

EXHIBIT 1



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
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www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

May 9, 2018

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On February 1, 2018, Acting Director Mulvaney moved the Office of Fair Lending and Equal Opportunity (OFLEO) into the office of the director, removing its authority to bring enforcement actions.¹ OFLEO’s mission is to “ensure fair, equitable, and nondiscriminatory access to credit for all consumers.”² This office plays a vital role in preventing racial discrimination in consumer lending. “The office previously used its powers to force payouts in several prominent cases, including settlements from lenders it alleged had systematically charged minorities higher interest rates than they had for whites.”³ Despite the Bureau’s explicit mandate to protect consumers from abusive creditors, Mulvaney wrote on January 23 that the CFPB serves “those who use credit cards and those who provide the credit; those who take out loans and those who

¹ Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018),

https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51.

² Supervision, Enforcement & Fair Lending, CFPB, <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/supervision-enforcement-fair-lending/> (last visited March 7, 2018).

³ Merle. *See also* David Dayen, *After Boasting About Lowering Black Unemployment, Donald Trump Undermines the Federal Unit Defending Against Housing Discrimination*, The Intercept (Feb. 1, 2018), <https://theintercept.com/2018/02/01/cfpb-mick-mulvaney-lending-housing-discrimination/>.



make them; those who buy cars and those who sell them.”⁴ We are concerned that by moving the OFLEO into the office of the director, Acting Director Mulvaney has hampered the OFLEO’s ability to engage in fair lending enforcement and day-to-day oversight of companies. Now that it is within the office of the director, it will instead focus merely on “advocacy, coordination and education” without the ability to punish bad actors in the marketplace.⁵

The 2010 Dodd-Frank Act instructed the CFPB to create the OFLEO in order to oversee and enforce federal fair lending laws and coordinate the fair lending efforts of the CFPB with other federal and state agencies, such as the Department of Justice. Part of OFLEO’s mission was to promote consistent and efficient enforcement of the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA). OFLEO’s enforcement of fair lending laws is a vital protection for communities of color, both to rectify historic unfair practices like redlining and to counteract new forms of discrimination. OFLEO has obtained over \$400 million in remediation to harmed consumers.⁶

The Lawyers’ Committee seeks records detailing the basis for the decision to move OFLEO into the Office of the Director. We are particularly concerned whether the move was in response to requests from corporate interest groups seeking to undermine OFLEO’s historically robust enforcement activities.

Requested Records

The Lawyers’ Committee requests that CFPB produce the following within twenty business days:

- All communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records—held by the Office of the Director—related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director. Please provide responsive records from November 24, 2017, to February 1, 2018.
 - In particular, in addition to other responsive records, please specifically search for “Community Financial Services Association of America,” “CFSA,” and “CFSAA.”
 - Please specifically search the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.

⁴ Mick Mulvaney, *The CFPB Has Pushed its Last Envelope*, WSJ (Jan. 23, 2018), <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>.

⁵ Merle.

⁶ *Fair Lending Report of the Consumer Financial Protection Bureau*, CFPB, at 3 (April 2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf.



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The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are also not interested in non-final drafts of documents in instances where multiple drafts or versions exist.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms "record," "document," "communication," and "calendar entry," in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁷ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁸

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁹ Furthermore, agencies that have adopted the

⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

⁹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



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National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."¹⁰ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers' Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹¹ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."¹² Moreover, the Vaughn index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information."¹³ Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"¹⁴

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹⁵ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers' Committee intends to pursue all legal avenues to enforce its right of access under FOIA,

¹⁰ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹¹ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

¹² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹³ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁴ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹⁵ *Mead Data Central*, 566 F.2d at 261.



including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers' Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody, Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.¹⁶

The CFPB exists to protect consumers, not banks and lenders. The OFLEO in particular is a central component of the Bureau's anti-discrimination efforts. Without enforcement authority, the OFLEO will not be able to effectively protect at-risk consumers from unlawful, discriminatory, and predatory practices. Payday and auto title lenders, for example, often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.¹⁷ "[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women."¹⁸ These low-income consumers are disproportionately unbanked or under-banked people of color. The public needs to know if Acting Director Mulvaney is undermining the mission of the public's financial watchdog.

The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers'

¹⁶ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

¹⁷ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

¹⁸ *Id.*



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Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership and the restructuring of the OFLEO. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.¹⁹ While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have immediate and disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's fair lending enforcement.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

Conclusion

¹⁹ Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.



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We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in purple ink that reads "Kristen Clarke". The signature is written in a cursive, flowing style.

Kristen Clarke
President and Executive Director
The Lawyers' Committee for Civil Rights Under Law

EXHIBIT 2

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-538-F

September 28, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated May 10, 2018. Your request sought Request sought all communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records—held by the Office of the Director—related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director from November 24, 2017, to February 1, 2018.

You indicated that in addition to other responsive records, please specifically search for “Community Financial Services Association of America,” “CFSA,” and “CFSAA.”

You also indicated to specifically search the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.

A search of our Office of the Director for documents responsive to your request produced a total of 354 pages. Of those pages, I have determined that 352 pages of the records are granted in full, 2 pages are granted in part, and 0 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(6).

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. The types of documents and/or information that we have withheld may consist of mobile telephone numbers or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested

consumerfinance.gov

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. Therefore, your fee waiver is moot.

For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division

EXHIBIT 3

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Thursday, October 4, 2018 9:17 AM
To: David Brody
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Hello – the search was conducted of Bureau email accounts. The search terms were “Community Financial Services Association of America”, “CFSA”, “CFSAA”, “Fair Lending” within 5 words of “Move”, and “OFLEO” within 5 words of “Move”.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

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From: David Brody <dbrody@lawyerscommittee.org>
Sent: Friday, September 28, 2018 10:57 PM
To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Mr. McDonald,

Sorry for the double-email, but another question: Did the search produce all records related to the OFLEO move, or just those that included “CFSA”?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers’ Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: David Brody
Sent: Friday, September 28, 2018 10:50 PM
To: 'McDonald, Ryan (CFPB)' <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Mr. McDonald,

Thank you for this production. One follow up question: Did you ask custodians if they had any potentially responsive records on their personal devices or in personal accounts (such as personal email)? And if they did, were those records searched and reviewed?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Friday, September 28, 2018 2:57 PM
To: David Brody <dbrody@lawyerscommittee.org>
Subject: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Dear Mr. Brody,

Attached to this email is our final response to your FOIA request dated May 10, 2018 to the Bureau of Consumer Financial Protection (BCFP).

If you have any questions or concerns, please do not hesitate to contact the BCFP FOIA Team at 1-855-444-FOIA (3642) or CFPB_FOIA@cfpb.gov.

Thank you.

Ryan McDonald
Government Information Specialist | Operations
Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)
Bureau of Consumer Financial Protection
consumerfinance.gov

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EXHIBIT 4



John E. McCarthy Jr.
(202) 624-2579
JMcCarthy@crowell.com

December 20, 2018

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cfpb.gov

Re: Appeal of CFPB Denial of Freedom of Information Act
Request No. CFPB-2018-538-F

Dear Sir or Madam:

We represent the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We write to appeal CFPB's partial denial of the Lawyers' Committee's request submitted on May 9, 2018. This appeal is timely submitted within 90 calendar days of CFPB's final response letter on the Lawyers' Committee's Request No. CFPB-2018-538-F (the "Request") dated September 28, 2018.

Pursuant to FOIA's statutory 20-day appeals determination deadline, we look forward to your determination no later than January 23, 2019. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

I. Introduction

On May 9, 2018, the Lawyers' Committee submitted a FOIA request for the following documents:

- All communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records—held by the Office of the Director—related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director from November 24, 2017 to February 1, 2018.
 - A specific search for "Community Financial Services Association of America," "CFSA," and "CFSAA."

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- A specific search for any records held by Acting Director Mulvaney and his chief of staff and their direct reports, in addition to other Office Staff.

Request at 2.¹ The Request sought calendar entries, including from Outlook calendars, and “any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.” *Id.* at 3. The Lawyers’ Committee further noted that it sought “all responsive records regardless of format, medium, or physical characteristics,” including “all attachments to these records.” *Id.* The Request also explicitly informed CFPB that it could “not exclude searches of files or emails in the personal custody of [CFPB’s] officials, such as personal email accounts.” *Id.* Citing relevant case law, the Lawyers’ Committee explained its justification for requesting information from personal accounts and devices:

Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers’ Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

Id. at 3 & n.7-8. Finally, the Lawyers’ Committee explained that the law required CFPB to “employ the most up-to-date technologies and tools available” in order to meet its obligation to conduct a reasonable search. *Id.* The Lawyers’ Committee demonstrated that “it is no longer reasonable to rely exclusively on custodian-driven searches” to meet the forgoing requirement. *Id.* at 3 & n. 9.

On June 8, 2018, the CFPB provided the Lawyer’s Committee with a FOIA Fee Estimate indicating that a search for responsive documents “would yield approximately 2.3GB of potentially responsive documents.” *See* June 8, 2018 FOIA Fee Estimate to Kristen Clarke (the “Fee Estimate”).² CFPB denied the Lawyer’s Committee’s request for a FOIA fee waiver, and later reversed its denial after the Lawyer’s Committee appealed.

¹ A complete copy of the Request is attached to this Appeal as Exhibit 1.

² A complete copy of the Estimate is attached to this Appeal as Exhibit 2.

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On September 28, 2018, CFPB responded to the Lawyers' Committee's Request. In its response, CFPB explained that it conducted a search of CFPB's Office of the Director. *See* September 28, 2018 CFPB Final Response Letter to D. Brody at 1 (the "Final Response").³

The CFPB stated that its search had produced a total of 354 pages of responsive material, 352 of which were provided in full and 2 of which were provided in part and withheld in part pursuant to Title 5 U.S.C. § 552 (b)(6), FOIA Exemption 6. *Id.* Significantly, the Final Response does not include any summary of the searches conducted to identify responsive documents, including an identification of search terms or custodians or files that were searched. *See generally* Final Response. The Final Response contains no indication that the CFPB searched any personal devices or accounts to uncover responsive material, as the Lawyer's Committee explicitly requested in the Request, nor does it identify whether it searched paper files or calendars. The production totaled some 18.1 MB of responsive material, less than 1% of the file volume identified as "potentially responsive" given in its Fee Estimate (18.1 MB produced out of 2300 MB identified as "potentially responsive"). Fee Estimate at 1. The utter lack of information regarding the CFPB's search makes clear that its search was unreasonable and did not fulfill the Bureau's FOIA obligations.

On both June 29 and September 28, 2018, Counsel for the Lawyers' Committee David Brody asked Government Information Affairs Specialist Ryan McDonald whether the communications and calendar entries for Acting Director Mulvaney included "responsive records from his personal devices and accounts." Responding after the production of documents on October 4, 2018, Mr. McDonald stated that "the search was conducted of Bureau email accounts" and the search terms were "Community Financial Association of America," "CFSA," "CFSAA," "Fair Lending" within 5 words of "Move," and "OFLEO" within 5 words of "Move."⁴ October 4, 2018 CFPB E-mail to D. Brody at 1. Mr. McDonald did not respond to the Lawyers' Committee's inquiries as to whether the CFPB had asked custodians if there were any potentially responsive records on their personal devices, or if any personal devices or accounts were searched per the Lawyer's Committee's request. *Id.* Likewise, there is no indication that the CFPB made any attempt to determine whether responsive material was present on any personal devices or accounts. In the processing of another Lawyers' Committee FOIA request that was contemporaneous to this request, Mr. McDonald told Mr. Brody that the CFPB does not search the personal devices or accounts of CFPB employees and does not ask employees whether

³ A complete copy of the Final Response is attached to this Appeal as Exhibit 3.

⁴ A complete copy of Mr. McDonald's communication is attached to this Appeal as Exhibit 4.

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they have responsive records on their personal devices or accounts.⁵ This is a practice of the CFPB that does not conform to the requirements of FOIA.

As explained more fully below, the CFPB's searches were unreasonable because the Bureau used arbitrary and overly limiting parameters and because the Bureau failed to even attempt to search all locations where responsive material would be located. Accordingly, we respectfully request that CFPB conduct reasonable searches calculated to uncover all potentially responsive materials on both government-issued and on personal accounts and devices to identify additional responsive material.

II. Argument

A. CFPB Did Not Conduct a Reasonable Search to Identify Documents Responsive to the Lawyers' Committee's Request

The "function of FOIA" is to serve "the citizens' right to be informed about what their government is up to." *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 150 (D.C. Cir. 2016). "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was *reasonably calculated to uncover all relevant documents*." *Gonzales v. United States*, 298 F. Supp. 3d 1, 3-4 (D.D.C. 2018) (internal marks and citations omitted) (emphasis added). While agencies enjoy some discretion in crafting search terms, the search terms selected "must pass muster under a standard of reasonableness." *Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*, 281 F. Supp. 3d 144, 151-52 (D.D.C. 2017) (internal marks and citations omitted). The adequacy of an agency's search is not determined by the "fruits of the search, but by the appropriateness of the methods used to carry out the search." *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017).

Here, it is abundantly clear that CFPB did not conduct a reasonable search that was calculated to uncover all relevant documents, and thus, did not fulfill its obligations under FOIA. The CFPB produced only 354 pages of documents, which according to the electronic properties of the files is *less than 20 MB*, in response to the Lawyers' Committee's May 9 Request, after initially identifying 3.2 GB (i.e., at least 3200 MB) of files as "potentially responsive." While some potentially responsive files were likely not responsive after review, it strains credulity that less than 1% of that initial set of potentially responsive documents would in fact be responsive and required to be included in the production of documents to the Lawyers' Committee.

Additionally, of the documents produced, *fewer than 10 pages* of actual communications with Acting Director Mulvaney's internal email account were provided. *See generally* CFPB-2018-538-F Disclosure. It defies logic to believe that a transition as significant as the decision to

⁵ A complete copy of the email communication between Mr. McDonald and Mr. Brody related to FOIA Request No. CFPB-2018-547-F is attached to this Appeal as Exhibit 5.

Chief FOIA Officer
December 20, 2018
Page 5

move OFLEO into the Office of the Director was done without correspondence from the Acting Director.

Furthermore, much of the production was useless. Of the 354 pages actually provided by the Bureau, the majority were either internal CFPB summaries of news coverage from seemingly random dates in February and April of 2018. A further 38 pages were devoted to the full reproduction of a complaint filed by the CFSA in the Western District of Texas.

It is plainly unreasonable for the CFPB to assert that within the entire Office of the Director, there was not a single substantive communication, report, statement, memorandum, calendar entry or any other record relevant to the Lawyers' Committee's Request at any point between November 24, 2017 and February 1, 2018 concerning the decision to move OFLEO into the Office of the Director. Here, it is clear that the CFPB's searches could not possibly have been reasonable as they did not return any information responsive to the Lawyers' Committee's Request.

As an example, the records CFPB did produce included emails stating that South Carolina State Senator Shane Martin spoke with Director Mulvaney and suggested Mulvaney speak with Dennis Shaul of the CFSA "as a personal favor."⁶ However, the CFPB did not produce calendar entries for any follow-up meeting or phone call, or any other follow up communications or related records. This indicates that the CFPB's search was inadequate.

Moreover, based on the Final Response and on the communications from Mr. McDonald, the CFPB expressly informed the Lawyers' Committee that the CFPB did not search any personal devices or accounts of the relevant CFPB employees, which per se makes its searches unreasonable. An agency cannot "deprive the citizens' of their right to know what [the] department is up to by the simple expedient of maintaining [] departmental emails on an account in another domain...." *Competitive Enter. Inst.*, 827 F.3d at 150. The CFPB produced only a single email communication from Acting Director Mulvaney, consisting of the phrases "[g]ood by me. Thanks." It is acutely implausible that Acting Director Mulvaney approved this major structural re-organization of an agency subdivision without substantive consideration; it is therefore likely that he communicated through other methods than his official email account. Such communications are responsive to this request.

The CFPB failed to ask the relevant custodians whether they could have information related to this Request on their personal devices, even though a related production suggests this could be the case. *See* Exhibit 4. Records responsive to another FOIA request include emails that Acting Director Mulvaney forwarded from his personal account to his work account on at

⁶ *See* CFPB-2018-538-F Disclosure at 46-47.

Chief FOIA Officer
December 20, 2018
Page 6

least one occasion, indicating that he uses his personal account for agency business.⁷ Furthermore, the CFPB produced a total of four emails directed specifically to Acting Director Mulvaney's account, none of which addressed any decision-making regarding the OFLEO move. This strongly suggests that Acting Director Mulvaney was conducting official government business, likely directly relevant to the Lawyers' Committee's Request, on another account. If this were the case, it would be clear violation of FOIA. The fact that Director Mulvaney has used his personal account in the past for agency business coupled with the lack of responsive documents from Director Mulvaney's account related to the decision to move OFLEO demonstrate that the reasonable search requirement compels CFPB to search Acting Director Mulvaney's personal devices and accounts for relevant records.

The CFPB has provided so little information to the Lawyers' Committee related to its searches that it is impossible for the Lawyers' Committee to suggest additional search terms that would satisfy its production obligations. Instead, the Lawyers' Committee requests that, at the very least, the originally requested terms be run against all custodial files of Mick Mulvaney, Kirsten Sutton, Anthony Welcher, Brian Johnson, and any other CFPB Office of the Director employee, including both their government and personal email accounts and including both the header metadata and the bodies of the communications.

The Lawyers' Committee looks forward to your prompt attention to resolve the patently unreasonable searches conducted to this point.

III. Conclusion

For the reasons set forth above, we respectfully request that the CFPB conduct a reasonable search for documents responsive to the Lawyers' Committee's Request, including searching for all public records relevant to the Request whether they are on personal devices and accounts or government-furnished devices and accounts and produce the responsive documents yielded by that search.

The Lawyers' Committee reserves all of its rights related to the Request and this Appeal. Please do not hesitate to contact me if you have any further questions.

⁷ See, e.g., CFPB FOIA Disclosure to World Acceptance Corp. Commc'ns, at 9-11, *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_foia_world-acceptance-corp-documents.pdf (Apr. 4, 2018).

Chief FOIA Officer
December 20, 2018
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Thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink, appearing to be 'J. McCarthy Jr.', with a stylized, cursive script.

John E. McCarthy Jr.
Lyndsay A. Gorton

*Counsel for The Lawyers' Committee for
Civil Rights Under Law*

EXHIBIT 1



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

May 9, 2018

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On February 1, 2018, Acting Director Mulvaney moved the Office of Fair Lending and Equal Opportunity (OFLEO) into the office of the director, removing its authority to bring enforcement actions.¹ OFLEO’s mission is to “ensure fair, equitable, and nondiscriminatory access to credit for all consumers.”² This office plays a vital role in preventing racial discrimination in consumer lending. “The office previously used its powers to force payouts in several prominent cases, including settlements from lenders it alleged had systematically charged minorities higher interest rates than they had for whites.”³ Despite the Bureau’s explicit mandate to protect consumers from abusive creditors, Mulvaney wrote on January 23 that the CFPB serves “those who use credit cards and those who provide the credit; those who take out loans and those who

¹ Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018),

https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51.

² Supervision, Enforcement & Fair Lending, CFPB, <https://www.consumerfinance.gov/about-us/the-bureau/bureau-structure/supervision-enforcement-fair-lending/> (last visited March 7, 2018).

³ Merle. *See also* David Dayen, *After Boasting About Lowering Black Unemployment, Donald Trump Undermines the Federal Unit Defending Against Housing Discrimination*, The Intercept (Feb. 1, 2018), <https://theintercept.com/2018/02/01/cfpb-mick-mulvaney-lending-housing-discrimination/>.



make them; those who buy cars and those who sell them.”⁴ We are concerned that by moving the OFLEO into the office of the director, Acting Director Mulvaney has hampered the OFLEO’s ability to engage in fair lending enforcement and day-to-day oversight of companies. Now that it is within the office of the director, it will instead focus merely on “advocacy, coordination and education” without the ability to punish bad actors in the marketplace.⁵

The 2010 Dodd-Frank Act instructed the CFPB to create the OFLEO in order to oversee and enforce federal fair lending laws and coordinate the fair lending efforts of the CFPB with other federal and state agencies, such as the Department of Justice. Part of OFLEO’s mission was to promote consistent and efficient enforcement of the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA). OFLEO’s enforcement of fair lending laws is a vital protection for communities of color, both to rectify historic unfair practices like redlining and to counteract new forms of discrimination. OFLEO has obtained over \$400 million in remediation to harmed consumers.⁶

The Lawyers’ Committee seeks records detailing the basis for the decision to move OFLEO into the Office of the Director. We are particularly concerned whether the move was in response to requests from corporate interest groups seeking to undermine OFLEO’s historically robust enforcement activities.

Requested Records

The Lawyers’ Committee requests that CFPB produce the following within twenty business days:

- All communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records—held by the Office of the Director—related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director. Please provide responsive records from November 24, 2017, to February 1, 2018.
 - In particular, in addition to other responsive records, please specifically search for “Community Financial Services Association of America,” “CFSA,” and “CFSAA.”
 - Please specifically search the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.

⁴ Mick Mulvaney, *The CFPB Has Pushed its Last Envelope*, WSJ (Jan. 23, 2018), <https://www.wsj.com/articles/the-cfpb-has-pushed-its-last-envelope-1516743561>.

⁵ Merle.

⁶ *Fair Lending Report of the Consumer Financial Protection Bureau*, CFPB, at 3 (April 2017), available at https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201704_cfpb_Fair_Lending_Report.pdf.



The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are also not interested in non-final drafts of documents in instances where multiple drafts or versions exist.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms "record," "document," "communication," and "calendar entry," in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.⁷ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.⁸

In addition, please note that in conducting a "reasonable search" as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.⁹ Furthermore, agencies that have adopted the

⁷ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

⁸ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) ("The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official's] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official's] work email account." (citations omitted)).

⁹ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, "Managing Government Records Directive," M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."¹⁰ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers' Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹¹ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."¹² Moreover, the Vaughn index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information."¹³ Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"¹⁴

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.¹⁵ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers' Committee intends to pursue all legal avenues to enforce its right of access under FOIA,

¹⁰ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹¹ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

¹² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹³ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁴ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

¹⁵ *Mead Data Central*, 566 F.2d at 261.



including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers' Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody, Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.¹⁶

The CFPB exists to protect consumers, not banks and lenders. The OFLEO in particular is a central component of the Bureau's anti-discrimination efforts. Without enforcement authority, the OFLEO will not be able to effectively protect at-risk consumers from unlawful, discriminatory, and predatory practices. Payday and auto title lenders, for example, often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.¹⁷ "[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women."¹⁸ These low-income consumers are disproportionately unbanked or under-banked people of color. The public needs to know if Acting Director Mulvaney is undermining the mission of the public's financial watchdog.

The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers'

¹⁶ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

¹⁷ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

¹⁸ *Id.*



Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership and the restructuring of the OFLEO. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.¹⁹ While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have immediate and disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's fair lending enforcement.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

Conclusion

¹⁹ Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.



LAWYERS' COMMITTEE FOR
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U N D E R L A W

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Fax: 202.783.0857
www.lawyerscommittee.org

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in purple ink that reads 'Kristen Clarke'.

Kristen Clarke
President and Executive Director
The Lawyers' Committee for Civil Rights Under Law

EXHIBIT 2

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-538-F

June 8, 2018

Ms. Kristen Clarke
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Ms. Clarke:

This letter is related to your Freedom of Information Act (FOIA) request dated May 10, 2018. Your request sought all communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records held by the Office of the Director related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director. You requested responsive records from the timeframe of November 24, 2017, to February 1, 2018.

In particular, in addition to other responsive records, you requested to specifically search for "Community Financial Services Association of America," "CFSA," and "CFSAA." You also requested to specifically search the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.

Our May 10, 2018 acknowledgement of your request notified you that you were placed in the "all other" requester category. It is estimated that our search would yield approximately 2.3GB of potentially responsive documents. Based on this information, it is estimated that the overall fee to process your request will equal approximately \$13,800.00.

Since the total estimated fee exceeds \$250.00, you must make an advance payment of an amount up to the amount of the entire anticipated fee before we can begin to process your request. *See* 12 C.F.R. § 1070.22(f). Please submit your check or money order in the amount of \$6,900.00, made payable to the Treasury of the United States, to this office within 30 calendar days from the date of this letter. Please mail your payment to this office at the following address:

Bureau of Consumer Financial Protection
Attention: Chief FOIA Officer
Freedom of Information Payment
1700 G Street, NW
Washington, DC 20552

In the alternative, you may narrow the scope of your request to reduce the universe of responsive records. If you wish to narrow the scope of your request, please send an amended request and indicate the processing fee amount you are willing to pay within 30 calendar days from the date of this letter. You may send your amended request via mail (address above), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

If we do not receive an advance payment of \$6,900.00 or an amended request from you within 30 calendar days from the date of this letter, we will consider this request withdrawn, and we will administratively close your request file.

For inquiries concerning your request, please contact Ryan McDonald by phone at 202-435-9133 and reference the FOIA request number above, or contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division

EXHIBIT 3

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-538-F

September 28, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated May 10, 2018. Your request sought Request sought all communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records—held by the Office of the Director—related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director from November 24, 2017, to February 1, 2018.

You indicated that in addition to other responsive records, please specifically search for “Community Financial Services Association of America,” “CFSA,” and “CFSAA.”

You also indicated to specifically search the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.

A search of our Office of the Director for documents responsive to your request produced a total of 354 pages. Of those pages, I have determined that 352 pages of the records are granted in full, 2 pages are granted in part, and 0 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(6).

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public’s right to disclosure against the individual’s right to privacy. The types of documents and/or information that we have withheld may consist of mobile telephone numbers or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested

consumerfinance.gov

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. Therefore, your fee waiver is moot.

For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division

EXHIBIT 4

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Thursday, October 4, 2018 9:17 AM
To: David Brody
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Hello – the search was conducted of Bureau email accounts. The search terms were “Community Financial Services Association of America”, “CFSA”, “CFSAA”, “Fair Lending” within 5 words of “Move”, and “OFLEO” within 5 words of “Move”.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

From: David Brody <dbrody@lawyerscommittee.org>
Sent: Friday, September 28, 2018 10:57 PM
To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Mr. McDonald,

Sorry for the double-email, but another question: Did the search produce all records related to the OFLEO move, or just those that included “CFSA”?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers’ Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: David Brody
Sent: Friday, September 28, 2018 10:50 PM
To: 'McDonald, Ryan (CFPB)' <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Mr. McDonald,

Thank you for this production. One follow up question: Did you ask custodians if they had any potentially responsive records on their personal devices or in personal accounts (such as personal email)? And if they did, were those records searched and reviewed?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Friday, September 28, 2018 2:57 PM
To: David Brody <dbrody@lawyerscommittee.org>
Subject: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-538-F)

Dear Mr. Brody,

Attached to this email is our final response to your FOIA request dated May 10, 2018 to the Bureau of Consumer Financial Protection (BCFP).

If you have any questions or concerns, please do not hesitate to contact the BCFP FOIA Team at 1-855-444-FOIA (3642) or CFPB_FOIA@cfpb.gov.

Thank you.

Ryan McDonald
Government Information Specialist | Operations
Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)
Bureau of Consumer Financial Protection
consumerfinance.gov

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EXHIBIT 5

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Wednesday, September 12, 2018 8:03 AM
To: David Brody
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello,

No. We did not ask every Bureau employee within the Office of the Director if they use their personal device or personal accounts for matters related to this request.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

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From: David Brody <dbrody@lawyerscommittee.org>
Sent: Tuesday, September 11, 2018 2:30 PM
To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this update, and sorry for the delayed response. I have one quick follow up question, if you don't mind: Did CFPB ask custodians whether they used personal devices/accounts for matters related to this request?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]
Sent: Wednesday, August 29, 2018 1:29 PM
To: David Brody <dbrody@lawyerscommittee.org>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello Mr. Brody,

The response regarding CFPB-2018-517-F was sent to you in error, my apologies.

We did not conduct searches of personal devices. Calendar entries / meeting invitations are included in the search. The withheld exemption 8 documents couldn't be reasonably segregated. I cannot provide any additional information regarding the withheld pages, however you may appeal the redactions and/or search by following the appeal procedures outlined in the final response letter.

From: David Brody <dbrody@lawyerscommittee.org>

Sent: Wednesday, August 29, 2018 10:38 AM

To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>

Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this response. One of the attachments is for FOIA Request #517; is this attachment responsive to our request as well (#547) or inadvertently shared with us?

I received a separate automated email that contained another attachment containing the 26 pages of responsive materials, as well as the final response letter detailing the exemptions. I have a few follow up questions:

- 1) Were the personal devices/accounts of each custodian searched for responsive documents? I do not see any evidence that they were, and in prior communications with CFPB FOIA personnel I have been told that personal devices/accounts are not routinely searched. However, the Bureau is legally required to search them if they may contain responsive materials.
- 2) Were calendar entries of each custodian searched? I do not see any calendar entries in the 26 page document, even though there are references to a meeting with CFSA and another meeting with industry stakeholders. We also asked for any attachments to calendar entries.
- 3) With regard to the 18 pages of materials withheld in full under (b)(8), is there nothing segregable in these documents that could be released? Can you please provide any additional detail about what these materials are?

Thanks for your continued and diligent assistance with our request. You have been very helpful and we are very appreciative!

Thanks,
David

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]

Sent: Monday, August 27, 2018 3:59 PM

To: David Brody <dbrody@lawyerscommittee.org>

Subject: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Dear Mr. Brody,

Attached to this email is our final response to your FOIA request dated May 14, 2018 to the Bureau of Consumer Financial Protection (BCFP).

If you have any questions or concerns, please do not hesitate to contact the BCFP FOIA Team at 1-855-444-FOIA (3642) or CFPB_FOIA@cfpb.gov.

Thank you.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

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EXHIBIT 5



1700 G Street NW, Washington, D.C. 20552

January 23, 2019

VIA Electronic Mail

John E. McCarthy, Jr., Esq.
Lyndsay A. Gorton, Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

RE: Final Appellate Determination on FOIA Appeal No. 2018-538-F

Dear Mr. McCarthy and Ms. Gorton,

This letter constitutes the final determination of the Bureau of Consumer Financial Protection (Bureau) regarding your December 20, 2018, appeal, which you filed on behalf of your client, the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), of the Bureau's September 28, 2018, response to Freedom of Information Act (FOIA) request no. 2018-538-F. For the reasons set forth below, the appeal is granted.¹

I. Background

On May 9, 2018, the Lawyers' Committee submitted a FOIA request seeking: "All communications, calendar entries, final drafts of memoranda, final drafts of statements, final drafts of documents, final drafts of reports, and/or other records – held by the Office of the

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.

Director – related to the decision to move the Office of Fair Lending and Equal Opportunity (OFLEO) into the Office of the Director.” The request also sought records containing the terms “Community Financial Services Association of America,” “CFSA,” and “CFSAA,” and requested that the Bureau search “the records held by Acting Director Mulvaney and his chief of staff, and their direct reports, in addition to other Office staff.” The request sought responsive records for the period of November 24, 2017, to February 1, 2018.

On September 28, 2018, the Bureau’s FOIA Office responded to the request, explaining that its search had located 354 pages of responsive documents. Of those pages, the Bureau released 352 in their entirety, and released the remaining two pages with portions redacted. The Bureau based those redactions on FOIA Exemption 6 because those documents contained personnel or medical files, the release of which would cause a clearly unwarranted invasion of personal privacy.

You filed your appeal on December 20, 2018. You argue that the Bureau did not conduct a reasonable search in response to your request. You note that, although the Bureau initially indicated that it had 3200 MB of potentially responsive documents, it ultimately located only 354 responsive pages, which you estimate to be no more than 20 MB. You contend that it “strains credulity” that less than 1% of the Bureau’s original estimate was ultimately responsive. You also note that the responsive documents include fewer than 10 pages of communications from the email account of the Bureau’s then-Acting Director Mulvaney, and you argue that it “defies logic” that there were not more emails related to the decision to move the Bureau’s Office of Fair Lending and Equal Opportunity into the Office of the Director. With respect to that portion of your request relating to CFSAA, you point out that, although the Bureau did disclose emails indicating that Acting Director Mulvaney had received a request to speak with the Dennis Shaul, the CEO of the CFSAA, the Bureau did not release any follow-up from that request, including calendar entries for meetings or phone calls. Finally, you argue that the search was inadequate because the Bureau failed to search the personal email accounts and devices of any of the relevant employees.

II. Appellate Determination

A FOIA search is adequate if it is “reasonably calculated to uncover all relevant documents.” *Ancient Coin Collector’s Guild v. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations omitted). That is, search adequacy is “measured by a standard of reasonableness, and is dependent upon the circumstances of the case.” *Heffernan v. Azar*, 317 F. Supp. 3d 94, 104 (D.D.C. 2018) (quoting *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)).

Here, none of the objections that you raise are sufficient to show that the search was inadequate. However, my examination of the record does demonstrate that the search was insufficient.

First, you argue that the results of the search demonstrate that the search was inadequate. In particular, you contend that, based on the subjects of your request and on the documents that you did receive, there should have been more material that was responsive. But the “adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). The mere fact that an agency does not discover the records a requestor hopes exist does not render the agency’s search inadequate.

Second, you complain that the Bureau’s search was unreasonable because it “did not search any personal devices or accounts of the relevant [Bureau] employees.” “[A]gency employees’ communications on non-agency accounts may constitute ‘agency records’ subject to the FOIA.” *Wright v. Admin. for Children and Families*, 2016 WL 5922293, at *8 (D.D.C. Oct. 11, 2016) (paraphrasing *Competitive Enterprises Institute v. Office of Science & Technology Policy*, 827 F.3d 145 (D.C. Cir. 2016)). But “a FOIA requestor is not entitled to a search of files specified by the requestor, but rather to a search of files that are likely to turn up the information requested.” *Tunchez v. U.S. Dep’t of Justice*, 715 F. Supp. 2d 49, 54 (D.D.C. 2010) (citation omitted). So a FOIA requestor cannot simply demand that an agency search its employees’ personal devices or accounts; it must “raise a substantial doubt as to the adequacy of the agency’s search” and “overcome the presumption that agency records are unlikely to exist on the agency employees’ personal accounts.” *Wright*, 2016 WL 5922293, at *8; see also *Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 319 F. Supp. 3d 431, 437-38 (D.D.C. 2018) (“Absent evidence to the contrary, a government employee is presumed to have properly discharged the duty to forward official business communications from a personal account to an official email account. . . . Thus, in a typical case, a search of a[n agency] employee’s personal email account would be unnecessarily duplicative of a search of the employee’s official email account.”).

In your appeal, you attempt to overcome this presumption by again pointing to the fact that the Bureau’s search did not find records that you think should exist: “It is acutely implausible that Acting Director Mulvaney approved this major structural re-organization of an agency subdivision without substantive consideration; it is therefore likely that he communicated through other methods than his official email account.” But as explained above, a requestor’s dissatisfaction with the fruits of a search is insufficient to call into question the adequacy of that search. And it is certainly not evidence sufficient to overcome the presumption that government records will be found in government systems. The FOIA Office only needs to search personal accounts if it has reason to believe that there may be agency records in personal accounts that

were not copied to or forwarded to government accounts in accordance with 44 U.S.C. § 2911 and Bureau policy. There is no indication that any Bureau employee failed to forward responsive records on personal devices or accounts to official accounts.

Nonetheless, I have concluded that the search conducted here was inadequate because it does not appear to have been based on a reasonable interpretation of the scope of the request. *See Wilson v. Dep't of Transp.*, 730 F. Supp. 2d 140, 154 (D.D.C. 2010) (an agency's search must be based on "a reasonable interpretation of what the request seeks"). In particular, it appears that the search terms that the Bureau used were too limited, and it may have failed to search the records of some relevant custodians. Accordingly, your appeal is granted, and your request is remanded so that the FOIA Office may conduct a more expansive search that is reasonably calculated to uncover all responsive documents.

* * * * *

If you are dissatisfied with the Bureau's final appellate determination, you may contact the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies pursuant to 5 U.S.C. § 552(h)(3). Using OGIS services does not affect your right to judicial review.

Sincerely,

Laura Hussain Digitally signed by Laura Hussain
Date: 2019.01.23 15:41:11 -05'00'

Laura M. Hussain
Assistant General Counsel for Litigation and Oversight

EXHIBIT 6



1700 G Street NW, Washington, D.C. 20552
February 12, 2019

John McCarthy
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
VIA Email: jmccarthy@crowell.com

RE: FOIA Request #CFPB-2019-0208-F

Dear Mr. McCarthy:

This letter is to inform you that in accordance with the Consumer Financial Protection Bureau (CFPB) Final Appellate Determination Letter (CFPB-2018-538-A2) dated January 23, 2019, your request has been remanded back to the FOIA Office in order to:

to conduct a more expansive search that is reasonably calculated to uncover all responsive documents.

For tracking purposes, you have been given a new FOIA request number.

Please be advised that the CFPB FOIA Office has a backlog of pending FOIA requests. We are diligently working to process each request in the order in which it was received. Your patience is greatly appreciated.

You have been determined to be a commercial requester and provisions of the FOIA allow the CFPB to recover part of the cost of complying with your request. You will be charged for the search, review, and duplication costs in accordance with the CFPB Interim FOIA regulations as applicable to commercial requestors. The CFPB's FOIA Fee Schedule may be viewed at www.consumerfinance.gov/foia-requests/fee-schedule/. **You did not indicate in your request a specific amount you were willing to pay. Therefore, in accordance with our regulations, your submission of a FOIA request is construed as an agreement to pay up to \$25.00.** You will be contacted in the event there are additional fees related to the processing of your request beyond this amount.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at consumerfinance.gov

1-877-684-6448; or facsimile at 202-741-5769.

For inquiries concerning your request, please reference your FOIA request number above and contact our FOIA Public Liaison via email at FOIA@consumerfinance.gov or by phone at 1-855-444-FOIA (3642).

Sincerely,

A handwritten signature in blue ink, appearing to read "RD Lazier". The signature is stylized and written in a cursive-like font.

Raynell D. Lazier
FOIA Manager

EXHIBIT 7



John E. McCarthy Jr.
jmccarthy@crowell.com
(202) 624-2579

April 1, 2019

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cpfb.gov

Re: Status of CFPB Freedom of Information Act Request No. CFPB-2018-538-A2/CFPB-2019-0208-F

Dear Sir or Madam:

We represent the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We are writing to inquire about the status of the Lawyers' Committee's Appeal No. 2018-538-A2, granted on January 23, 2019 when CFPB issued its final appellate determination.

As you are aware, the final appellate determination concluded that the CFPB's "examination of the record [did] determine the search was insufficient."¹ The appellate review also concluded that "the search conducted was inadequate because it [did] not appear to have been based on a reasonable interpretation of the scope of the request." As a result, the Lawyers' Committee's request was remanded to the CFPB FOIA Office so that it could "conduct a more expansive search that is reasonably calculated to uncover all responsive documents." Following that communication, the Lawyer's Committee received a letter on February 12, 2019, stating that in accordance with the final appellate determination a new FOIA request number (FOIA Request #CFPB-2019-208-F) had been assigned for "tracking purposes." FOIA requires that "upon any determination by an agency to comply with a request for records, the records shall be made promptly available[.]" See 5 U.S.C § 552(a)(6)(C)(i).

It has now been more than 30 calendar work days since the CFPB issued its last communication, without any further contact. In light of the substantial amount of time that has already elapsed since the final appellate determination – not to mention the months of elapsed time since the original FOIA request, the Lawyers' Committee respectfully requests that the

¹ A complete copy of the CFPB's final appellate determination is enclosed.

Chief FOIA Officer
April 1, 2019
Page 2

CFPB provide a response to remanded request No. 2018-538-F (now No. 2019-208-F) within the next 7 calendar days. If we do not receive a response, we will assume the agency does not intend to provide any additional information and proceed to exercise our right to judicial review of the agency's final appellate determination under 5 U.S.C. §552(a)(4)(B).

Respectfully submitted,



John E. McCarthy Jr.

EXHIBIT 8



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

May 14, 2018

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On November 24, 2017, Mick Mulvaney became the Acting Director of the Consumer Financial Protection Bureau (CFPB).¹ On January 16, 2018, Acting Director Mulvaney announced that the CFPB would repeal the Payday Loan Rule, which was adopted in October 2017.² The Rule regulates payday loans, auto title loans, and other types of expensive loans targeted at poor communities with poor credit.³ The Rule is particularly important to African American and Latino communities where studies have shown that payday lenders are concentrated.⁴ As part of its January 16, 2018 announcement, CFPB said it will grant waivers from compliance with the Payday Loan Rule’s registration system, which is slated to go into effect in April 2018.⁵

¹ Victoria Guida, *Trump taps Mulvaney to head CFPB, sparking confusion over agency’s leadership*, Politico (Nov. 24, 2017), <https://www.politico.com/story/2017/11/24/richard-cordray-successor-cfpb-leandra-english-259612>.

² *CFPB Statement on Payday Rule*, CFPB (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>; *CFPB Finalizes Rule to Stop Payday Debt Traps*, CFPB (Oct. 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

³ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

⁵ *CFPB Statement on Payday Rule*.



The Lawyers' Committee has grave concerns that the CFPB is now being run by corporate interests. The payday lending industry has given \$63,000 to Mr. Mulvaney.⁶ Not surprisingly, the CFPB has inexplicably dropped at least three litigations or investigations into lenders engaged in egregious practices. On January 18, CFPB dropped a lawsuit against a group of payday lenders in Kansas who affiliated with Native American tribes in order to evade regulation; their loans carried annual interest rates as high as 950%.⁷ And on January 23, CFPB quietly terminated a four-year investigation of World Acceptance Corporation's abusive payday lending practices; the company has given \$4,500 to Mr. Mulvaney's past political campaigns.⁸ Mr. Mulvaney's CFPB has also dropped an investigation into a different lender, World Finance.⁹ The chief executive of the Community Financial Services Association of America, which represents the payday lending industry, reports that they are "finding it easier to have our voice heard on the staff level [of the CFPB.]"¹⁰ The former CEO of World Acceptance even contacted Mr. Mulvaney at his personal email address to ask that she be considered for CFPB director (prior to Mr. Mulvaney's own appointment).¹¹

The Lawyers' Committee seeks to uncover the extent to which financial industry lobbyists and representatives have been meeting with Mr. Mulvaney's office to undermine CFPB enforcement and the implementation of the Payday Loan Rule.

Requested Records

The Lawyers' Committee requests that CFPB produce the following within twenty business days:

- Communications and/or calendar entries (including invitations) involving CFPB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies

⁶ Alan Rappeport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

⁷ Zeke Faux, *CFPB Signals Shift by Dropping Payday Lender Lawsuit*, Bloomberg (Jan. 18, 2018), <https://www.bloomberg.com/news/articles/2018-01-18/trump-led-cfpb-signals-shift-by-dropping-payday-lender-lawsuit>; see also *CFPB v. Golden Valley Lending, Inc.*, 2:17-cv-02521 (D. Kan.).

⁸ Josh Keefe, *CFPB Drops Investigation Into Payday Lender that Contributed to Mick Mulvaney's Campaigns*, Int'l Bus. Times (Jan. 23, 2018), <http://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaney-campaigns>.

⁹ Paul Kiel, *Newly Defanged, Top Consumer Protection Agency Drops Investigation of High-Cost Lender*, ProPublica (Jan. 23, 2018), <https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender>.

¹⁰ Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018), https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51.

¹¹ Associated Press, *Under Trump, payday lenders and consumer protection agency exhibit cozier relationship*, L.A. Times (Mar. 6, 2018), <http://www.latimes.com/business/la-fi-cfpb-payday-lender-20180306-story.html>.



or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:¹²
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn
- Communications and/or calendar entries (including invitations) involving any employee of the CFPB Office of the Director and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America, including any of its Board of Directors:¹³
 - Patrick O'Shaughnessy
 - Donald Gayhardt

¹² *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).

¹³ *Id.*



- C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn
- Any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers.

CFPB should search for the above companies and organizations both using keyword searching within the body of records and as an entry in the to/from/cc/bcc fields of emails or calendar entries.

The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are also not interested in non-final drafts of documents or memoranda, in instances where multiple drafts or versions exist.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms "communication" and "calendar entry" in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.¹⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records

¹⁴ See *Competitive Enter. Inst. V. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).



contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.¹⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.¹⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB’s archiving tools would capture that email under Capstone. Accordingly, the Lawyers’ Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers’ Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹⁷ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers’ Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹⁸ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”¹⁹ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

¹⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

¹⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹⁸ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

¹⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



withholding it must discuss the consequences of disclosing the sought-after information.”²⁰ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”²¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.²² Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers’ Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers’ Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody; Lawyers’ Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers’ Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.²³

²⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

²¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

²² *Mead Data Central*, 566 F.2d at 261.

²³ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).



The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.²⁴ “[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women.”²⁵ These low-income consumers are disproportionately unbanked or under-banked people of color. “Predatory lending in protected communities may constitute discrimination—not because it excludes minorities, but because it targets and exploits them by offering loans with abusive terms and conditions.”²⁶ The public needs to know if its financial watchdog is fulfilling its mission.

The Lawyers’ Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers’ Committee’s financial interest. The Lawyers’ Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers’ Committee. The Lawyers’ Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers’ Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers’ Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers’ Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

²⁴ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

²⁵ *Id.*

²⁶ *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.²⁷ While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have immediate and disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

Conclusion

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in purple ink that reads 'Kristen Clarke'.

Kristen Clarke
President and Executive Director
The Lawyers' Committee for Civil Rights Under Law

²⁷ Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.

EXHIBIT 9

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-547-F

August 27, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated May 14, 2018. Your request sought:

Communications and/or calendar entries (including invitations) involving CFPB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies or organizations, their employees, or their representatives from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore

consumerfinance.gov

- Doug Clark
- D. Lynn DeVault
- Ian MacKechnie
- Tracy Rawle
- Brian K. Lynn

Communications and/or calendar entries (including invitations) involving any employee of the CFPB Office of the Director and any of the following companies or organizations, their employees, or their representatives from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn

Any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers.

A search of our Office of Research, Markets and Regulations for documents responsive to your request regarding any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers determined that the documents are located online at: <https://www.consumerfinance.gov/policy-compliance/guidance/payday-loans-registered-information-systems-registration-program/registered-information-systems/#waivers>

A search of our Office of the Director for documents responsive to the remaining items of your request produced a total of 44 pages. Of those pages, I have determined that 26 pages of the records are granted in full and 18 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(8).

FOIA Exemption 8 protects matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Additionally, it ensur[es] the security of financial institutions, which could be undermined by disclosure of information containing frank evaluations of such institutions, and a secondary purpose of safeguarding the relationship between the banks and their supervising agencies.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. Therefore, your fee waiver is moot. For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division

consumerfinance.gov

EXHIBIT 10

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Wednesday, September 12, 2018 8:03 AM
To: David Brody
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello,

No. We did not ask every Bureau employee within the Office of the Director if they use their personal device or personal accounts for matters related to this request.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

From: David Brody <dbrody@lawyerscommittee.org>
Sent: Tuesday, September 11, 2018 2:30 PM
To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this update, and sorry for the delayed response. I have one quick follow up question, if you don't mind: Did CFPB ask custodians whether they used personal devices/accounts for matters related to this request?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]
Sent: Wednesday, August 29, 2018 1:29 PM
To: David Brody <dbrody@lawyerscommittee.org>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello Mr. Brody,

The response regarding CFPB-2018-517-F was sent to you in error, my apologies.

We did not conduct searches of personal devices. Calendar entries / meeting invitations are included in the search. The withheld exemption 8 documents couldn't be reasonably segregated. I cannot provide any additional information regarding the withheld pages, however you may appeal the redactions and/or search by following the appeal procedures outlined in the final response letter.

From: David Brody <dbrody@lawyerscommittee.org>

Sent: Wednesday, August 29, 2018 10:38 AM

To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>

Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this response. One of the attachments is for FOIA Request #517; is this attachment responsive to our request as well (#547) or inadvertently shared with us?

I received a separate automated email that contained another attachment containing the 26 pages of responsive materials, as well as the final response letter detailing the exemptions. I have a few follow up questions:

- 1) Were the personal devices/accounts of each custodian searched for responsive documents? I do not see any evidence that they were, and in prior communications with CFPB FOIA personnel I have been told that personal devices/accounts are not routinely searched. However, the Bureau is legally required to search them if they may contain responsive materials.
- 2) Were calendar entries of each custodian searched? I do not see any calendar entries in the 26 page document, even though there are references to a meeting with CFSA and another meeting with industry stakeholders. We also asked for any attachments to calendar entries.
- 3) With regard to the 18 pages of materials withheld in full under (b)(8), is there nothing segregable in these documents that could be released? Can you please provide any additional detail about what these materials are?

Thanks for your continued and diligent assistance with our request. You have been very helpful and we are very appreciative!

Thanks,
David

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]

Sent: Monday, August 27, 2018 3:59 PM

To: David Brody <dbrody@lawyerscommittee.org>

Subject: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Dear Mr. Brody,

Attached to this email is our final response to your FOIA request dated May 14, 2018 to the Bureau of Consumer Financial Protection (BCFP).

If you have any questions or concerns, please do not hesitate to contact the BCFP FOIA Team at 1-855-444-FOIA (3642) or CFPB_FOIA@cfpb.gov.

Thank you.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

EXHIBIT 11



John E. McCarthy Jr.
jmccarthy@crowell.com
(202) 624-2579

November 21, 2018

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cpfb.gov

Re: Appeal of CFPB Denial of Freedom of Information Act
Request No. CFPB-2018-547-F

Dear Sir or Madam:

We represent The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We write to appeal CFPB's partial denial of the Lawyers' Committee's request submitted on May 14, 2018. This appeal is timely submitted within 90 calendar days of CFPB's final response letter on the Lawyers' Committee's Request No. CFPB-2018-547-F (the "Request") dated August 27, 2018.

Pursuant to FOIA's statutory 20-day appeals determination deadline, we look forward to your determination no later than December 20, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

I. Introduction

On May 14, 2018, the Lawyers' Committee submitted a FOIA request for the following documents:

- Communications and/or calendar entries (including invitations) involving CFPB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation

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- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors.
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn
- Communications and/or calendar entries (including invitations) involving any employee of the CFPB Office of the Director and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America, including any of its Board of Directors
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie

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- Tracy Rawle
 - Brian K. Lynn
- Any CFPB orders waiving compliance with the Payday Loan Rule’s registration system, as well as any requests for such waivers.

Request at 2-4.¹ The Request acknowledged that CFPB would use search terms to identify responsive documents, but stated, “The CFPB should search for the above terms both using keyword searching within the body of records and as an entry in the to-from/cc/bcc fields of email or calendar entries.” *Id.* at 4. The Request also sought calendar entries, including from Outlook calendars, and “any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.” *Id.* The Lawyers’ Committee further noted that it sought “all responsive records regardless of format, medium, or physical characteristics,” including “all attachments to these records.” *Id.* at 4 to 5. The Request also explicitly informed CFPB that it could “not exclude searches of files or emails in the personal custody of [CFPB’s] officials, such as personal email accounts.” *Id.* Citing relevant case law, the Lawyers’ Committee explained its justification for requesting information from personal accounts and devices:

Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers’ Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

Id. at 4-5 & n.14-15. Finally, the Lawyers’ Committee requested “records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request.” *Id.* at 4.

On August 27, 2018, CFPB responded to the Lawyers’ Committee’s Request. In its response, CFPB explained that it conducted a search of CFPB’s “Office of Research, Markets and Regulations” as well as any requests for waivers at:

¹ A complete copy of the Request is attached to this Appeal as Exhibit 1.

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<https://www.consumerfinance.gov/policy-compliance/guidance/payday-loansregistered-information-systems-registration-program/registered-information-systems/#waivers>. August 27, 2018 CFPB Final Response Letter to D. Brody at 1 (the “Final Response”).² The CFPB stated that it had located 44 pages of documents, of which it was releasing 26 pages and withholding 18 pages in their entirety based on FOIA Exemption 8. *See* Final Response at 3. Significantly, the Final Response does not include any summary of the searches conducted to identify responsive documents, including an identification of search terms or custodians or files that were searched. *See generally* Final Response. The Final Response contains no indication that the CFPB searched any personal devices or accounts to uncover responsive material, as was explicitly requested by the Request, nor does it identify whether it searched paper files or calendars. The utter lack of information regarding the CFPB’s searches makes clear that its searches were unreasonable and do not fulfill the Agency’s FOIA obligations.

The Final Response states, “FOIA Exemption 8 protects matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Additionally, it ensur[es] the security of financial institutions, which could be undermined by disclosure of information containing frank evaluations of such institutions, and a secondary purpose of safeguarding the relationship between the banks and their supervising agencies.” Final Response at 3. The Final Response contains absolutely no indication as to how or why the withheld information is subject to Exemption 8; it only contains the conclusory determination by the CFPB that it is subject to the Exemption.

On August 29, 2018, David Brody, Counsel for the Lawyers’ Committee, emailed Ryan McDonald, FOIA Officer for this Request, and asked for the following additional information:

Were the personal devices/accounts of each custodian searched for responsive documents? I do not see any evidence that they were, and in prior communications with CFPB FOIA personnel I have been told that personal devices/accounts are not routinely searched. However, the Bureau is legally required to search them if they may contain responsive materials.

² A complete copy of the Final Response is attached to this Appeal as Exhibit 2.

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Were calendar entries of each custodian searched? I do not see any calendar entries in the 26 page document, even though there are references to a meeting with CFSA and another meeting with industry stakeholders. We also asked for any attachments to calendar entries.

In response, Mr. McDonald stated that the CFPB did not conduct searches of personal devices. Several days later, on September 11, 2018, Mr. Brody sent an additional question to Mr. McDonald asking whether the CFPB asked the relevant custodians if they had information responsive to the Request on their personal devices. The following day, Mr. McDonald responded, “No. We did not ask every Bureau employee within the Office of the Director if they use their personal device or personal accounts for matters related to this request.”³

As explained more fully below, the CFPB’s searches were unreasonable because of the arbitrary and overly limiting parameters that the Agency used. Furthermore, it is clear that the Agency will not be able to sustain its burden in demonstrating that the withheld information is properly subject to Exemption 8. Accordingly, we respectfully request that CFPB produce the pages of responsive documents that it previously withheld, either in whole or in part, without further delay and re-run reasonable searches calculated to uncover all potentially relevant material on both government-issued and on personal accounts and devices to identify additional responsive material.

II. Argument

A. CFPB Did Not Conduct a Reasonable Search to Identify Documents Responsive to the Lawyers’ Committee’s Request

The “function of FOIA” is to serve “the citizens’ right to be informed about what their government is up to.” *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 150 (D.C. Cir. 2016). “An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was ***reasonably calculated to uncover all relevant documents.***” *Gonzales v. United States*, 298 F. Supp. 3d 1, 3-4 (D.D.C. 2018) (internal marks and citations omitted) (emphasis added). While agencies enjoy some discretion in crafting search terms, the search terms selected “must pass muster under a standard of reasonableness.” *Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*, 281 F. Supp. 3d 144, 151-52 (D.D.C. 2017) (internal marks and citations omitted). The adequacy of an agency’s search is not

³ A complete copy of the email communications between Mr. Brody and Mr. McDonald is attached to this Appeal as Exhibit 3.

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determined by the “fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017).

Here, although it is unclear what search CFPB actually conducted, it is abundantly clear that CFPB did not conduct a reasonable search that was calculated to uncover all relevant documents, and thus, did not fulfill its obligations under FOIA. The CFPB produced only 26 pages of documents and *not a single page* of those documents indicates that it was from Acting Director Mulvaney. *See* CFPB-2018-574-F Disclosure. Furthermore, of the 26 pages actually provided by the Bureau, all but 6 pages consisted of automatically generated advertisements for the Community Financial Services of America’s Conference and Expo. It is unreasonable for the CFPB to assert that neither Acting Director Mulvaney nor anyone in the Office of the Director had a single relevant email to the Lawyers’ Committee’s Request for “communications” at any point between November 24, 2017 and the date the search was conducted. Here, it is clear that the CFPB’s searches could not possibly have been reasonable as they did not return what should have been clearly relevant information in response to the Lawyers’ Committee’s Request.

As an example, the records CFPB did produce included emails stating that Dennis Shaul of the CFSA met at least once with senior CFPB staff at the beginning of 2018.⁴ However, the CFPB did not produce any calendar entries for this meeting or any other related records. This indicates that the CFPB’s search was inadequate.

Furthermore, the CFPB has not provided its search terms or custodians to the Lawyers’ Committee. However, based on the Final Response, the CFPB expressly informed the Lawyers’ Committee that the CFPB did not search any personal devices or accounts of the relevant CFPB employees, which per se makes its searches unreasonable. An agency cannot “deprive the citizens’ of their right to know what [the] department is up to by the simple expedient of maintaining [] departmental emails on an account in another domain...” *Competitive Enter. Inst.*, 827 F.3d at 150. As discussed above, the CFPB produced no email communications from Acting Director Mulvaney whatsoever, which strongly suggests that Acting Director Mulvaney was conducting official government business, likely directly relevant to the Lawyers’ Committee’s Request, on another account. It is a clear violation of FOIA to allow the acting director of an agency to escape FOIA’s requirements by simply sending his communications from an alternate account. Furthermore, the CFPB failed to even ask the relevant custodians whether they could have information related to this Request on their personal devices. *See* Exhibit 3. To allow that would be to allow the CFPB to flout FOIA all together.

⁴ *See* CFPB-2018-574-F Disclosure at 20-24.

Chief FOIA Officer
November 21, 2018
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For example, records from another FOIA request include emails that Acting Director Mulvaney forwarded from his personal account to his work account on at least one occasion, indicating that he uses his personal account for agency business.⁵ We do not know if this is the only time he has used his personal account for agency business because the CFPB has not conducted an adequate search of such records in response to this request. The records in this other FOIA production clearly show that CFPB needs to search Acting Director Mulvaney's personal devices and accounts for relevant records.

With only the information in the Final Response and the documents produced to the Lawyers' Committee to go on, the CFPB has provided so little information to the Lawyers' Committee related to its searches that it is impossible for the Lawyers' Committee to suggest additional search terms that would help to resolve the issues with CFPB's wholly inadequate production of information. Instead, the Lawyers' Committee requests that at the very least the originally requested terms be run against Mick Mulvaney, Kirsten Sutton, Anthony Welcher, Brian Johnson, and any other CFPB Office of the Director employee's government and personal email accounts, including both the header metadata and the bodies of the communications.

The Lawyers' Committee looks forward to your prompt attention to resolve the patently unreasonable searches conducted to this point.

B. CFPB Cannot Demonstrate That the Information the Lawyers' Committee Seeks is Properly Withheld Under Exemption 8

FOIA Exemption 8 applies to matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions[.]" 5 U.S.C. § 552(b)(8). The D.C. Circuit has identified two purposes underlying Exemption 8: "[T]he primary reason for adoption of exemption 8 was to ensure the security of financial institutions[;]" and "[A] secondary purpose in enacting exemption 8 appears to have been to safeguard the relationship between the banks and their supervising agencies." *Pub. Inv'rs Arbitration Bar Ass'n v. U.S. S.E.C.*, 930 F. Supp. 2d 55, 64 (D.D.C. 2013). While Exemption 8 has been construed more broadly than most of the FOIA exemptions, there are limits to its interpretation. *McKinley v. F.D.I.C.*, 756 F. Supp. 2d 105, 115 (D.D.C. 2010). Furthermore, as is always the case with a FOIA exemption, the agency bears the burden of demonstrating that the information is properly withheld. *Id.* ("In a

⁵ See, e.g., CFPB FOIA Disclosure to World Acceptance Corp. Commc'ns, at 9-11, *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_foia_world-acceptance-corp-documents.pdf (Apr. 4, 2018).

Chief FOIA Officer
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FOIA case, the burden of proof is always on the agency to demonstrate that it has fully discharged its obligations under the FOIA.”) Here, CFPB cannot do so.

In fact, CFPB has not even attempted to meet this burden, nor could it, because its claim of privilege under Exemption 8 was limited to a single declarative sentence that the CFPB “[has] determined that...18 pages are withheld in full pursuant to Title 5 U.S.C. § 552(b)(8).” Out of the 44 pages it identified as responsive, the CFPB fully withheld the contents of 18. The CFPB has made absolutely no showing that the material is “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”

Accordingly, because the CFPB has not met its burden to demonstrate that the information is properly withheld under Exemption 8, the Lawyers’ Committee requests that all documents CFPB has withheld, either in whole or in part, be released in their entirety.

C. CFPB Must Produce Any “Reasonably Segregable” Portions of the Eighteen Pages of Responsive Documents Redacted In Their Entirety

FOIA directs that “[a]ny reasonably segregable portion of a record *shall be provided* to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b) (emphasis supplied); *see also Ctr. for Int’l Envtl. Law v. Office of U.S. Trade Representative*, 505 F. Supp. 2d 150, 158 (D.D.C. 2007) (even where FOIA exemption applies, agency “may not automatically withhold the full document as categorically exempt without disclosing any segregable portions”). CFPB did not comply with this directive by withholding entire pages of documents.

Even assuming, for the sake of argument, that any of the documents responsive to the Lawyer’s Committee’s request are subject to Exemption 8, it is highly improbable that eighteen pages of them contain *only* confidential information. Accordingly, the Lawyers’ Committee requests that, for any responsive documentation over which CFPB continues to assert the applicability of Exemption 8, CFPB comply with FOIA and release all “reasonably segregable” portions of those documents.

III. Conclusion

For the reasons set forth above, we respectfully request that the CFPB conduct a reasonable search for documents responsive to the Lawyers’ Committee’s Request, including searching for all public records relevant to the Request whether they are on personal devices and accounts or government-furnished devices and accounts and produce the responsive documents yielded by such search. We further request release in their entirety the 18 pages of responsive documents that the CFPB has withheld.

Chief FOIA Officer
November 21, 2018
Page 9

The Lawyers' Committee reserves all of its rights related to the Request and this Appeal. Please do not hesitate to contact me if you have any further questions.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be 'J. McCarthy Jr.', written in a cursive style.

John E. McCarthy Jr.
Lyndsay A. Gorton

*Counsel for The Lawyers' Committee for
Civil Rights Under Law*

EXHIBIT 1



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
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Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

May 14, 2018

RE: Freedom of Information Act Request

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”).

The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On November 24, 2017, Mick Mulvaney became the Acting Director of the Consumer Financial Protection Bureau (CFPB).¹ On January 16, 2018, Acting Director Mulvaney announced that the CFPB would repeal the Payday Loan Rule, which was adopted in October 2017.² The Rule regulates payday loans, auto title loans, and other types of expensive loans targeted at poor communities with poor credit.³ The Rule is particularly important to African American and Latino communities where studies have shown that payday lenders are concentrated.⁴ As part of its January 16, 2018 announcement, CFPB said it will grant waivers from compliance with the Payday Loan Rule’s registration system, which is slated to go into effect in April 2018.⁵

¹ Victoria Guida, *Trump taps Mulvaney to head CFPB, sparking confusion over agency’s leadership*, Politico (Nov. 24, 2017), <https://www.politico.com/story/2017/11/24/richard-cordray-successor-cfpb-leandra-english-259612>.

² *CFPB Statement on Payday Rule*, CFPB (Jan. 16, 2018), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/>; *CFPB Finalizes Rule to Stop Payday Debt Traps*, CFPB (Oct. 5, 2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/>.

³ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

⁵ *CFPB Statement on Payday Rule*.



The Lawyers' Committee has grave concerns that the CFPB is now being run by corporate interests. The payday lending industry has given \$63,000 to Mr. Mulvaney.⁶ Not surprisingly, the CFPB has inexplicably dropped at least three litigations or investigations into lenders engaged in egregious practices. On January 18, CFPB dropped a lawsuit against a group of payday lenders in Kansas who affiliated with Native American tribes in order to evade regulation; their loans carried annual interest rates as high as 950%.⁷ And on January 23, CFPB quietly terminated a four-year investigation of World Acceptance Corporation's abusive payday lending practices; the company has given \$4,500 to Mr. Mulvaney's past political campaigns.⁸ Mr. Mulvaney's CFPB has also dropped an investigation into a different lender, World Finance.⁹ The chief executive of the Community Financial Services Association of America, which represents the payday lending industry, reports that they are "finding it easier to have our voice heard on the staff level [of the CFPB.]"¹⁰ The former CEO of World Acceptance even contacted Mr. Mulvaney at his personal email address to ask that she be considered for CFPB director (prior to Mr. Mulvaney's own appointment).¹¹

The Lawyers' Committee seeks to uncover the extent to which financial industry lobbyists and representatives have been meeting with Mr. Mulvaney's office to undermine CFPB enforcement and the implementation of the Payday Loan Rule.

Requested Records

The Lawyers' Committee requests that CFPB produce the following within twenty business days:

- Communications and/or calendar entries (including invitations) involving CFPB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies

⁶ Alan Rappeport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

⁷ Zeke Faux, *CFPB Signals Shift by Dropping Payday Lender Lawsuit*, Bloomberg (Jan. 18, 2018), <https://www.bloomberg.com/news/articles/2018-01-18/trump-led-cfpb-signals-shift-by-dropping-payday-lender-lawsuit>; see also *CFPB v. Golden Valley Lending, Inc.*, 2:17-cv-02521 (D. Kan.).

⁸ Josh Keefe, *CFPB Drops Investigation Into Payday Lender that Contributed to Mick Mulvaney's Campaigns*, Int'l Bus. Times (Jan. 23, 2018), <http://www.ibtimes.com/political-capital/cfpb-drops-investigation-payday-lender-contributed-mick-mulvaney-campaigns>.

⁹ Paul Kiel, *Newly Defanged, Top Consumer Protection Agency Drops Investigation of High-Cost Lender*, ProPublica (Jan. 23, 2018), <https://www.propublica.org/article/consumer-financial-protection-bureau-drops-investigation-of-high-cost-lender>.

¹⁰ Renee Merle, *Trump administration strips consumer watchdog office of enforcement powers in lending discrimination cases*, Wash. Post (Feb. 1, 2018), https://www.washingtonpost.com/news/business/wp/2018/02/01/trump-administration-strips-consumer-watchdog-office-of-enforcement-powers-against-financial-firms-in-lending-discrimination-cases/?utm_term=.ac24d787de51.

¹¹ Associated Press, *Under Trump, payday lenders and consumer protection agency exhibit cozier relationship*, L.A. Times (Mar. 6, 2018), <http://www.latimes.com/business/la-fi-cfpb-payday-lender-20180306-story.html>.



or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:¹²
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn
- Communications and/or calendar entries (including invitations) involving any employee of the CFPB Office of the Director and any of the following companies or organizations, their employees, or their representatives. Please provide all responsive records from November 24, 2017, to the date the search is conducted.
 - Golden Valley Lending
 - Silver Cloud Financial
 - Mountain Summit Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America, including any of its Board of Directors:¹³
 - Patrick O'Shaughnessy
 - Donald Gayhardt

¹² *Board of Directors*, Community Financial Services Association of America, <https://www.cfsaa.com/board-of-directors> (last visited April 6, 2018).

¹³ *Id.*



- C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn
- Any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers.

CFPB should search for the above companies and organizations both using keyword searching within the body of records and as an entry in the to/from/cc/bcc fields of emails or calendar entries.

The Lawyers' Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are also not interested in non-final drafts of documents or memoranda, in instances where multiple drafts or versions exist.

For calendar entries created in Outlook or similar programs, the documents should be produced in "memo" form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

The Lawyers' Committee seeks all responsive records regardless of format, medium or physical characteristics. In conducting your search, please understand the terms "communication" and "calendar entry" in their broadest sense, to include any written, typed, recorded, graphic, printed or audio material of any kind. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.¹⁴ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records

¹⁴ See *Competitive Enter. Inst. V. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).



contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.¹⁵

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.¹⁶ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB’s archiving tools would capture that email under Capstone. Accordingly, the Lawyers’ Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers’ Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”¹⁷ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers’ Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹⁸ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”¹⁹ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

¹⁶ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

¹⁷ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹⁸ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

¹⁹ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).



withholding it must discuss the consequences of disclosing the sought-after information.”²⁰ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”²¹

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.²² Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers’ Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers’ Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody; Lawyers’ Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers’ Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.²³

²⁰ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

²¹ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

²² *Mead Data Central*, 566 F.2d at 261.

²³ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).



The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income consumers who lack access to conventional loans with reasonable interest rates.²⁴ “[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women.”²⁵ These low-income consumers are disproportionately unbanked or under-banked people of color. “Predatory lending in protected communities may constitute discrimination—not because it excludes minorities, but because it targets and exploits them by offering loans with abusive terms and conditions.”²⁶ The public needs to know if its financial watchdog is fulfilling its mission.

The Lawyers’ Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers’ Committee’s financial interest. The Lawyers’ Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers’ Committee. The Lawyers’ Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and addressing predatory lending practices that stymie economic development in these communities. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers’ Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers’ Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers’ Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

²⁴ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

²⁵ *Id.*

²⁶ *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.



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We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the change in CFPB leadership. It is uniquely unusual to have one individual running both a White House office and an independent agency. In fact, there is ongoing litigation between CFPB deputy director Leandra English and Mr. Mulvaney regarding who is the rightful acting director of the CFPB pursuant to its authorizing statute; that case is being expedited at the D.C. Circuit.²⁷ While this dispute is ongoing, Mr. Mulvaney is aggressively taking deregulatory actions at CFPB to undermine fair lending enforcement in a manner that could have immediate and disparate negative impacts on communities of color. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices.

Accordingly, the Lawyers' Committee qualifies for expedited processing under the statute.

Conclusion

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

Kristen Clarke
President and Executive Director
The Lawyers' Committee for Civil Rights Under Law

²⁷ Jim Puzzanghera, *Judge denies injunction to remove Mick Mulvaney as consumer bureau's acting director*, L.A. Times (Jan. 11, 2018), <http://www.latimes.com/business/la-fi-cfpb-acting-director-20180110-story.html>.

EXHIBIT 2

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-547-F

August 27, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated May 14, 2018. Your request sought:

Communications and/or calendar entries (including invitations) involving CFPB Director Mick Mulvaney, his chief of staff, or their direct reports, and any of the following companies or organizations, their employees, or their representatives from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore

consumerfinance.gov

- Doug Clark
- D. Lynn DeVault
- Ian MacKechnie
- Tracy Rawle
- Brian K. Lynn

Communications and/or calendar entries (including invitations) involving any employee of the CFPB Office of the Director and any of the following companies or organizations, their employees, or their representatives from November 24, 2017, to the date the search is conducted.

- Golden Valley Lending
- Silver Cloud Financial
- Mountain Summit Financial
- Majestic Lake Financial
- World Acceptance Corporation
- World Finance
- Community Choice Financial
- Community Financial Services Association of America, including any of its Board of Directors:
 - Patrick O'Shaughnessy
 - Donald Gayhardt
 - C. Dan Adams
 - Darrin Andersen
 - Dennis Bassford
 - Dennis Shaul
 - Kip Cashmore
 - Doug Clark
 - D. Lynn DeVault
 - Ian MacKechnie
 - Tracy Rawle
 - Brian K. Lynn

Any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers.

A search of our Office of Research, Markets and Regulations for documents responsive to your request regarding any CFPB orders waiving compliance with the Payday Loan Rule's registration system, as well as any requests for such waivers determined that the documents are located online at: <https://www.consumerfinance.gov/policy-compliance/guidance/payday-loans-registered-information-systems-registration-program/registered-information-systems/#waivers>

A search of our Office of the Director for documents responsive to the remaining items of your request produced a total of 44 pages. Of those pages, I have determined that 26 pages of the records are granted in full and 18 pages are withheld in full pursuant to Title 5 U.S.C. § 552 (b)(8).

FOIA Exemption 8 protects matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Additionally, it ensur[es] the security of financial institutions, which could be undermined by disclosure of information containing frank evaluations of such institutions, and a secondary purpose of safeguarding the relationship between the banks and their supervising agencies.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. Therefore, your fee waiver is moot. For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Raynell D. Lazier
FOIA Manager
Operations Division

consumerfinance.gov

EXHIBIT 3

From: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Sent: Wednesday, September 12, 2018 8:03 AM
To: David Brody
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello,

No. We did not ask every Bureau employee within the Office of the Director if they use their personal device or personal accounts for matters related to this request.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

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From: David Brody <dbrody@lawyerscommittee.org>
Sent: Tuesday, September 11, 2018 2:30 PM
To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this update, and sorry for the delayed response. I have one quick follow up question, if you don't mind: Did CFPB ask custodians whether they used personal devices/accounts for matters related to this request?

Thanks,
David

David Brody
Counsel & Senior Fellow for Privacy and Technology
Lawyers' Committee for Civil Rights Under Law
www.lawyerscommittee.org
202-662-8320

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]
Sent: Wednesday, August 29, 2018 1:29 PM
To: David Brody <dbrody@lawyerscommittee.org>
Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hello Mr. Brody,

The response regarding CFPB-2018-517-F was sent to you in error, my apologies.

We did not conduct searches of personal devices. Calendar entries / meeting invitations are included in the search. The withheld exemption 8 documents couldn't be reasonably segregated. I cannot provide any additional information regarding the withheld pages, however you may appeal the redactions and/or search by following the appeal procedures outlined in the final response letter.

From: David Brody <dbrody@lawyerscommittee.org>

Sent: Wednesday, August 29, 2018 10:38 AM

To: McDonald, Ryan (CFPB) <Ryan.McDonald@cfpb.gov>

Subject: RE: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Hi Mr. McDonald,

Thank you for this response. One of the attachments is for FOIA Request #517; is this attachment responsive to our request as well (#547) or inadvertently shared with us?

I received a separate automated email that contained another attachment containing the 26 pages of responsive materials, as well as the final response letter detailing the exemptions. I have a few follow up questions:

- 1) Were the personal devices/accounts of each custodian searched for responsive documents? I do not see any evidence that they were, and in prior communications with CFPB FOIA personnel I have been told that personal devices/accounts are not routinely searched. However, the Bureau is legally required to search them if they may contain responsive materials.
- 2) Were calendar entries of each custodian searched? I do not see any calendar entries in the 26 page document, even though there are references to a meeting with CFSA and another meeting with industry stakeholders. We also asked for any attachments to calendar entries.
- 3) With regard to the 18 pages of materials withheld in full under (b)(8), is there nothing segregable in these documents that could be released? Can you please provide any additional detail about what these materials are?

Thanks for your continued and diligent assistance with our request. You have been very helpful and we are very appreciative!

Thanks,
David

From: McDonald, Ryan (CFPB) [<mailto:Ryan.McDonald@cfpb.gov>]

Sent: Monday, August 27, 2018 3:59 PM

To: David Brody <dbrody@lawyerscommittee.org>

Subject: Bureau of Consumer Financial Protection FOIA Response (CFPB-2018-547-F)

Dear Mr. Brody,

Attached to this email is our final response to your FOIA request dated May 14, 2018 to the Bureau of Consumer Financial Protection (BCFP).

If you have any questions or concerns, please do not hesitate to contact the BCFP FOIA Team at 1-855-444-FOIA (3642) or CFPB_FOIA@cfpb.gov.

Thank you.

Ryan McDonald

Government Information Specialist | Operations

Office: (202) 435-9133 | Fax: (855) FAX-FOIA (329-3642)

Bureau of Consumer Financial Protection

consumerfinance.gov

Confidentiality Notice: If you received this email by mistake, you should notify the sender of the mistake and delete the e-mail and any attachments. An inadvertent disclosure is not intended to waive any privileges.

EXHIBIT 12

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



December 21, 2018

VIA Electronic Mail

John E. McCarthy, Jr., Esq.
Lyndsay A. Gorton, Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

RE: Final Appellate Determination on FOIA Appeal No. 2018-547-A

Dear Mr. McCarthy and Ms. Gorton,

This letter constitutes the final determination of the Bureau of Consumer Financial Protection (Bureau) regarding your appeal dated November 21, 2018, which you filed on behalf of your client the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee).¹ You appeal the Bureau's August 27, 2018 response to Freedom of Information Act (FOIA) request No. 2018-547-F from the Lawyers' Committee. For the reasons set forth below, the appeal is granted in part and denied in part, and the request is remanded to the FOIA Office.²

¹ While your letter is dated November 21, 2018, the Bureau's records reflect that it was actually received on November 23, 2018.

² 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.

I. Background

On May 14, 2018, the Lawyers' Committee submitted the underlying FOIA request, which, in the respects relevant to this appeal, sought:

- Communications and calendar entries (including invitations) from and after November 24, 2017 involving Acting Director Mulvaney, his chief of staff, and their direct reports, and any of eight organizations, the employees of those organizations or the representatives of those organizations. The eight organizations are:
 - Golden Valley Lending
 - Silver Cloud Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America

The request also named twelve individuals whose communications it sought, which the request indicated were individuals associated with the Board of Directors of one of the organizations, the Community Financial Services Association of America.

The request also sought:

- Communications and calendar entries (including invitations) from and after November 24, 2017 involving any employee of the CFPB Office of the Director, and any of eight organizations, the employees of those organizations or the representatives of those organizations. The eight organizations are:
 - Golden Valley Lending
 - Silver Cloud Financial
 - Majestic Lake Financial
 - World Acceptance Corporation
 - World Finance
 - Community Choice Financial
 - Community Financial Services Association of America

The request again also requested communications with twelve individuals that it identified as associated with the Board of Directors of the Community Financial Services Association of America.³

By a letter dated August 27, 2018, the Bureau's FOIA Office responded to the request, explaining that its search of the Office of the Director had found 44 pages responsive to the requests and that it was producing 26 of these pages. It further explained that the remaining 18 pages of records were being withheld in full pursuant to FOIA Exemption 8, because these records reflected matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

You appealed the Bureau's determination on behalf of the Lawyers' Committee. Your appeal makes three arguments: you challenge the reasonableness of the Bureau's search; you question the withholding of material pursuant to Exemption 8, arguing that the material cannot qualify for the exemption; and finally you argue that reasonably segregable information has been improperly withheld.

II. Appellate Determination

A. Search Adequacy

A FOIA search is adequate if it is "reasonably calculated to uncover all relevant documents." *Ancient Coin Collector's Guild v. Dep't of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations omitted). That is, search adequacy is "measured by a standard of reasonableness, and is dependent upon the circumstances of the case." *Hefferman v. Azar*, 317 F. Supp. 3d 94, 104 (D.D.C. 2018) (quoting *Truitt v. Dep't of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)).

Here, the specific objections to the search that you raise in your appeal are misplaced. Nonetheless, based on the record available to me, I am unable to conclude that the search was

³ The Request also sought "CFPB orders waiving compliance with the Payday Loan Rule's registration system as well as any requests for such waivers." This appeal does not raise any issue with respect to the Bureau's response to this portion of the initial FOIA request.

adequate, and so I remand to the FOIA Office so that it may either better document its search or conduct additional searches, as needed.

First, you argue that the results of the search demonstrate that the search was inadequate. But the “adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). True, if agency records contain an “apparent” lead, the agency cannot ignore it, *Kowalczyk v. Dept. of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996), but this is not such a “rare case,” *id.* The mere fact that an agency does not discover the records a requestor hopes exist does not render the agency’s search inadequate.

Second, you challenge the fact that the Bureau did not produce the search terms that it used or a list of the custodians that it searched. This objection falters because agencies are not obligated to do so. FOIA compels agencies to produce records that already exist, not to “answer questions disguised as a FOIA request or to create documents. . . in response to an individual’s request for information.” *Hudgins v. I.R.S.*, 620 F. Supp. 19, 21 (D.D.C. 1985) (citing *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 162 (1975)), *aff’d*, 808 F.2d 137 (D.C. Cir. 1987).

Third, you state that “the CFPB expressly informed the Lawyers’ Committee that the CFPB did not search any personal devices or accounts of the relevant CFPB employees, which per se makes its searches unreasonable.” It is true that “agency employees’ communications on non-agency accounts may constitute ‘agency records’ subject to the FOIA.” *Wright v. Admin. for Children and Families*, 2016 WL 5922293, at *8 (D.D.C. Oct. 11, 2016) (paraphrasing *Competitive Enterprises Institute v. Office of Science & Technology Policy*, 827 F.3d 145 (D.C. Cir. 2016)). However, “a FOIA requestor is not entitled to a search of files specified by the requestor, but rather to a search of files that are likely to turn up the information requested.” *Tunchez v. U.S. Dep’t of Justice*, 715 F. Supp. 2d 49, 54 (D.D.C. 2010) (citation omitted). So a FOIA requestor cannot simply demand that an agency search its employees’ personal devices or accounts, it must “raise a substantial doubt as to the adequacy of the agency’s search” and “overcome the presumption that agency records are unlikely to exist on the agency employees’ personal accounts.” *Wright*, 2016 WL 5922293, at *8; *see also Judicial Watch, Inc. v. U.S. Dep’t of Justice*, 319 F. Supp. 3d 431, 437-38 (D.D.C. 2018) (“Absent evidence to the contrary, a government employee is presumed to have properly discharged the duty to forward official business communications from a personal email account to an official email account. . . . Thus,

in a typical case, a search of a[n agency] employee’s personal email account would be unnecessarily duplicative of a search of the employee’s official email account.”).

In your appeal, you attempt to overcome this presumption by again pointing to the fact that the Bureau’s search did not find records that you think should exist:

[T]he CFPB produced no email communications from Acting Director Mulvaney whatsoever, which strongly suggests that Acting Director Mulvaney was conducting official government business, likely directly relevant to the Lawyers’ Committee’s Request, on another account.

As explained above, a requestor’s dissatisfaction with the fruits of a search is insufficient to call into question the adequacy of that search. And it is certainly not evidence sufficient to overcome the presumption that government records will be found in government systems. The FOIA Office only needs to search personal accounts if it has reason to believe that there may be agency records in personal accounts that were not copied to or forwarded to government accounts in accordance with 44 U.S.C. § 2911 and Bureau policy.⁴

Fourth, you suggest that the Bureau use the search terms your client originally proposed. But “there is no bright-line rule requiring agencies to use the search terms proposed in a FOIA request.” *Media Research Ctr. v. U.S. Dep’t of Justice*, 818 F. Supp. 2d 131, 139 (D.D.C. 2011) (quoting *Physicians for Human Rights v. U.S. Dep’t of Defense*, 675 F. Supp. 2d 149, 163-64 (D.D.C. 2009)). Instead, agencies have “discretion [to] craft[] . . . search terms that [they] believe[] to be reasonably tailored to uncover documents responsive to a FOIA request.” *Am. Fed’n of Gov’t Employees, Local 182 v. Broadcasting Bd. of Governors*, 711 F. Supp. 2d 139, 151 n.11 (D.D.C. 2010) (citation omitted).

Nonetheless, based on the record available to me, I am unable to determine whether the Bureau’s search was reasonably calculated to uncover all documents responsive to the request for communications and calendar entries relating to the identified organizations, their employees, their representatives and their Directors. The appeal is accordingly remanded for

⁴ You also fail to overcome this presumption by citing an instance when former Acting Director Mulvaney received an unsolicited email sent to his personal email account, which he promptly forwarded to his official account, in compliance with 44 U.S.C. § 2911. See Appeal at 7 & n.5. An example of *compliance* with federal records law certainly does not support a presumption of *non-compliance*.

the FOIA Office to better document its earlier searches, or conduct additional searches as needed that are reasonably calculated to uncover all responsive documents. As explained, if the FOIA Office has reason to believe that there may be agency records in personal accounts, then the FOIA Office should also search those accounts.

B. Exemption 8

FOIA Exemption 8 protects from disclosure “matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.” 5 U.S.C. § 552(b)(8). Interpreting the text of Exemption 8, the D.C. Circuit has repeatedly held that the scope of Exemption 8 is “particularly broad” and “all inclusive.” *Consumers Union v. Heimann*, 589 F.2d 531, 534 (D.C. Cir. 1978); *see also Pub. Investors Arbitration Bar Assoc. v. SEC*, 930 F. Supp. 2d 55, 62 (D.D.C. 2013), *aff’d*, 771 F.3d 1 (D.C. Cir. 2014) (“[T]he language of Exemption 8, by its terms, is very broad.”). Specifically, Exemption 8’s “related to” language “casts a wide net of non-disclosure over any documents that are logically connected to an ‘examination, operating, or condition report.’” *Pub. Investors*, 930 F. Supp. 2d at 62. Documents that are “logically connected” to examination reports include documents that “represent the foundation of the examination process, the findings of such an examination or its follow-up.” *Atkinson v. Fed. Dep. Ins. Corp.*, No. 79-1113, 1980 WL 355660, at *1 (D.D.C. Feb. 13, 1980). “Exemption 8 extends to any documents received by a financial regulatory agency in the course of exercising its regulatory responsibilities in relation to the financial institution whose information has been withheld.” *Williams & Connolly, LLP v. OCC*, 39 F. Supp. 3d 82, 90 (D.D.C. 2014) (quotations omitted). Thus, Congress meant to provide through Exemption 8 “absolute protection regardless of the circumstances underlying the regulatory agency’s receipt or preparation of examination, operating or condition reports.” *Gregory v. FDIC*, 631 F.2d 896, 898 (D.C. Cir. 1980) (*per curiam*).

You argue that the pages withheld in full do not qualify for withholding under Exemption 8. I have examined the withheld pages. They concern supervisory activities with respect to a financial institution under the Bureau’s regulatory and supervisory authority. Accordingly, these documents, in their entirety, are “related to examination, operating or condition reports” within the meaning of Exemption 8. Therefore, the documents at issue were appropriately withheld pursuant to Exemption 8.

C. Reasonably Segregable Portions of Withheld Pages

Your appeal lastly argues that the Bureau failed to produce reasonably segregable information on the fully withheld pages. It is true that “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b). Here, the FOIA Office withheld 18 pages in full. However, as already noted, after reviewing the fully withheld pages I have determined that they do not contain reasonably segregable material not subject to Exemption 8’s protection from disclosure.


Accordingly, the appeal is granted in part and denied in part, and the request is remanded to the FOIA Office for documentation of the searches or, if necessary, to conduct a further search.

* * * * *

If you are dissatisfied with the Bureau’s final appellate determination, you may contact the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies pursuant to 5 U.S.C. § 552(h)(3). Using OGIS services does not affect your right to judicial review. Under 5 U.S.C. § 552(a)(4)(B), you may also seek judicial review of this appeal denial in the U.S. District Court where you reside, in the district where the documents are located, or in the District of Columbia.

Sincerely,

**Laura M.
Hussain**

 Digitally signed by Laura M.
Hussain
Date: 2018.12.21 13:47:25
-05'00'

Laura M. Hussain
Assistant General Counsel for Litigation and Oversight

EXHIBIT 13

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #BCFP-2019-0166-F

December 27, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is to inform you that in accordance with the Bureau of Consumer Financial Protection (BCFP) Final Appellate Determination Letter (BCFP-2019-0166-F) dated December 21, 2018, your request has been remanded back to the FOIA Office for documentation of the searches or, if necessary, to conduct a further search.

For tracking purposes, you have been given a new FOIA request number.

You have been determined to be a non-commercial requester and provisions of the FOIA allow the BCFP to recover part of the cost of complying with your request. You will be charged for the search (after the first two hours) and duplication (after the first 100 pages) costs in accordance with the BCFP Interim FOIA regulations as applicable to commercial requestors. The BCFP's FOIA Fee Schedule may be viewed at www.consumerfinance.gov/foia-requests/fee-schedule/. **You did not indicate in your request a specific amount you were willing to pay. Therefore, in accordance with our regulations, your submission of a FOIA request is construed as an agreement to pay up to \$25.00.** You will be contacted in the event there are additional fees related to the processing of your request beyond this amount.

For inquiries concerning your request, please contact Holly Walter by phone at 202-435-7210 and reference the FOIA request number, or contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Sincerely,

Raynell D. Lazier
FOIA Manager
Operations Division

consumerfinance.gov

EXHIBIT 14



John E. McCarthy Jr.
jmccarthy@crowell.com
(202) 624-2579

April 1, 2019

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cpfb.gov

Re: Status of CFPB Freedom of Information Act
Request No. CFPB-2018-547-F/BCFP-2019-0166-F

Dear Sir or Madam:

We represent the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We are writing to inquire about the status of the Lawyers' Committee's FOIA Request No. 2019-0166-F, the number assigned to FOIA Appeal CFPB-2018-547-F for tracking purposes on December 27, 2018 after the Lawyers' Committee's appeal was granted in part on December 21, 2018.

As you are aware, the final appellate determination rejected the CFPB response to the Lawyer's Committee's FOIA request on the basis that it could not conclude that an adequate search was conducted, and remanded the request to the FOIA Office so that it could "either better document its search or conduct additional searches, as needed."¹ Following that communication, the Lawyer's Committee received a letter on December 27, 2018 stating that in accordance with the final appellate determination ordered on December 21, 2018 a new FOIA request number (FOIA Request #BCFP-2019-0166-F) had been assigned for "tracking purposes." FOIA requires that "upon any determination by an agency to comply with a request for records, the records shall be made promptly available[.]" See 5 U.S.C § 552(a)(6)(C)(i). Following the December 27, 2018 letter, the Lawyers' Committee has not received any additional documents or other communication from the CFPB regarding its remanded request.

It has now been more than 60 calendar workdays since the CFPB issued its last communication, without any further contact. In light of the substantial amount of time that has

¹ A complete copy of the CFPB's final appellate determination is enclosed.

Chief FOIA Officer

April 1, 2019

Page 2

elapsed since the final appellate determination -- not to mention the months of elapsed time since the original FOIA request, the Lawyers' Committee respectfully requests that the CFPB provide a response to remanded request No. 2018-547-F (now No. 2019-0166-F) within the next 7 calendar days. If we do not receive a response, we will assume the agency does not intend to provide any additional information and proceed to exercise our right to judicial review of the agency's final appellate determination under 5 U.S.C. §552(a)(4)(B).

Respectfully submitted,



John E. McCarthy Jr.

EXHIBIT 15



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

June 8, 2018

RE: Freedom of Information Act Request – Expedited Processing Requested

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”). The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On June 6, 2018, Acting Director Mulvaney fired all 25 members of the Consumer Advisory Board.¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) instructs the Director to establish a Consumer Advisory Board, and the objective of the Board is to use their expertise to advise the Bureau on the CFPB’s “functions under the Federal consumer financial laws” and “provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and relevant information.”² The Consumer Advisory Board plays a valuable and irreplaceable role in providing the CFPB with input from civil rights organizations and consumer advocates with on-the-ground expertise about how different consumer financial products and markets affect American consumers, especially low income communities and communities of color.

The Director shall seek to assemble experts in “consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved

¹ See Renae Merle, *Mick Mulvaney fires all 25 members of consumer watchdog advisory board*, Wash. Post, (June 6, 2018), https://www.washingtonpost.com/news/business/wp/2018/06/06/mick-mulvaney-fires-members-of-cfpb-advisory-board/?noredirect=on&utm_term=.ff3b31cc35bf.

² *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf (quoting SEC. 1014(a) of the Dodd-Frank Act).



communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.”³

In the wake of the firings, Anthony Welcher, CFPB’s Associate Policy Director for External Affairs, told the former members that the agency wanted to modify how the board operates.⁴ On a conference call he said, “We’ve decided we’re going to start the advisory groups with new membership, to bring in these new perspectives and new dialogue. We want more diverse voices and we want to bring people in from larger-scale organizations, larger-scale opportunities in the communities to hear about processes we may be going through.”⁵ Members of the advisory board had served for three year terms, with one-third turnover each year.⁶ Welcher said the CFPB had amended the board’s charter so that each member serves a single year.⁷ Neither the former term duration nor this stated change are reflected in the charter posted on CFPB’s website.⁸ In a CFPB blog post, Welcher stated that the Consumer Advisory Board will continue to meet and will be reformatted as a smaller group in order to “enhance its ability to hear from consumer, civil rights, and industry groups on a more regular basis.”⁹ According to the most recent publicly available version of the Board’s charter, at least 6 members must be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis, and the Board must meet at least twice a year.¹⁰ The Board last met on November 1, 2017.¹¹ The two meetings scheduled for this year (in February and June) were cancelled shortly before their intended dates.¹²

³ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf (quoting SEC. 1014(b)).

⁴ Kate Berry, *Mulvaney makes it official, fires CFPB advisory board members*, Am. Banker, (June 6, 2018), <https://www.americanbanker.com/news/mulvaney-makes-it-official-fires-cfpb-advisory-board-members>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

⁹ Anthony Welcher, *Transforming the way we engage*, CFPB Blog, (June 6, 2018), <https://www.consumerfinance.gov/about-us/blog/transforming-way-we-engage/>.

¹⁰ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

¹¹ See Consumer Advisory Board, CFPB, <https://www.consumerfinance.gov/about-us/advisory-groups/consumer-advisory-board/> (last visited June 8, 2018) (listing previous meeting minutes and agendas); Minutes, *Consumer Advisory Board: November 1-2, 2017*, CFPB (Nov. 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_CAB-meeting-minutes_112017.pdf.

¹² Kate Berry, *Mulvaney makes it official, fires CFPB advisory board members*, Am. Banker, (June 6, 2018), <https://www.americanbanker.com/news/is-mulvaney-trying-to-purge-cfpbs-advisory-board>.



There are concerns that this sudden firing of the Board will have an impact on its ability to fulfill its obligations.¹³ It is important to protect the Consumer Advisory Board because “they are a source of market intelligence and expertise for [the CFPB], and also advise and consult” the CFPB on their work.¹⁴ Without a properly constituted Board, not only would CFPB fail to comply with Dodd-Frank, it also would lack vital information from experts representing the very consumers the Bureau is designed to defend.

The Lawyers’ Committee seeks communications and calendar entries that may explain the decision to disband the Consumer Advisory Board. In addition, the Lawyers’ Committee seeks any amended versions of the Consumer Advisory Board’s charter and/or any new charters created since the Charter dated February 22, 2017.

Requested Records

The Lawyers’ Committee requests that CFPB produce the following within twenty business days:

- Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the “Consumer Advisory Board” or “CAB” from November 24, 2017, to the date the search is conducted. We do *not* request such records held by the Office of Fair Lending and Equal Opportunity.
- Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017.

The CFPB should search for the above terms both using keyword searching within the body of records and as an entry in the to/form/cc/bcc fields of email or calendar entries.

The Lawyers’ Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption.

For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic,

¹³ *See id.*

¹⁴ *Consumer Advisory Board*, Consumer Protection Board Website, <https://www.consumerfinance.gov/about-us/advisory-groups/consumer-advisory-board/>, (last accessed June 7, 2018).



whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

We seek all responsive records regardless of format, medium or physical characteristics. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.¹⁵ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.¹⁶

In addition to the records requested above, the Lawyers' Committee also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If CFPB uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searched, we also request any such records prepared in connection with the processing of this request.

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.¹⁷ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

¹⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

¹⁷ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."¹⁸ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers' Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹⁹ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."²⁰ Moreover, the Vaughn index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information."²¹ Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"²²

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.²³ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers' Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

¹⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹⁹ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

²⁰ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

²¹ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

²² *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

²³ *Mead Data Central*, 566 F.2d at 261.



To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers' Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody, Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.²⁴

The CFPB exists to protect consumers. One of the means of protection for consumers is the Consumer Advisory Board. The Consumer Advisory Board "is designed to help consumer groups work with the CFPB to identify problems facing Americans who are treated unfairly by financial firms."²⁵ Additionally, the Board has statutory obligations that it needs to follow such as meeting requirements.²⁶ It is alarming that the CFPB has summarily fired the entire Board. The CFPB is currently undertaking a number of significant regulatory actions, such as a proposed rollback of the Payday Lending Rule that will have major impacts on low income consumers and communities of color.²⁷ Unchecked payday lending "trap[s] vulnerable consumers in a feedback loop of debt" with huge and predatory interest rates that can be as high as "nearly 1,000 percent."²⁸ Without a properly constituted Consumer Advisory Board, the Bureau will lack expert input on how its regulatory actions are affecting the communities the Bureau is designed to protect. The public needs to know if its financial watchdog is fulfilling its mission, or if to the dismissal of the Consumer Advisory Board will harm consumers.

²⁴ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

²⁵ Chris Arnold & Avie Schneider, *Mick Mulvaney Effectively Fires CFPB Advisory Council*, NPR, (June 6, 2018), <https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council>.

²⁶ *Consumer Financial Protection Bureau Charter of the CFPB's Consumer Advisory Board*, (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

²⁷ See, e.g., Alan Rappeport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

²⁸ *Id.*



The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers' Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and protection. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Expedited Processing Requested

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 12 C.F.R. § 1070.17(b)(2)(ii).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the disbanding of the Consumer Advisory Board.

Expedited processing is warranted for this request because (1) Lawyers' Committee is an organization primarily engaged in disseminating information to the public; we routinely share our expertise and the products of our investigations and litigations with the public through press releases, media statements, our website (www.lawyerscommittee.org), and social media posts; (2) this request pertains to an actual or alleged Federal government activity—the CFPB's disbanding of the Consumer Advisory Board; and (3) there is an urgent need to inform the public about the recent and summary firing of all of the Board members because the Board is mandated by Dodd-Frank, plays a vital role in advising the Bureau on how consumers use and are affected by financial products and markets, and this advice is especially necessary and urgent right now



**LAWYERS' COMMITTEE FOR
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UNDER LAW**

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as the Bureau is currently undertaking a number of regulatory actions that will affect consumers, especially low income communities and communities of color. The Bureau is also subject to a lawsuit seeking to block the Payday Lending Rule, and just days ago the Bureau collaborated with its supposed adversary to seek a stay of the Rule pending its rollback.²⁹ The Board is a two-directional conduit of information between the general public and the Bureau. Because the input and participation of a properly constituted Consumer Advisory Board is essential to informing the CFPB's current rulemaking, regulatory, and litigation activities, the public needs to know why the Bureau fired the entire Board. The requested records pertain to this matter of current exigency to the American public; without a proper Board, advocates for the public's interests are in the dark about the CFPB's activities. If this request is delayed, the public may not learn whether or how the Bureau is accounting for the interests of low income communities and communities of color until after regulatory actions are completed. Finally, as the CFPB just fired the Board yesterday, this matter is extremely pressing and time sensitive.

We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge and belief. Executed on the date at the top of this letter.

Conclusion

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

David Brody
Counsel & Senior Fellow for Privacy and Technology
The Lawyers' Committee for Civil Rights Under Law

²⁹ David Baumann, *CFPB, Trade Group Ask for Delay in Payday Loan Rule & Lawsuit*, Credit Union Times (May 31, 2018), <https://www.cutimes.com/2018/05/31/cfpb-trade-group-ask-for-delay-in-payday-loan-rule/?slreturn=20180508121008>.

EXHIBIT 16

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-600-F

August 22, 2018

Mr. David Brody
Counsel & Senior Fellow for Privacy and Technology
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated June 8, 2018. Your request sought:

Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the "Consumer Advisory Board" or "CAB" from November 24, 2017, to the date the search is conducted. We do not request such records held by the Office of Fair Lending and Equal Opportunity.

Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017. (Date range for record search: from 02/22/2017 to 06/11/2018).

A search of our Office of External Affairs for documents responsive to your request produced 1,892 in seven (7) files and two (2) audio recordings. We have determined that the records are granted in part pursuant to Title 5 U.S.C. § 552(b)(5) and (b)(6).

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that portions of the responsive documents qualify for protection under the Deliberative Process Privilege.

consumerfinance.gov

- The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. D. Lazier".

Raynell D. Lazier
FOIA Manager
Operations Division

EXHIBIT 17



John E. McCarthy Jr.
jmccarthy@crowell.com
(202) 624-2579

November 20, 2018

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cpfb.gov

Re: Appeal of CFPB Denial of Freedom of Information Act
Request No. CFPB-2018-600-F

Dear Sir or Madam:

We represent The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We write to appeal CFPB's partial denial of the Lawyers' Committee's FOIA request submitted on June 8, 2018, designated by CFPB as (the "Request"). This appeal is timely submitted within 90 calendar days of CFPB's final response to that Request dated August 22, 2018.

Pursuant to FOIA's statutory 20-day appeals determination deadline, we look forward to receiving your determination regarding this Appeal no later than December 19, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(ii).

I. Introduction

On June 8, 2018, the Lawyers' Committee submitted its FOIA Request for the following documents:

- Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the "Consumer Advisory Board" or "CAB" from November 24, 2017, to the date the search is conducted. We do *not* request such records held by the Office of Fair Lending and Equal Opportunity.

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November 20, 2018
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- Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017.

Request at 3 (italics in original).¹ The Request acknowledged that CFPB would use search terms to identify responsive documents, but stated, “The CFPB should search for the above terms both using keyword searching within the body of records and as an entry in the to-from/cc/bcc fields of email or calendar entries.” *Id.* The Request also sought calendar entries, including from Outlook calendars, and “any calendar – paper or electronic, whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.” *Id.* at 3-4. The Lawyers’ Committee further noted that it sought “all responsive records regardless of format, medium, or physical characteristics,” including “all attachments to these records.” *Id.* at 4. The Request also explicitly informed CFPB that it could “not exclude searches of files or emails in the personal custody of [CFPB’s] officials, such as personal email accounts.” *Id.* Citing relevant case law, the Lawyers’ Committee explained its justification for requesting information from personal accounts and devices:

Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers’ Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.

Id. at 4 & n.15-16. Finally, the Lawyers’ Committee requested “records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request.” *Id.* at 4.

On June 28, 2018, Holly Walter, FOIA Officer for this Request, spoke by telephone with David Brody, Counsel for the Lawyers’ Committee, to discuss the initial searches that CFPB conducted to identify material responsive to the Request. Ms. Walters represented to Mr. Brody that the initial search results were in the thousands of documents and that she was working to filter the results. Ms. Walters indicated that she ran searches for “advisory board” and then

¹ A complete copy of the Request is attached to this Appeal as Exhibit 1.

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narrowed it to “advisory board” within five of “cancel.” She also stated that she “pulled inboxes” for the Advisory Board members to identify relevant calendar entries. Ms. Walters further states that the CFPB identified fourteen relevant email addresses against which to run the searches, but did not identify the individual custodians whose email addresses were deemed relevant or any other information regarding the searches. Ms. Walters informed Mr. Brody that she referred the request to the “T&I Team,” which the Lawyers’ Committee understands to be the CFPB’s eDiscovery department, in an attempt to identify more limited search terms.

The CFPB has not since provided any further information to the Lawyers’ Committee related to search terms, custodians, or any other aspect of the collection process.

On August 22, 2018, CFPB responded to the Lawyers’ Committee’s Request. In its response, CFPB explained that it conducted “a search of our Office of External Affairs” and had located 1,892 pages of documents, which it produced in seven PDF files, and two audio recordings. *See* Aug. 22, 2018 CFPB Final Response Letter to D. Brody at 1 (the “Final Response”).² The Final Response further explained that CFPB was denying the Request in part and withholding certain of the relevant information pursuant to FOIA Exemptions 5 and 6. *Id.* at 1-2. Significantly, the Final Response does not include any summary of the searches conducted to identify responsive documents, including an identification of search terms or custodians or files that were searched. *See generally* Final Response. The Final Response contains no indication that the CFPB searched any personal devices or accounts to uncover responsive material, as was explicitly called for by the Request, nor does it identify whether it searched paper files or calendars. The utter lack of information regarding the CFPB’s searches, along with the materials that CFPB actually produced, make clear that its searches were not reasonable and do not fulfill the Agency’s FOIA obligations.

The Final Response further explained that the CFPB determines that the withheld information contained in the 1,892 pages it did locate qualifies for protection under the deliberative process privilege under FOIA Exemption 5. *Id.* at 1-2. The Final Response states, “The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.” Final Response at 2. The Final Response contains absolutely no indication as to how or why the withheld information is subject to Exemption 5; it only contains the conclusory determination by the CFPB that it is subject to the deliberative process privilege.

² A complete copy of the Final Response is attached to this Appeal as Exhibit 2.

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As explained more fully below, the CFPB's searches were unreasonable because of the arbitrary and overly limited search parameters that the Agency used. Furthermore, it is clear that the Agency will not be able to sustain its burden in demonstrating that the withheld information is properly subject to Exemption 5. Accordingly, we respectfully request that CFPB produce the pages of responsive documents that it previously withheld, either in whole or in part, without further delay. In addition, we request that CFPB run additional reasonable searches calculated to uncover all potentially relevant material on both government-issued and personal accounts and devices to identify additional responsive material.

II. Argument

A. CFPB Did Not Conduct a Reasonable Search to Identify Documents Responsive to the Lawyers' Committee's Request

The "function of FOIA" is to serve "the citizens' right to be informed about what their government is up to." *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 150 (D.C. Cir. 2016). "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was ***reasonably calculated to uncover all relevant documents.***" *Gonzales v. United States*, 298 F. Supp. 3d 1, 3-4 (D.D.C. 2018) (internal marks and citations omitted) (emphasis added). While agencies enjoy some discretion in crafting search terms, the search terms selected "must pass muster under a standard of reasonableness." *Am. Ctr. for Equitable Treatment, Inc. v. Office of Mgmt. & Budget*, 281 F. Supp. 3d 144, 151-52 (D.D.C. 2017) (internal marks and citations omitted). The adequacy of an agency's search is not determined by the "fruits of the search, but by the appropriateness of the methods used to carry out the search." *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017).

Here, it is abundantly clear that CFPB did not conduct a reasonable search that was calculated to uncover all relevant documents, and thus, did not fulfill its obligations under FOIA. The CFPB produced 1,892 pages of documents and *fewer than ten (10) pages* of those documents indicate that they are from Acting Director Mulvaney. See CAB 6 of 7 at 166-68, 170-71, 370, 383, 384-86 (documents including "Mulvaney, Mick" in the "From" field). Furthermore, those few pages actually produced from Acting Director Mulvaney's account, consist of *only* meeting invitations and *absolutely no communications*. It is not plausible for the CFPB to assert that Acting Director Mulvaney does not have a single email or other communication relevant to the Lawyers' Committee's Request for all "communications" relating to the "Consumer Advisory Board" or "CAB" between February 22, 2017 and June 11, 2018.³

³ The CFPB identified the end date of the relevant time frame in its Final Response. Final Response at 1 ("Date range for record search: from 02/22/2017 to 06/11/2018).")

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CFPB's searches could not possibly have been reasonable as they did not return undeniably relevant information in response to the Lawyers' Committee's Request.

Furthermore, the CFPB has not provided its search terms or custodians to the Lawyers' Committee. As such, the Lawyers' Committee does not know exactly what searches were conducted.

Based on the Final Response, however, the Lawyers' Committee understands that, notwithstanding Lawyers' Committee's specific request, the CFPB did not search any personal devices or accounts or even make an inquiry regarding whether they contained responsive information. Indeed, it does not appear that the CFPB even inquired as to the use of personal devices or accounts for otherwise government communications. This failure makes its searches per se unreasonable. An agency cannot "deprive the citizens' of their right to know what [the] department is up to by the simple expedient of maintaining [] departmental emails on an account in another domain..." *Competitive Enter. Inst.*, 827 F.3d at 150. As discussed above, the CFPB produced no email communications or other correspondence from Acting Director Mulvaney regarding the Consumer Advisory Board, which if they truly do not exist on his Government devices, strongly suggests that Acting Director Mulvaney was conducting official government business, likely directly relevant to the Lawyers' Committee's Request on another account. It is a clear violation of FOIA to allow the acting director of an agency to escape FOIA's requirements by simply sending his communications from an alternate account.

For the CFPB to decide to dismiss all members of the Consumer Advisory Board, a statutorily mandated entity, without any significant documented communications between any senior staff in the Office of the Director defies reason and plausibility. Consequently, it seems likely that such communications were not captured by the CFPB's search—either because the search terms were inadequate or because such staff were communicating through external devices or accounts.

Indeed, based upon the Final Response and the documents produced to the Lawyers' Committee, it appears that CFPB intentionally limited its searches such that they never would have uncovered "all relevant documents." And in all events those searches cannot pass muster as to reasonableness. The CFPB has provided so little information to the Lawyers' Committee related to its searches, that it is impossible for the Lawyers' Committee to suggest additional search terms that would entirely resolve the issues with CFPB's wholly inadequate and unreasonable searches. However, in an effort to facilitate CFPB's further searches, the Lawyers' Committee requests that at the very least the below terms be run against Mick Mulvaney, Kirsten Sutton, Anthony Welcher, and any other CFPB Office of the Director employee's government and personal email accounts and calendars, including both the header metadata and the bodies of the communications.

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- “Fire” or terminat! or disband! or cancel! or “charter” w/50 of “advisory board” or “CAB” or “mulvaney”

We also ask that the CFPB search for non-electronic records relevant to this Request. The Lawyers’ Committee looks forward to your prompt attention to resolve the patently unreasonable searches conducted to this point.

B. CFPB Cannot Demonstrate That the Information the Lawyers’ Committee Seeks is Properly Withheld Under Exemption 5

FOIA Exemption 5 applies to “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). When applying Exemption 5, the agency bears the burden of demonstrating that the withheld material is “pre-decisional in the sense that it was antecedent to the adoption of agency policy” and “deliberative, in that it forms a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Justice*, 955 F. Supp. 2d 4, 17 (D.D.C. 2013) (internal marks and citations omitted). To properly withhold information under Exemption 5, the agency must explain “the function and significance of the document(s) in the agency’s decision-making process,” and the agency “must describe the nature of the decision-making authority vested in the office or person issuing the disputed document(s), and the positions in the chain of commands of the parties to the documents.” *100Reporters LLC v. U.S. Dep’t of Justice*, 316 F. Supp. 3d 124, 144 (D.D.C. 2018).

Here, CFPB has not attempted to meet this burden, nor could it, because there is no plausible basis upon which CFPB could claim the requested information is protected by the deliberative process. In the 1,892 pages it produced, the CFPB withheld information on more than 120 pages. Those claims of deliberative privilege are simply in the form of black redaction bars with “(b)(5)” written in red text. The CFPB has not provided any information demonstrating that the material is “pre-decisional” or that any of the withheld information was an opinion or recommendation on legal or policy matters. Furthermore, CFPB has made no indication that any of the individuals involved in the withheld information has any decision-making authority. In fact, the complete lack of emails from Acting Director Mulvaney confirms CFPB’s utter lack of basis for claiming protection under Exemption 5. While the Lawyers’ Committee is not privy to the innermost workings of the agency, at least Acting Director Mulvaney would have been personally involved in deliberations as to whether to take this agency action related to the Consumer Advisory Board.

Furthermore, it is clear that the withheld information is not pre-decisional. For example, CFPB produced a “Recommendation Memorandum for the Acting Director” that attached sixteen heavily redacted response letters to the CAB members in response to their

Chief FOIA Officer
November 20, 2018
Page 7

correspondence related to the related cancellations of the statutorily-required meetings. *See* CAB 6 of 7, at 66-83. Clearly that is a response to an *already-made determination* and per se cannot be pre-decisional. We believe that the remainder of the withheld information is similarly improperly claimed as “pre-decisional.”

Accordingly, as the CFPB will not be able to demonstrate that the information is properly withheld under Exemption 5, the Lawyers’ Committee requests that all documents CFPB has withheld, either in whole or in part, be released in their entirety.

C. CFPB Must Produce Any “Reasonably Segregable” Portions of the Thirty-Five Pages of Responsive Documents Redacted In Their Entirety

FOIA directs that “[a]ny reasonably segregable portion of a record *shall be provided* to any person requesting such record after deletion of the portions which are exempt under this subsection.” 5 U.S.C. § 552(b) (emphasis supplied); *see also Ctr. for Int’l Envtl. Law v. Office of U.S. Trade Representative*, 505 F. Supp. 2d 150, 158 (D.D.C. 2007) (even where FOIA exemption applies, agency “may not automatically withhold the full document as categorically exempt without disclosing any segregable portions”). CFPB does not appear to have complied with this directive by redacting entire pages of documents (e.g. CAB 6 of 7 at 221-224; 406-407) as well as removing file names of documents identified as attachments (e.g. CAB 6 of 7 at 405).

Even assuming, for the sake of argument, that any of the documents responsive to the Lawyer’s Committee’s request are subject to Exemption 5, it is highly improbable that approximately thirty-five pages of them contain *only* confidential information. Accordingly, the Lawyers’ Committee requests that, for any responsive documentation over which CFPB continues to assert the applicability of Exemption 5, CFPB comply with FOIA and release all “reasonably segregable” portions of those documents.

III. Conclusion

For the reasons set forth above, we respectfully request that the CFPB conduct a reasonable search for documents responsive to the Lawyers’ Committee’s Request, including searching for all public records relevant to the Request – whether they are on personal devices and accounts or government-furnished devices and accounts and produce the responsive documents yielded by such search. We further request that CFPB produce in their entirety the approximately 120 pages of responsive documents that the CFPB has withheld, either in whole or in part.

The Lawyers’ Committee reserves all of its rights related to the Request and this Appeal. Please do not hesitate to contact me if you have any further questions.

Chief FOIA Officer
November 20, 2018
Page 8

Thank you in advance for your assistance.

Sincerely,



John E. McCarthy Jr.
Lyndsay A. Gorton

*Counsel for The Lawyers' Committee for
Civil Rights Under Law*

EXHIBIT 1



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
Fax: 202.783.0857
www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

June 8, 2018

RE: Freedom of Information Act Request – Expedited Processing Requested

Dear FOIA Officer:

This letter constitutes a request pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., submitted by the Lawyers’ Committee for Civil Rights Under Law (“Lawyers’ Committee”). The Lawyers’ Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers’ Committee’s principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On June 6, 2018, Acting Director Mulvaney fired all 25 members of the Consumer Advisory Board.¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) instructs the Director to establish a Consumer Advisory Board, and the objective of the Board is to use their expertise to advise the Bureau on the CFPB’s “functions under the Federal consumer financial laws” and “provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and relevant information.”² The Consumer Advisory Board plays a valuable and irreplaceable role in providing the CFPB with input from civil rights organizations and consumer advocates with on-the-ground expertise about how different consumer financial products and markets affect American consumers, especially low income communities and communities of color.

The Director shall seek to assemble experts in “consumer protection, financial services, community development, fair lending and civil rights, and consumer financial products or services and representatives of depository institutions that primarily serve underserved

¹ See Renae Merle, *Mick Mulvaney fires all 25 members of consumer watchdog advisory board*, Wash. Post, (June 6, 2018), https://www.washingtonpost.com/news/business/wp/2018/06/06/mick-mulvaney-fires-members-of-cfpb-advisory-board/?noredirect=on&utm_term=.ff3b31cc35bf.

² *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf (quoting SEC. 1014(a) of the Dodd-Frank Act).



communities, and representatives of communities that have been significantly impacted by higher-priced mortgage loans, and seek representation of the interests of covered persons and consumers, without regard to party affiliation.”³

In the wake of the firings, Anthony Welcher, CFPB’s Associate Policy Director for External Affairs, told the former members that the agency wanted to modify how the board operates.⁴ On a conference call he said, “We’ve decided we’re going to start the advisory groups with new membership, to bring in these new perspectives and new dialogue. We want more diverse voices and we want to bring people in from larger-scale organizations, larger-scale opportunities in the communities to hear about processes we may be going through.”⁵ Members of the advisory board had served for three year terms, with one-third turnover each year.⁶ Welcher said the CFPB had amended the board’s charter so that each member serves a single year.⁷ Neither the former term duration nor this stated change are reflected in the charter posted on CFPB’s website.⁸ In a CFPB blog post, Welcher stated that the Consumer Advisory Board will continue to meet and will be reformatted as a smaller group in order to “enhance its ability to hear from consumer, civil rights, and industry groups on a more regular basis.”⁹ According to the most recent publicly available version of the Board’s charter, at least 6 members must be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis, and the Board must meet at least twice a year.¹⁰ The Board last met on November 1, 2017.¹¹ The two meetings scheduled for this year (in February and June) were cancelled shortly before their intended dates.¹²

³ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf (quoting SEC. 1014(b)).

⁴ Kate Berry, *Mulvaney makes it official, fires CFPB advisory board members*, Am. Banker, (June 6, 2018), <https://www.americanbanker.com/news/mulvaney-makes-it-official-fires-cfpb-advisory-board-members>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

⁹ Anthony Welcher, *Transforming the way we engage*, CFPB Blog, (June 6, 2018), <https://www.consumerfinance.gov/about-us/blog/transforming-way-we-engage/>.

¹⁰ *Consumer Financial Protection Bureau Charter of the CFPB’s Consumer Advisory Board*, CFPB (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

¹¹ See Consumer Advisory Board, CFPB, <https://www.consumerfinance.gov/about-us/advisory-groups/consumer-advisory-board/> (last visited June 8, 2018) (listing previous meeting minutes and agendas); Minutes, *Consumer Advisory Board: November 1-2, 2017*, CFPB (Nov. 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_CAB-meeting-minutes_112017.pdf.

¹² Kate Berry, *Mulvaney makes it official, fires CFPB advisory board members*, Am. Banker, (June 6, 2018), <https://www.americanbanker.com/news/is-mulvaney-trying-to-purge-cfpbs-advisory-board>.



There are concerns that this sudden firing of the Board will have an impact on its ability to fulfill its obligations.¹³ It is important to protect the Consumer Advisory Board because “they are a source of market intelligence and expertise for [the CFPB], and also advise and consult” the CFPB on their work.¹⁴ Without a properly constituted Board, not only would CFPB fail to comply with Dodd-Frank, it also would lack vital information from experts representing the very consumers the Bureau is designed to defend.

The Lawyers’ Committee seeks communications and calendar entries that may explain the decision to disband the Consumer Advisory Board. In addition, the Lawyers’ Committee seeks any amended versions of the Consumer Advisory Board’s charter and/or any new charters created since the Charter dated February 22, 2017.

Requested Records

The Lawyers’ Committee requests that CFPB produce the following within twenty business days:

- Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the “Consumer Advisory Board” or “CAB” from November 24, 2017, to the date the search is conducted. We do *not* request such records held by the Office of Fair Lending and Equal Opportunity.
- Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017.

The CFPB should search for the above terms both using keyword searching within the body of records and as an entry in the to/form/cc/bcc fields of email or calendar entries.

The Lawyers’ Committee is *not* interested in any records, or portions thereof, that would be subject to the (b)(4) exemption.

For calendar entries created in Outlook or similar programs, the documents should be produced in “memo” form to include all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars – we request the production of any calendar – paper or electronic,

¹³ *See id.*

¹⁴ *Consumer Advisory Board*, Consumer Protection Board Website, <https://www.consumerfinance.gov/about-us/advisory-groups/consumer-advisory-board/>, (last accessed June 7, 2018).



whether on government-issued or personal devices – used to track or coordinate how CFPB employees, including these individuals, allocate their time on agency business.

We seek all responsive records regardless of format, medium or physical characteristics. Our request includes any attachments to these records.

You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.¹⁵ It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; the Lawyers' Committee has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.¹⁶

In addition to the records requested above, the Lawyers' Committee also requests records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If CFPB uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searched, we also request any such records prepared in connection with the processing of this request.

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.¹⁷ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual

¹⁵ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, 827 F.3d 145, 149-50 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955-56 (D.C. Cir. 2016).

¹⁶ See *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy*, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

¹⁷ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.



custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information "only if . . . disclosure would harm an interest protected by an exemption" or "disclosure is prohibited by law."¹⁸ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers' Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.¹⁹ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA."²⁰ Moreover, the Vaughn index "must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information."²¹ Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'"²²

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.²³ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers' Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

¹⁸ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114-185).

¹⁹ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

²⁰ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

²¹ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) (emphasis in original).

²² *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

²³ *Mead Data Central*, 566 F.2d at 261.



To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers' Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody, Lawyers' Committee for Civil Rights Under Law; 1401 New York Avenue, NW, Suite 400; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.²⁴

The CFPB exists to protect consumers. One of the means of protection for consumers is the Consumer Advisory Board. The Consumer Advisory Board "is designed to help consumer groups work with the CFPB to identify problems facing Americans who are treated unfairly by financial firms."²⁵ Additionally, the Board has statutory obligations that it needs to follow such as meeting requirements.²⁶ It is alarming that the CFPB has summarily fired the entire Board. The CFPB is currently undertaking a number of significant regulatory actions, such as a proposed rollback of the Payday Lending Rule that will have major impacts on low income consumers and communities of color.²⁷ Unchecked payday lending "trap[s] vulnerable consumers in a feedback loop of debt" with huge and predatory interest rates that can be as high as "nearly 1,000 percent."²⁸ Without a properly constituted Consumer Advisory Board, the Bureau will lack expert input on how its regulatory actions are affecting the communities the Bureau is designed to protect. The public needs to know if its financial watchdog is fulfilling its mission, or if to the dismissal of the Consumer Advisory Board will harm consumers.

²⁴ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).

²⁵ Chris Arnold & Avie Schneider, *Mick Mulvaney Effectively Fires CFPB Advisory Council*, NPR, (June 6, 2018), <https://www.npr.org/2018/06/06/617612219/mick-mulvaney-effectively-fires-cfpb-advisory-council>.

²⁶ *Consumer Financial Protection Bureau Charter of the CFPB's Consumer Advisory Board*, (Feb. 22, 2017), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201702_cfpb_Consumer-Advisory-Board-charter.pdf.

²⁷ See, e.g., Alan Rappoport, *Payday Rules Relax on Trump's Watch After Lobbying by Lenders*, N.Y. Times (Feb. 2, 2018), <https://www.nytimes.com/2018/02/02/us/politics/payday-lenders-lobbying-regulations.html>.

²⁸ *Id.*



The Lawyers' Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers' Committee's financial interest. The Lawyers' Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice projects and fair lending projects are core programmatic areas of the Lawyers' Committee. The Lawyers' Committee has a strong interest in protecting the rights of minority, low-income customers who can no longer turn to the CFPB for relief and protection. African Americans and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The Lawyers' Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers' Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as Facebook and Twitter.

Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Expedited Processing Requested

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 12 C.F.R. § 1070.17(b)(2)(ii).

We certify to be true and correct to the best of our knowledge and belief that expedited processing is warranted because there is a compelling and urgent need to inform the public about, and there are questions regarding, the disbanding of the Consumer Advisory Board.

Expedited processing is warranted for this request because (1) Lawyers' Committee is an organization primarily engaged in disseminating information to the public; we routinely share our expertise and the products of our investigations and litigations with the public through press releases, media statements, our website (www.lawyerscommittee.org), and social media posts; (2) this request pertains to an actual or alleged Federal government activity—the CFPB's disbanding of the Consumer Advisory Board; and (3) there is an urgent need to inform the public about the recent and summary firing of all of the Board members because the Board is mandated by Dodd-Frank, plays a vital role in advising the Bureau on how consumers use and are affected by financial products and markets, and this advice is especially necessary and urgent right now



as the Bureau is currently undertaking a number of regulatory actions that will affect consumers, especially low income communities and communities of color. The Bureau is also subject to a lawsuit seeking to block the Payday Lending Rule, and just days ago the Bureau collaborated with its supposed adversary to seek a stay of the Rule pending its rollback.²⁹ The Board is a two-directional conduit of information between the general public and the Bureau. Because the input and participation of a properly constituted Consumer Advisory Board is essential to informing the CFPB's current rulemaking, regulatory, and litigation activities, the public needs to know why the Bureau fired the entire Board. The requested records pertain to this matter of current exigency to the American public; without a proper Board, advocates for the public's interests are in the dark about the CFPB's activities. If this request is delayed, the public may not learn whether or how the Bureau is accounting for the interests of low income communities and communities of color until after regulatory actions are completed. Finally, as the CFPB just fired the Board yesterday, this matter is extremely pressing and time sensitive.

We declare under penalty of perjury that the foregoing is true and correct to the best of our knowledge and belief. Executed on the date at the top of this letter.

Conclusion

We share a common mission to promote transparency in government. The Lawyers' Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

David Brody
Counsel & Senior Fellow for Privacy and Technology
The Lawyers' Committee for Civil Rights Under Law

²⁹ David Baumann, *CFPB, Trade Group Ask for Delay in Payday Loan Rule & Lawsuit*, Credit Union Times (May 31, 2018), <https://www.cutimes.com/2018/05/31/cfpb-trade-group-ask-for-delay-in-payday-loan-rule/?slreturn=20180508121008>.

EXHIBIT 2

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #CFPB-2018-600-F

August 22, 2018

Mr. David Brody
Counsel & Senior Fellow for Privacy and Technology
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005

Dear Mr. Brody:

This letter is in final response to your Freedom of Information Act (FOIA) request dated June 8, 2018. Your request sought:

Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the "Consumer Advisory Board" or "CAB" from November 24, 2017, to the date the search is conducted. We do not request such records held by the Office of Fair Lending and Equal Opportunity.

Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017. (Date range for record search: from 02/22/2017 to 06/11/2018).

A search of our Office of External Affairs for documents responsive to your request produced 1,892 in seven (7) files and two (2) audio recordings. We have determined that the records are granted in part pursuant to Title 5 U.S.C. § 552(b)(5) and (b)(6).

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I determined that portions of the responsive documents qualify for protection under the Deliberative Process Privilege.

consumerfinance.gov

- The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You may appeal any of the responses or decisions set forth above. If you choose to file an appeal, you must do so within 90 calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Chief FOIA Officer
Freedom of Information Appeal
1700 G Street, NW
Washington, DC 20552

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, we have waived all fees related to the processing of your request. For inquiries concerning your request, please contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. D. Lazier".

Raynell D. Lazier
FOIA Manager
Operations Division

EXHIBIT 18

Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552



December 20, 2018

VIA Electronic Mail

John E. McCarthy, Jr., Esq.
Lyndsay A. Gorton, Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595

RE: Final Appellate Determination on FOIA Appeal No. 2018-600-A

Dear Mr. McCarthy and Ms. Gorton,

This letter constitutes the final determination of the Bureau of Consumer Financial Protection (Bureau) regarding your November 20, 2018 appeal, which you filed on behalf of your client the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee), of the Bureau's August 22, 2018 response to Freedom of Information Act (FOIA) request No. 2018-600-F. For the reasons set forth below, the appeal is granted, and the request is remanded to the FOIA Office.¹

I. Background

On June 8, 2018, the Lawyers' Committee submitted a FOIA request stating that it sought:

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.

- Communications and calendar entries (including invitations) involving Acting Director Mulvaney, his chief of staff Kirsten Sutton, Principal Policy Director Brian Johnson, Associate Policy Director for External Affairs Anthony Welcher, and any other employee of the CFPB Office of the Director, relating to the “Consumer Advisory Board” or “CAB” from November 24, 2017, to the date the search is conducted. We do *not* request such records held by the Office of Fair Lending and Equal Opportunity.
- Any amendments to the Consumer Advisory Board Charter dated February 22, 2017, and/or any new or proposed Consumer Advisory Board charters that have been created since February 22, 2017.

The request also sought “records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request.”

On August 22, 2018, the Bureau’s FOIA Office responded to the request, explaining that its search had found 1,892 documents responsive to the request. It further explained that portions of the records were being withheld pursuant to FOIA Exemption 5 because they qualified for protection under the deliberative process privilege, and other portions were being withheld pursuant to FOIA Exemption 6, which protects information the release of which would cause a clearly unwarranted invasion of personal privacy.

On November 20, 2018, you appealed the Bureau’s determination on behalf of the Lawyers’ Committee. Your appeal challenges the reasonableness of the Bureau’s search and the redaction of material pursuant to Exemption 5, arguing that the material cannot qualify for the exemption and that reasonably segregable information was improperly withheld.

II. Appellate Determination

A. Search Adequacy

A FOIA search is adequate if it is “reasonably calculated to uncover all relevant documents.” *Ancient Coin Collector’s Guild v. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (citations omitted). That is, search adequacy is “measured by a standard of reasonableness, and is dependent upon the circumstances of the case.” *Heffernan v. Azar*, 317 F. Supp. 3d 94, 104 (D.D.C. 2018) (quoting *Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990)).

Here, the specific objections to the search that you raise in your appeal are misplaced. Nonetheless, the record demonstrates that the search was insufficient.

First, you argue that the results of the search demonstrate that the search was inadequate. But the “adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). True, if agency records contain an “apparent” lead, the agency cannot ignore it, *Kowalczyk v. Dept. of Justice*, 73 F.3d 386, 389 (D.C. Cir. 1996), but this is not such a “rare case,” *id.* The mere fact that an agency does not discover the records a requestor hopes exist does not render the agency’s search inadequate.

Second, you challenge the fact that the Bureau did not produce the search terms that it used or a list of the custodians that it searched. This objection falters because agencies are not obligated to do so. FOIA compels agencies to produce records that already exist, not to “answer questions disguised as a FOIA request or to create documents. . . in response to an individual’s request for information.” *Hudgins v. I.R.S.*, 620 F. Supp. 19, 21 (D.D.C. 1985) (citing *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 162 (1975)), *aff’d*, 808 F.2d 137 (D.C. Cir. 1987).

Third, you state:

[T]he Lawyers’ Committee understand that, notwithstanding Lawyers’ Committee’s specific request, the CFPB did not search any personal devices or accounts or even make an inquiry regarding whether they contained responsive information. Indeed, it does not appear that the CFPB even inquired as to the use of personal devices or accounts for otherwise government communications. This failure makes its searches per se unreasonable.

“[A]gency employees’ communications on non-agency accounts may constitute ‘agency records’ subject to the FOIA.” *Wright v. Admin. for Children and Families*, 2016 WL 5922293, at *8 (D.D.C. Oct. 11, 2016) (paraphrasing *Competitive Enterprises Institute v. Office of Science & Technology Policy*, 827 F.3d 145 (D.C. Cir. 2016)). But “a FOIA requestor is not entitled to a search of files specified by the requestor, but rather to a search of files that are likely to turn up the information requested.” *Tunchez v. U.S. Dep’t of Justice*, 715 F. Supp. 2d 49, 54 (D.D.C. 2010) (citation omitted). So a FOIA requestor cannot simply demand that an agency search its employees’ personal devices or accounts, it must “raise a substantial doubt as to the adequacy of the agency’s search” and “overcome the presumption that agency records are unlikely to exist on the agency employees’ personal accounts.” *Wright*, 2016 WL 5922293, at *8; *see also Judicial*

Watch, Inc. v. U.S. Dep't of Justice, 319 F. Supp. 3d 431, 437-38 (D.D.C. 2018) (“Absent evidence to the contrary, a government employee is presumed to have properly discharged the duty to forward official business communications from a personal email account to an official email account. . . . Thus, in a typical case, a search of a[n agency] employee’s personal email account would be unnecessarily duplicative of a search of the employee’s official email account.”).

In your appeal, you attempt to overcome this presumption by again pointing to the fact that the Bureau’s search did not find records that you think should exist:

[T]he CFPB produced no email communications or other correspondence from Acting Director Mulvaney regarding the Consumer Advisory Board, which if they truly do not exist on his Government devices, strongly suggests that Acting Director Mulvaney was conducting official government business, likely directly relevant to the Lawyers’ Committee’s Request on another account.

As explained above, a requestor’s dissatisfaction with the fruits of a search is insufficient to call into question the adequacy of that search. And it is certainly not evidence sufficient to overcome the presumption that government records will be found in government systems. The FOIA Office only needs to search personal accounts if it has reason to believe that there may be agency records in personal accounts that were not copied to or forwarded to government accounts in accordance with 44 U.S.C. § 2911 and Bureau policy.

Fourth, you suggest search terms for the Bureau to use. But “there is no bright-line rule requiring agencies to use the search terms proposed in a FOIA request.” *Media Research Ctr. v. U.S. Dep’t of Justice*, 818 F. Supp. 2d 131, 139 (D.D.C. 2011) (quoting *Physicians for Human Rights v. U.S. Dep’t of Defense*, 675 F. Supp. 2d 149, 163-64 (D.D.C. 2009)). Instead, agencies have “discretion [to] craft[] . . . search terms that [they] believe[] to be reasonably tailored to uncover documents responsive to a FOIA request.” *Am. Fed’n of Gov’t Employees, Local 182 v. Broadcasting Bd. of Governors*, 711 F. Supp. 2d 139, 151 n.11 (D.D.C. 2010) (citation omitted).

Fifth, you request that the Bureau search for non-electronic records. Again, “a FOIA requestor is not entitled to a search of files specified by the requestor, but rather to a search of files that are likely to turn up the information requested.” *Tunchez*, 715 F. Supp. 2d at 54. If the FOIA Office has reason to believe that records responsive to your request may be stored in non-

electronic form, then it should search the potentially responsive non-electronic records. But a requestor may not mandate where the FOIA Office has to search.

Nonetheless, I have concluded that the search conducted here was inadequate. I have reviewed the record and concluded that the search was not reasonably calculated to uncover all documents responsive to the request for communications and calendar entries “relating to the ‘Consumer Advisory Board’ or ‘CAB.’” While the Bureau’s FOIA Office searched the appropriate custodians, the search terms it used were too limited. The appeal is accordingly remanded for the FOIA Office to conduct a more expansive search that is reasonably calculated to uncover all responsive documents. As explained, if the FOIA Office has reason to believe that there may be agency records in personal accounts or in non-electronic form, then the FOIA Office should also search those accounts or non-electronic sources.

B. Exemption 5

FOIA Exemption 5 protects from disclosure “inter-agency and intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). This exemption incorporates common-law privileges, including the deliberative process privilege, *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008), which protects from disclosure documents “reflecting advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated,” *Sears, Roebuck & Co.*, 421 U.S. at 150 (citation omitted). And, as is true for all FOIA exemptions, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” 5 U.S.C. § 552(b).

Here, the FOIA Office withheld some pages in full or in part pursuant to Exemption 5, specifically the deliberative process privilege. Your appeal argues that the Bureau improperly redacted reasonably segregable information and also lacked a basis to invoke Exemption 5.

You argue that the Exemption 5 redactions are improper because the Bureau has not explained why the material is protected. But agencies are not required to create a privilege log explaining redactions in response to a FOIA request. *Sakamoto v. EPA*, 443 F. Supp. 2d 1182, 1189 (N.D. Cal. 2006) (“Initial agency responses to FOIA requests are not required to contain a *Vaughn* index”). Furthermore, you contend that some redacted documents cannot be pre-decisional because they are “response letters to the CAB members in response to their correspondence

related to the related cancellations” of meetings, which you contend “is a response to an *already-made determination* and per se cannot be pre-decisional.” But a document can postdate a decision that a requestor is interested in but still be pre-decisional with respect to a later decision and therefore protected. As the Supreme Court has explained, “the need to protect pre-decisional documents does not mean that the existence of the privilege turns on the ability of an agency to identify a specific decision in connection with which a memorandum is prepared,” because agencies are “engaged in a continuing process of examining their policies.” *Sears, Roebuck & Co.*, 421 U.S. at 151 n.18. So, a record could postdate the decision to cancel a meeting but be pre-decisional with respect to a later decision, such as how to respond to correspondence regarding the earlier decision.

While your specific arguments regarding Exemption 5 are unfounded, I have reviewed all of the redactions and found that while some redactions were proper, others were not. Accordingly, the appeal is remanded to the FOIA Office with instructions to remove improper redactions.

* * * * *

If you are dissatisfied with the Bureau’s final appellate determination, you may contact the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies pursuant to 5 U.S.C. § 552(h)(3). Using OGIS services does not affect your right to judicial review.

Sincerely,

Laura Hussain Digitally signed by Laura
Hussain
Date: 2018.12.20 15:31:02 -05'00'

Laura M. Hussain
Assistant General Counsel for Litigation and Oversight

EXHIBIT 19



John E. McCarthy Jr.
jmccarthy@crowell.com
(202) 624-2579

April 1, 2019

VIA FIRST CLASS MAIL AND EMAIL

Chief FOIA Officer
Bureau of Consumer Financial Protection
Freedom of Information Act Appeal
1700 G Street, NW
Washington, DC 20552
CFPB_FOIA@cpfb.gov

Re: Final Determination of CFPB Freedom of Information Act
Request No. CFPB-2018-600-A

Dear Sir or Madam:

We represent the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") in connection with the above-referenced Freedom of Information Act ("FOIA") request to the Consumer Financial Protection Bureau ("CFPB"). We are writing to inquire about the status of the Lawyers' Committee's Appeal No. 2018-600-A, which was granted in part on December 20, 2018 when CFPB issued its final appellate determination for FOIA Request No. 2018-600-F.

As you are aware, the final appellate determination concluded that "the record demonstrates that the [CFPB's] search was insufficient," and indicated that the Lawyers' Committee's appeal would be granted and the original request remanded to the CFPB FOIA Office so that it could "conduct a more expansive search that is reasonably calculated to uncover all responsive documents."¹ The appellate decision also indicated that some redactions made to the original production under Exemption 5 of FOIA were improper, and instructed the FOIA Office to remove the improper redactions. Following that communication, the Lawyer's Committee has received no additional information related to the original request or the result of its successful appeal. FOIA requires that "upon any determination by an agency to comply with a request for records, the records shall be made promptly available[.]" See 5 U.S.C § 552(a)(6)(C)(i).

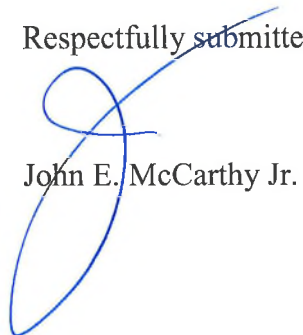
It has now been more than 67 calendar workdays since the CFPB issued its final appellate determination, without any further communication from the CFPB FOIA Office. In light of the substantial amount of elapsed time since the final appellate determination, the Lawyers' Committee respectfully requests that the CFPB provide a response to remanded request No. 2018-600-F within the next 7 calendar days. Absent a response, the Lawyers' Committee will

¹ A complete copy of the CFPB's final appellate determination is enclosed.

Chief FOIA Officer
April 1, 2019
Page 2

assume the CFPB does not intend to provide any additional information and proceed to exercise our right to judicial review of the agency's final appellate determination under 5 U.S.C. §552(a)(4)(B).

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal stroke and a vertical stroke, positioned above the printed name.

John E. McCarthy Jr.

EXHIBIT 20



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

1401 New York Avenue, NW
Suite 400
Washington, DC 20005-2124

Tel: 202.662.8600
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www.lawyerscommittee.org

Raynell Lazier
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552
(202) 444-3642
CFPB_FOIA@consumerfinance.gov

October 10, 2018

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") hereby submits this request made pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq.

The Lawyers' Committee is a non-profit, non-partisan organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's resources in combatting racial discrimination and the resulting inequality of opportunity. The Lawyers' Committee's principal mission is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

On January 16, 2018, Acting Director Mick Mulvaney announced that the Consumer Financial Protection Bureau ("CFPB") would repeal its October 4, 2017 Final Rule regarding Payday, Vehicle Title, and Certain High-Cost Installment Loans ("the Payday Loan Rule" or "Rule")¹—a Rule aimed at protecting millions of financially-vulnerable consumers from payday debt traps. The Rule's common-sense consumer protections are particularly important to African American, Hispanic, and other racial and ethnic communities who are disproportionately targeted by payday lenders.² The Lawyers' Committee has grave concerns that any repeal or roll back of the Rule will result in a consumer environment where lenders offer consumers loans they cannot afford and borrowers are forced to choose between defaulting, re-borrowing, or skipping major financial obligations or expenses. We therefore seek information relating to the Rule and its predicted impact on consumers.

Requested Records

The Lawyers' Committee requests that CFPB produce the following within twenty business days:

1. Data, memoranda, and reports, including economic or other empirical analyses, relating to payday lending and its effects across or in different geographic areas, including urban,

¹ 82 FR 54472 (Nov. 4, 2017).

² Final Rule at 315.



suburban, and rural areas. In providing responsive records, please include, but not limit, searches for “payday” in combination with the terms:

- a. Urban;
 - b. Suburban;
 - c. Rural;
 - d. Geographic;
 - e. Demographic;
 - f. Territory; and
 - g. Region.
2. Data, memoranda, and reports, including maps and other visual information devices, of the geographic locations and/or concentrations of payday loan lenders.
 3. Data, memoranda, and reports, including economic or other empirical analyses, relating to the racial or ethnic impact of payday loans and/or the Rule. In providing responsive records, please include, but not limit, searches for “payday” in combination with the terms:
 - a. Black and/or African American;
 - b. Latino and/or Hispanic;
 - c. Asian;
 - d. White;
 - e. Native American and/or American Indian;
 - f. Native or Pacific Islander;
 - g. Minorities;
 - h. Minority Communities; and
 - i. Communities of Color.
 4. Data, memoranda, and reports, including economic or other empirical analyses, relating to the advertisement of payday loans.

The effective date range for these requests includes all documents created between January 1, 2013 and the present, unless otherwise specified. The search terms provided above are exemplary and should not constitute the total of CFPB’s search for responsive records. Furthermore, searches should include reasonable permutations of requested search terms (e.g. plurals, verb-tenses, etc.)

Further Instructions for Search

CFPB should search for information responsive to the above requests using keyword searching within the body of records and as well as in entries in the to/from/cc/bcc fields of emails or calendar entries.



The Lawyers' Committee is not interested in any records, or portions thereof, that would be subject to the (b)(4) exemption. We are also not interested in non-final drafts of documents or memoranda, in instances where multiple drafts or versions exist.

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.³ Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians' files. For example, a custodian may have deleted a responsive email from his or her email program, but CFPB's archiving tools would capture that email under Capstone. Accordingly, the Lawyers' Committee insists that CFPB use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. The Lawyers' Committee is available to work with you to create appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁴ If it is your position that any portion of the requested records is exempt from disclosure, the Lawyers' Committee requests that you provide an index of those documents as required under *Vaughn v. Rosen*.⁵ As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”⁶ Moreover, the Vaughn index “must describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of disclosing the sought-after information.”⁷ Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”⁸

³ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidentialmemorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

⁴ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

⁵ 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

⁶ *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

⁷ *King v. U.S. Dep't of Justice*, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

⁸ *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).



In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonable segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.⁹ Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

You should institute a preservation hold on information responsive to this request. The Lawyers' Committee intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, CFPB is on notice that litigation is reasonably foreseeable.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, the Lawyers' Committee welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, we can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email to dbrody@lawyerscommittee.org or in PDF format on a USB drive. Please send any responsive material being sent by mail to David Brody; Lawyers' Committee for Civil Rights Under Law; 1500 K Street, NW, Suite 900; Washington, DC 20005. If it will accelerate release of responsive records, please also provide responsive material on a rolling basis.

Fee Waiver Request

The Lawyers' Committee requests that all fees in connection with this FOIA request be waived in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) because it does not seek the records for a commercial purpose and disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government.¹⁰

The requested records concern the identifiable operations or activities of the federal government. They are products of the CFPB, used by the CFPB in the course of its regulatory and enforcement activities; namely the formulation, enforcement, and/or roll back of the Rule.

The CFPB exists to protect consumers, not banks and lenders. Payday and auto title lenders often prey on low-income consumers who lack access to conventional loans with reasonable interest

⁹ *Mead Data Central*, 556 F.2d at 261.

¹⁰ 28 C.F.R. § 16.10(k)(1), (2)(i)-(ii).



rates.¹¹ “[T]ypical payday loan borrowers include low-income households and those headed by minorities and single women.”¹² These low-income consumers are disproportionately unbanked or under-banked people of color. “Predatory lending in protected communities may constitute discrimination—not because it excludes minorities, but because it targets and exploits them by offering loans with abusive terms and conditions.”¹³ The requested records will inform the public about how payday lending affects vulnerable and minority communities, how the Rule protects these communities, and why a roll back of the Rule would expose these communities to predatory lending. Consequently, disclosure of these records will be meaningfully informative about the operations of the CFPB with regard to payday lending—specifically whether it is fulfilling its mission to protect consumers.

Public understanding after the disclosure of these records will be enhanced to a significant extent. While the Rule was lengthy and thorough, additional records disclosed through this request will add to the public’s understanding of how payday lending works. Specifically, the data and analyses requested will be useful to explain how payday lending affects low income and minority communities. Analysis of these data to compare economic outcomes and find correlations between different variables and demographics will help the public understand the impact of the Payday Loan Rule and what could happen if the CFPB goes forward with its plan to repeal it.

The Lawyers’ Committee is a 501(c)(3) nonprofit organizations and does not have a commercial purpose, and the release of the information requested is not in the Lawyers’ Committee’s financial interest. The Lawyers’ Committee was founded in 1963 and is committed to full and fair enforcement of federal civil rights laws and ensuring equal justice under law for all. Economic justice and fair lending are core programmatic areas of the Lawyers’ Committee. The Lawyers’ Committee has a strong interest in protecting the rights of minority, low-income customers and addressing predatory lending practices that stymie economic development in these communities. African Americans, Hispanics, and other racial minorities have historically been discriminated against in the consumer financial marketplace; policies such as redlining restrict economic opportunity for minorities and contribute to present day economic disparities.

The requested records will contribute to the understanding of a broad audience of persons interested in this subject. The requested records relate to the payday lending market and as such they are relevant to the protection of all consumers within that market. The Lawyers’ Committee will use the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. The Lawyers’ Committee will also make materials it gathers available on its public website and promote their availability on social media platforms, such as

¹¹ See Raul Arce-Contreras, *A Word of Caution on Payday Loans*, Center for American Progress (Apr. 7, 2009), <https://www.americanprogress.org/issues/economy/news/2009/04/07/5850/a-word-of-caution-on-payday-loans/>.

¹² *Id.*

¹³ *Race Matters: The Concentration of Payday Lenders in African-American Neighborhoods in North Carolina*, Center for Responsible Lending (March 22, 2005), <http://www.responsiblelending.org/research-publication/race-matters-concentration-payday-lenders-african-american-neighborhoods-north>.



Facebook and Twitter. Furthermore, the Lawyers' Committee will also use the requested information and build upon it in future CFPB rulemakings concerning the Payday Lending Rule.

The Lawyers' Committee has a demonstrated history of and capacity for effectively disseminating information to the public. The organization has a communication staff dedicated to the publication of information¹⁴ on its direct website (www.lawyerscommittee.org) as well as through social media platforms. The Lawyers' Committee's average social media reach is 15 million impressions per month.¹⁵ Its Twitter page has over 32,000 followers,¹⁶ and the Twitter page of its Executive Director, Kristen Clarke, has over 27,000 followers.¹⁷ The Lawyers' Committee's Facebook page has almost 8,000 followers.¹⁸ The Lawyers' Committee's attorneys are asked to contribute information to various media outlets and the executive director is regularly quoted in national publications. It routinely shares information from FOIA requests with news media and gives interviews on important civil rights issues.¹⁹ Accordingly, the Lawyers' Committee qualifies for a fee waiver. If a waiver is not granted, then please advise us of the amount of any proposed search and reproduction charges before those activities are carried out.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees.

Application for Expedited Records

We request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.10(d)(1)(iv).

Expedited processing is warranted because there is a compelling and urgent need to inform the public about payday loans, and there are questions regarding changes in CFPB's position regarding the Rule and its general rulemaking authority. Acting Director Mulvaney continues to take aggressive deregulatory actions at CFPB to undermine fair lending rules and enforcement in a manner that could have immediate and disparate negative impacts on communities of color. These actions include (1) granting enforcement waivers; (2) planning rulemakings aimed at rolling back the Payday Lending Rule; and (3) attempting to repeal the Rule outside of required notice-and-comment procedures by refusing to defend the Rule in litigation brought by the payday loan industry. The Lawyers' Committee intends to quickly publish responsive records so that the public can be informed about changes in the CFPB's enforcement practices. Moreover, the Lawyers' Committee intends to prepare responses to any further attempts by the CFPB to repeal or rollback the Rule.

¹⁴ See *2017 Annual Report*, Lawyers' Committee for Civil Rights Under Law (2017), <https://lawyerscommittee.org/wp-content/uploads/2018/01/2017annualreport.pdf>.

¹⁵ See *Newsroom*, Lawyers' Committee for Civil Rights Under Law, <https://lawyerscommittee.org/newsroom/>.

¹⁶ Lawyers' Committee for Civil Rights Under Law, @LawyersComm, Twitter, <https://twitter.com/LawyersComm>.

¹⁷ Kristen Clarke, @KristenClarkeJD, Twitter, <https://twitter.com/kristenclarkejd>.

¹⁸ Lawyers' Committee for Civil Rights Under Law, @lawyerscommittee, Facebook, <https://www.facebook.com/lawyerscommittee/>.

¹⁹ See *News Clips*, Lawyers' Committee for Civil Rights Under Law, <https://lawyerscommittee.org/newsclip/>.



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Over the past year, the CFPB has repeatedly stated that it intends to initiate a rulemaking to repeal the Rule. In June and July 2018, the CFPB attempted to indefinitely suspend the Rule—effectively repealing it—by joining with private litigants to request that a district court judge in Texas indefinitely stay the Rule’s compliance dates. In August 2018, the CFPB also reported to the Texas district court that it intends to reconsider the Rule by releasing a Notice of Proposed Rulemaking (NPRM). That imminent NPRM may only have a brief window for interested parties, including Lawyers’ Committee, to file comments. Accordingly, it is essential for this records request to receive expedited processing so that the public can digest and analyze the records *before* the comment period for the NPRM begins. That way, the public can meaningfully incorporate the information in the requested records into their comments on the NPRM and any further advocacy before the CFPB and Congress. Furthermore, the CFPB will have a more robust administrative record and be better informed for its final rulemaking.

We certify that the bases for this expedited processing request are true and correct to the best of our knowledge and belief.

Conclusion

We share a common mission to promote transparency in government. The Lawyers’ Committee looks forward to working with you on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully complying with this request, please contact David Brody at dbrody@lawyerscommittee.org.

Thank you very much for your attention to this matter.

Sincerely,

Dariely Rodriguez
Director, Economic Justice Project
The Lawyers’ Committee for Civil Rights Under Law

EXHIBIT 21

1700 G Street NW
Washington, DC 20552



RE: FOIA Request #BCFP-2019-0023-F

October 18, 2018

Mr. David Brody
The Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue NW, Suite 400
Washington, DC 20005-2124

Dear Mr. Brody:

This letter is to inform you that on October 12, 2018, the Bureau of Consumer Financial Protection (BCFP) received your Freedom of Information Act (FOIA) request dated October 10, 2018. Your request sought data, memoranda, and reports, including economic or other empirical analyses, relating to payday lending and its effects across or in different geographic areas, including urban, suburban, and rural areas.

In providing responsive records, you indicated to include, but not limit, searches for “payday” in combination with the terms:

- a. Urban;
- b. Suburban;
- c. Rural;
- d. Geographic;
- e. Demographic;
- f. Territory; and
- g. Region.

2. Data, memoranda, and reports, including maps and other visual information devices, of the geographic locations and/or concentrations of payday loan lenders.

3. Data, memoranda, and reports, including economic or other empirical analyses, relating to the racial or ethnic impact of payday loans and/or the Rule. In providing responsive records, please include, but not limit, searches for “payday” in combination with the terms:

- a. Black and/or African American;
- b. Latino and/or Hispanic;
- c. Asian;
- d. White;

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- e. Native American and/or American Indian;
- f. Native or Pacific Islander;
- g. Minorities;
- h. Minority Communities; and
- i. Communities of Color.

4. Data, memoranda, and reports, including economic or other empirical analyses, relating to the advertisement of payday loans..

As it relates to your request for expedited treatment, under the BCFP FOIA regulation, expedited processing of a FOIA request is warranted if the request involves circumstances in which the lack of expedited treatment “could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,” or, if the request is made by a person primarily engaged in disseminating information, “an urgency to inform the public concerning actual or alleged federal government activity.” Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request (see 12 C.F.R. § 1070.17(b)(3)) and that statement must be certified by the requester to be true and correct.

Your request for expedited processing is denied because you do not qualify for either category.

You failed to demonstrate a particular urgency to inform the public about the government activity involved in the request beyond the public’s right to know about government activity generally. Your letter was conclusory in nature and did not present any facts to justify a grant of expedited processing under the applicable standards.

You have the right to appeal our denial determination regarding expedited processing. If you choose to file an appeal, you must do so within ten (10) calendar days from the date of this letter. Your appeal must be in writing, signed by you or your representative, and should contain the rationale for the appeal. You may send your appeal via the mail (address below), email (CFPB_FOIA@cfpb.gov) or fax (1-855-FAX-FOIA (329-3642)).

Your appeal should be addressed to:

Bureau of Consumer Financial Protection
Attention: Chief FOIA Officer
Appeal for Expedited Processing
1700 G Street, NW
Washington, DC 20552

For inquiries concerning your request, please contact Ryan McDonald by phone at 202-435-9133 and reference the FOIA request number above, or contact our FOIA Public Liaison at CFPB_FOIA@cfpb.gov or by phone at 1-855-444-FOIA (3642).

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Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raynell D. Lazier". The signature is stylized and written in a cursive-like font.

Raynell D. Lazier
FOIA Manager
Operations Division