



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 4, 2009

Ms. Jenny Small  
Judicial Watch, Inc.  
501 School Street, SW  
Suite 725  
Washington, D.C. 20024

Re: Freedom of Information Act Appeal

Dear Ms. Small:

This is in response to your March 30, 2009 Freedom of Information Act (FOIA) appeal concerning the March 17, 2009 partial denial of your December 8, 2008 FOIA request.

In your FOIA request, you sought, for the time period January 2008 through April 2008, a copy of the following:

1. Any and all records concerning correspondence between the U.S. Department of Treasury and any representative of Bear Stearns.
2. Any and all records concerning third party communications about Bear Stearns (including communication with hedge funds).
3. Any and all records concerning negotiations and renegotiations of JP Morgan's acquisition of Bear Stearns including but not limited to memos, agendas, transcripts, emails, notes, and supplemental material.
4. Any and all communication by the U.S. Department of the Treasury with James Dimon and/or any representative of JP Morgan.
5. Any and all records concerning the loan to JP Morgan to acquire Bear Stearns (including correspondence about the risk to the central bank).

By email dated January 9, 2009, Steven Laughton, a Department of the Treasury ("Treasury") attorney, memorialized a conversation and agreement between you and him regarding the scope of your FOIA request. Specifically, you agreed to narrow your FOIA request to records responsive to a previous FOIA request submitted by another requester relating to Bear Stearns. The previous FOIA request sought, among other things, all notes, memoranda, documents, and records "concerning and/or relating to the [Bear Stearns] Company" from March 1, 2008 through March 22, 2008. Mr. Laughton represented that Treasury agreed to not close out your FOIA request until you had the chance to review the documents.

In response to your FOIA request as revised in your conversation with Mr. Laughton, Treasury released 743 pages in whole or in part, and withheld 198 pages in full. In your letter of March 30, 2009, you appealed Treasury's determination to withhold the 198 pages in their entirety.

With respect to the 198 pages withheld in full, duplicative material was not included in the page count. That is, responsive material that identically appeared on multiple pages was counted only once in the total page count of material withheld in full. In processing your FOIA appeal, however, we have counted each and every hardcopy page, even if the same material appeared on more than one page. The total number of hardcopy pages withheld in full is 237. After carefully reviewing all 237 pages, we have determined that 59 of these pages may be released to you in full and 96 may be released to you in part. The remaining 82 pages are being withheld in full.

The FOIA subsections that we have asserted for withholding information are (b)(2), (b)(4), (b)(6), and (b)(5).

Under FOIA subsection (b)(2), we have deleted a conference call system access code number from an email. Subsection (b)(2) exempts from disclosure matters that are "related solely to the internal personnel rules and practices of an agency."

Under FOIA subsection (b)(4), we have withheld 32 pages in full. These pages consist of financial statements and emails containing confidential financial information provided to Treasury from various business submitters. None of this information has been disclosed to the public. Subsection (b)(4) exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Under FOIA subsection (b)(6), we have deleted home telephone and personal cell numbers and personal email addresses from certain emails. Subsection (b)(6) exempts from disclosure "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

Under FOIA subsection (b)(5), we have withheld 50 pages in full and 95 in part. Subsection (b)(5) exempts from disclosure "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."

Note that any material redacted pursuant to the deliberative process component of subsection (b)(5) was determined to be both predecisional and deliberative. The material is predecisional in that it was prepared during the developing process of reaching a final decision as to the appropriate course of action to take with respect to the Bear Stearns' financial crisis. The material is deliberative in that it contains personal opinions, analyses, advice, thought processes, strategies, and recommendations, reflecting the "give and take" of Treasury's consultative, deliberative processes.

In your appeal letter dated March 30, 2009, you specifically challenged the withholding of seven pages of handwritten notes as "personal records."<sup>1</sup> You stated that "personal records" was not a proper FOIA exemption. After careful review, we have determined that the seven pages of handwritten notes are agency records, not personal records, but are exempt from disclosure pursuant to the deliberative process privilege of subsection (b)(5).

Finally, we have withheld one sentence in an email because it is non-responsive to your December 8, 2008 FOIA request. The deleted sentence pertains to matters wholly unrelated to Bear Stearns or to its acquisition by JP Morgan.

Note that we are providing you with all reasonably segregable, non-exempt, portions of documents. With respect to the pages being released in part, the appropriate FOIA exemption appears next to the redacted material.

The FOIA entitles you to seek judicial review of this determination. You may file a complaint in the United States District Court in the district in which you reside, or have your principal place of business, or in which the requested records are located, or in the District of Columbia.

Sincerely,



Matthew Rutherford  
Deputy Assistant Secretary for Federal Finance

Enclosures

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<sup>1</sup> In Treasury's response to your December 8, 2008 FOIA request, it indicated that it was withholding seven pages of handwritten notes because they were personal records, not agency records. Alternatively, Treasury stated that the handwritten notes were being withheld pursuant to FOIA subsection (b)(5).