December 11, 2019

VIA Electronic Delivery

Chief FOIA Officer
Communications Division
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Re: Freedom of Information Act Records Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq., and the Office of the Comptroller of the Currency (OCC) and the Department of the Treasury regulations at 12 C.F.R. Part 4 and 31 C.F.R. Part 1, respectively, Democracy Forward Foundation and California Reinvestment Coalition make the following request for records.

Records Requested

In an effort to understand and explain to the public how OCC is responding to community groups’ concerns with its effort to revise the Community Reinvestment Act regulations, Democracy Forward Foundation and California Reinvestment Coalition request that the OCC produce the following within twenty (20) business days:

1. All emails related to the revision of the Community Reinvestment Act regulations whose sender and/or recipient fields include one or more email addresses with a top-level domain “.com,” “.org,” or “.edu.” This does not include comments filed in the public rulemaking docket number OCC-2018-0008, “Reforming the Community Reinvestment Act Regulatory Framework.”

2. All records containing or reflecting communications, conversations, complaints, interpretations, decisions or actions taken relating to whether public comments related to the Advanced Notice of Proposed Rulemaking (ANPR) "Reforming the Community Reinvestment Act Regulatory Framework" were fabricated, manufactured, or otherwise not authored by the putative signatory.

3. All records containing or reflecting communications to or from Comptroller Joseph Otting or Deputy Comptroller for Community Affairs Barry Wides concerning or relating


to California Reinvestment Coalition (CRC) or the American Banker articles “BankThink Why is OCC scared of public input?”\(^3\) or “Setting the record straight on CRA reform.”\(^4\)

4. All records containing or reflecting communications from Deputy Comptroller for Community Affairs Barry Wides to persons or entities outside the government seeking corrections of or responding to statements, whether inside or outside the ANPR/rulemaking process, by such persons or entities about the OCC effort to revise the Community Reinvestment Act regulations.

The timeline for this search is September 5, 2018 to the date the search is completed.

**Scope of Search**

Please search for records regardless of format, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical materials. This request includes, without limitation, all correspondence, letters, emails, text messages, calendar entries, facsimiles, telephone messages, voice mail messages, and transcripts, notes, minutes, or audio or video recordings of any meetings, telephone conversations, or discussions. In searching for responsive records, however, please exclude publicly available materials such as news clips that mention otherwise responsive search terms.

FOIA requires agencies to disclose information, with only limited exceptions for information that would harm an interest protected by a specific exemption or where disclosure is prohibited by law. 5 U.S.C. § 552(a)(8)(A). In the event that any of the requested documents cannot be disclosed in their entirety, we request that you release any material that can be reasonably segregated. See id. 5 U.S.C. § 552(b). Should any documents or portions of documents be withheld, we further request that you state with specificity the description of the document to be withheld and the legal and factual grounds for withholding any documents or portions thereof in an index, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Should any document include both disclosable and non-disclosable material that cannot reasonably be segregated, we request that you describe what proportion of the information in a document is non-disclosable and how that information is dispersed throughout the document. *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

If requested records are located in, or originated in, another agency, department, office, installation or bureau, please refer this request or any relevant portion of this request to the appropriate entity.

To the extent that the records are readily reproducible in an electronic format, we would prefer to receive the records in that format. However, if certain records are not available in that format, we are willing to accept the best available copy of each such record.

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Please respond to this request in writing within 20 working days as required under 5 U.S.C. § 552(a)(6)(A)(i). If all of the requested documents are not available within that time period, we request that you provide us with all requested documents or portions of documents that are available within that time period. If all relevant records are not produced within that time period, we are entitled to a waiver of fees for searching and duplicating records under 5 U.S.C. § 552(a)(4)(A)(viii)(I).

Request for Fee Waiver

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), 12 C.F.R. § 4.17, and 31 C.F.R. § 1.7, Democracy Forward Foundation (DF) and California Reinvestment Coalition (CRC) request a waiver of all fees associated with processing records for this request. FOIA requires documents to be furnished to requesters at no fee or reduced fees when “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A); see also 12 C.F.R. § 4.17(4), 31 C.F.R. § 1.7(k)(1).

The disclosure of records sought by this Request is likely to contribute significantly to the public understanding of the operations or activities of the government.

The OCC has begun the process of taking public comment on revised regulations under the Community Reinvestment Act (CRA). The CRA is a crucial fair lending law designed to combat redlining and encourage financial institutions to meet the credit needs of their communities. In September 2018, the OCC published an Advanced Notice of Proposed Rulemaking to take comment on a new CRA regulatory framework. The ANPRM received over 1,500 public comments in response. The OCC’s behavior toward commenters, particularly from community groups, has raised significant flags. In January and March 2019 respectively, the OCC Deputy Comptroller for Community Affairs Barry Wides sent a letter to CRC expressing offense at its advocacy around the CRA and published an article that took the unusual step of criticizing commenters that in his view “have not contributed positively to the public discussion” and “opted to distort facts by inaccurately portraying the purpose and content of the ANPRM.”

And the following October, Wides again sent a letter to the California Reinvestment Coalition asking CRC to alter its stance on the ANPRM. This request seeks more information about OCC’s views of community groups like California Reinvestment Coalition, how it decided to take these unusual steps, and whether there are other irregularities in the ANPRM comment process.

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requested records will therefore have a connection that is “direct and clear” to operations or activities of the Federal Government, and because these records will shed new light on this important topic, they also will be “meaningfully informative” about government operations or activities. 31 C.F.R. § 1.7(k)(2).

Democracy Forward Foundation and California Reinvestment Coalition are able to, and regularly do, disseminate Records obtained through FOIA requests to a broad audience of persons interested in the subject matter.

In determining whether a fee waiver is appropriate, courts consider whether a requester has a “demonstrated . . . ability to disseminate the requested information,” Cause of Action v. F.T.C., 799 F.3d 1108, 1116-17 (D.C. Cir. 2015), and whether the requester regularly disseminates records obtained through FOIA to “a reasonably broad audience of persons interested in the subject” of its work. Carney v. U.S. Dep’t of Justice, 19 F.3d 807, 814-15 (2d Cir. 1994). FOIA does not require a requester to describe exactly how it intends to disseminate the information requested, as that would require “pointless specificity”; all that is necessary is for a requester to adequately demonstrate its “ability to publicize disclosed information.” Judicial Watch, Inc. v. Rossotti, 326 F.3d 1309, 1314 (D.C. Cir. 2003). In evaluating a fee waiver request, courts consider how a requester actually communicates information collected through FOIA to the public, including press releases or a website where documents received are made available, see id., or whether the requester has a history of “contacts with any major news[] companies” that suggest an ability to disseminate materials of interest through the press. Larson v. C.I.A., 843 F.2d 1481, 1483 (D.C. Cir. 1988) (upholding a denial of a fee waiver to a requester who had failed to identify his relationships with newspaper companies that could disseminate documents).

DFF has a demonstrated ability to disseminate information of public interest requested through FOIA, and intends to publicize records DFF receives that contribute significantly to the public’s understanding of the operations of government.

DFF operates a dedicated communications staff with deep relations with a wide variety of national publications. When DFF obtains materials through FOIA requests that are of significant public interest, DFF’s communications staff regularly works to ensure that these materials and their contents are featured in press articles educating the public about the operation of government; many articles feature additional commentary and analysis from DFF staff about those materials and their relevance to policy issues of public interest.9

Additionally, DFF regularly sends press releases and other materials to over 6,000 members of the press and the over 7,000 members on our organization’s email list, discussing ongoing legal developments related to executive branch policymaking. These materials often include descriptions and analysis of information obtained by DFF through its FOIA requests.10 In


addition, DFF operates a verified Twitter account with over 6,000 followers, and frequently uses the account to circulate significant documents received through FOIA requests.11

DFF’s website also houses a great deal of information obtained through its FOIA requests, accessible to the public at no cost. DFF’s website logged over 187,000 pageviews in 2018 alone.

DFF frequently incorporates documents received through FOIA into related legal actions brought by DFF on behalf of its clients, and in doing so further publicizes documents received by explaining their legal significance.12

Similarly, CRC frequently submits FOIA requests to enhance the public’s understanding of the actions of financial regulatory agencies.13 It publicizes the government’s responses to its requests in its newsletter and on its website. CRC also use this information to further enhance public discourse through comments and communications to various administrative agencies, and through its media work to educate the public, regulatory agencies and policymakers about the plight of vulnerable residents and communities and the need for regulators and legislators to more closely scrutinize financial institution practices.14

Democracy Forward Foundation and California Reinvestment Coalition are purely noncommercial requesters.

11 See, e.g., the following tweets and tweet threads from @DemocracyFwd:
https://twitter.com/DemocracyFwd/status/910123899035226112 (Sep. 19, 2017);
https://twitter.com/DemocracyFwd/status/97699106080462336 (Mar. 22, 2018);
https://twitter.com/DemocracyFwd/status/99648098877271042 (May 15, 2018);
https://twitter.com/DemocracyFwd/status/998986714105483264 (May 22, 2018);
https://twitter.com/DemocracyFwd/status/1022870550769754112 (July 27, 2018);
https://twitter.com/DemocracyFwd/status/1035144352345903105 (Aug. 30, 2018);
https://twitter.com/DemocracyFwd/status/1053294640382779392 (Oct. 19, 2018);


Neither Democracy Forward Foundation nor California Reinvestment Coalition are filing this request to further a commercial interest, and any information disclosed by DFF or CRC as a result of this FOIA request will be disclosed at no cost. A fee waiver would fulfill Congress’s legislative intent in amending FOIA. See Judicial Watch, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.”) (quotation marks omitted)).

Democracy Forward is a representative of the news media.

A representative of the news media is one that “publishes or otherwise disseminates information to the public,” and in particular one that “gathers information from a variety of sources; exercises a significant degree of editorial discretion in deciding what documents to use and how to organize them; devises indices and finding aids; and distributes the resulting work to the public.” Nat’l Sec. Archive v. US Dep’t of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

Representatives of the news media qualify for a waiver of all fees except “reasonable standard charges for document duplication” as a representative of the news media pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II).

As documented above, DFF extensively disseminates information gathered through FOIA requests to the public, via sharing that information with other news outlets, publishing and sending press releases and other updates to our website and email list, and alerting our followers on social media to new developments in our work, including highlights from documents obtained through FOIA. This process entails a great degree of editorial discretion in deciding which documents to highlight and how to organize them for the public, as our team of lawyers and policy experts carefully examine and build a thorough understanding of the documents we receive from FOIA and their relationship to policies of interest to the public.

Beyond disseminating information to reporters for them to publish, and sharing press releases and updates, Democracy Forward has also sought to disseminate information directly to the public through reports and opinion pieces written by our staff.15

California Reinvestment Coalition is an “other requester.”

CRC is a nonprofit institution advocating for fair and equal access to banking and other financial services for low-income and communities of color. CRC is a 501(c)(3) non-profit corporation and accordingly falls under the “all other requesters” category. 12 C.F.R. § 4.17(b)(2)(iii).

For all the foregoing reasons, Democracy Forward Foundation and California Reinvestment Coalition qualify for a fee waiver.

Conclusion

If you need clarification as to the scope of the request, have any questions, or foresee any obstacles to releasing fully the requested records within the 20-day period, please contact Democracy Forward as soon as possible at foia@democracyforward.org.

We appreciate your assistance and look forward to your prompt response.

Sincerely,

Nitin Shah
Democracy Forward Foundation

Kevin Stein
California Reinvestment Coalition