IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VERN McKINLEY, 20745 Ashburn Station Place Ashburn, Virginia 20147, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION 550 17th St., N.W. Washington, D.C. 20429-9990, Defendant.	)))))))))))))))	Case: 1:10-cv-00420 Assigned To : Sullivan, Emmet G. Assign. Date : 3/15/2010 Description: FOIA/Privacy Act

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiff Vern McKinley brings this action against Defendant Federal Deposit Insurance Corporation ("FDIC") to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). As grounds therefor, Plaintiff alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Plaintiff Vern McKinley is a private citizen residing in Ashburn, Virginia. For the past 24 years, McKinley has worked in bank supervision and central banking, including as an employee of the FDIC. He currently works as an advisor to governments worldwide on financial sector policy and legal issues. McKinley also is the author of several professional articles on

banking and financial issues published by the Cato Institute. McKinley also has testified before Congress on issues related to U.S. consumer bankruptcy policy.

4. Defendant FDIC is an agency of the United States government and is headquartered at 550 17th St., N.W., Washington, D.C. 20429-9990. The FDIC is an independent agency created by Congress to maintain stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, and managing receiverships. The FDIC has possession, custody, and control of records to which Plaintiff seeks access.

STATEMENT OF FACTS

5. On October 14, 2008, the FDIC announced the creation of a new program -- the Temporary Liquidity Guarantee Program -- "to strengthen confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and by providing full coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount" (hereinafter "TLG Program"). The announcement followed a meeting of the FDIC's Board of Directors, at which the FDIC invoked its authority under section 13(c) of the Federal Deposit Insurance Act ("FDI Act") in determining that the TLG Program was necessary to avoid or mitigate "serious adverse effects on economic conditions or financial stability." *See* 12 U.S.C. § 1823(c)(4)(G). The FDIC had used its authority under section 13(c) of the FDI Act, sometimes referred to as "systemic risk exception authority," multiple times in 2008 and 2009.

6. On November 23, 2008, the FDIC announced that along with the U.S. Department of the Treasury ("Treasury") it would provide "a package of guarantees, liquidity access and capital" to Citigroup Inc. According to the FDIC, "As part of the Agreement,

Treasury and the [FDIC] will provide protection against the possibility of unusually large losses on an asset pool of approximately $306 billion of loans and securities backed by residential and commercial real estate and other such assets, which will remain on Citigroup's balance sheet." The agreement with Treasury and Citigroup Inc. followed a meeting of the FDIC's Board of Directors at which the FDIC again invoked its authority under section 13(c) of the FDI Act in determining that the aid package was necessary to avoid or mitigate "serious adverse effects on economic conditions or financial stability."

7. On January 16, 2009, the FDIC announced that along with Treasury it would provide Bank of America Corp. "a package of guarantees, liquidity access and capital as part of its commitment to support financial market stability." According to the FDIC, "Treasury and the [FDIC] will provide protection against the possibility of unusually large losses on an asset pool of approximately $118 billion of loans, securities backed by residential and commercial real estate loans and other such assets, all of which have been marked to current market value." The agreement with Treasury and Bank of America Corp. followed a meeting of the FDIC's Board of Directors at which the FDIC again invoked its authority under section 13(c) of the FDI Act in determining that the aid package was necessary to avoid or mitigate "serious adverse effects on economic conditions or financial stability."

8. On December 4, 2009, McKinley sent a FOIA request to the FDIC seeking records about the FDIC Board of Directors' determination regarding the Citigroup, Inc. aid package: "I would like any information available on this determination such as meeting minutes or supporting memos."

9. On December 20, 2009, McKinley sent a second FOIA request to the FDIC seeking records about the FDIC Board of Directors' determination regarding the TLG Program:

"I would like any information available on this determination such as meeting minutes and supporting memos."

10. Also on December 20, 2009, McKinley sent a third FOIA request to the FDIC seeking records about the FDIC Board of Directors' determination regarding the Bank of America Corp. aid package: "I would like any information available on this determination such as meeting minutes and supporting memos."

11. The FDIC acknowledged receipt of all three of McKinley's FOIA requests.

12. On January 26, 2010, the FDIC invoked 5 U.S.C. § 552(a)(6)(B)(i) to grant itself a ten (10) day extension of time to respond to McKinley's December 4, 2009 request.

13. On February 23, 2010, the FDIC invoked 5 U.S.C. § 552(a)(6)(B)(i) to grant itself ten (10) day extensions of time to respond to McKinley's December 20, 2009 requests.

14. By reason of the ten (10) day extension of time the FDIC granted itself on January 26, 2010, the FDIC response to McKinley's December 4, 2009 FOIA became due on February 10, 2010.

15. By reason of the ten (10) day extensions of time the FDIC granted itself on January 23, 2010, the FDIC's responses to McKinley's December 20, 2009 FOIA requests became due on March 9, 2010.

16. As of the date of the Complaint, the FDIC has failed to produce any records responsive to any of McKinley's requests or demonstrate that responsive records are exempt from production. Nor has the FDIC indicated when or whether any responsive records will be produced.

17. Because the FDIC failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i), McKinley is deemed to have exhausted any and

all administrative remedies with respect to its three FOIA requests, pursuant to 5 U.S.C. § 552(a)(6)(C).

<u>COUNT 1</u>
(Violation of FOIA)

18. Plaintiff realleges paragraphs 1 through 17 as if fully stated herein.

19. Defendant has violated FOIA by failing to produce any and all non-exempt records responsive to Plaintiff's requests within the time limits required by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i).

20. Plaintiff is being irreparably harmed by reason of Defendant's violations of FOIA, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) declare Defendant's failure to comply with FOIA to be unlawful; (2) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's requests and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (3) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the request; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and (5) grant Plaintiff such other relief as the Court deems just and proper.

Dated: March 15, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.

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