)(B)(i)). OFAC's determination was due by July 27, 2018. The Departmental Offices' determination was due no

later than August 13, 2018 (if the 20-day deadline applied) or August 27, 2018 (if the 30-day deadline applied). In either case, Treasury has missed the deadline.

Treasury's mere acknowledgement of receipt of the request in its July 6 letter or July 16 letters is not a "determination" under FOIA. Instead, "to make a 'determination'" Treasury must, for example: "(i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Crew*, 711 F.3d at 188. However, Treasury has not done so here. Instead, OFAC simply stated that it will "query the appropriate OFAC components for responsive records" and the Departmental Offices stated that it has "initiated a search within Departmental Offices . . . for records that would be responsive."

Nor was the Departmental Offices' claim of "unusual circumstances" in the letter dated July 16 sufficient to make a "determination." "[W]ithin the relevant time period, the agency must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions." *CREW*, 711 F.3d at 186. The Departmental Offices have not provided a "determination" within the 10-day extension sought regarding the documents requested or since then.

Accordingly, Treasury's deadline to make a "determination" has elapsed. 5 U.S.C. § 552(a)(A)(i). Because Treasury has failed to make a determination by that statutory deadline, it has constructively denied the request and NPR is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C); *Oglesby v. U.S. Dep't of the Army*, 920 F.2d 57, 65 (D.C. Cir. 1990).

### III. CONCLUSION

The Supreme Court's directive is that "disclosure, not secrecy, is the dominant objective of FOIA." *U.S. Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 494 (1993). The records NPR seeks – which do not include properly classified records – concern sanctions imposed against two Russian oligarchs, a matter of the highest public interest. We respectfully request that you respond to this appeal with 20 business days (5 U.S.C. § 552(a)(6)(A)(ii)) and that you instruct OFAC and the Departmental Offices to release all non-exempt portions of the records requested immediately.

Sincerely,



Micah Ratner  
Counsel