

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

VERN McKINLEY, )  
20745 Ashburn Station Place )  
Ashburn, Virginia 20147, )

Plaintiff, )

v. )

BOARD OF GOVERNORS OF THE )  
FEDERAL RESERVE SYSTEM )  
20th St. and Constitution Ave., N.W. )  
Washington, DC 20551, )

Defendant. )

Case: 1:10-cv-00751  
Assigned To : Walton, Reggie B.  
Assign. Date : 5/11/2010  
Description: FOIA/Privacy Act

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff Vern McKinley brings this action against Defendant Board of Governors of the Federal Reserve System 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 25 years, McKinley has worked in banking supervision, central banking and deposit insurance, including as an employee of the Board of Governors of the Federal Reserve. 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.

4. Defendant Board of Governors of the Federal Reserve System (“Board of Governors”) is an agency of the United States Government and is headquartered at 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

#### **STATEMENT OF FACTS**

5. On March 21, 2010, McKinley sent a FOIA request to the Board of Governors seeking the following records:

I am requesting further detail on information contained on page 3 of the following minutes of the Board of Governors of the Federal Reserve dated September 16, 2008 regarding American International Group, Inc. (AIG) . . . The source of the power referenced in the minutes is Section 13(3) of the Federal Reserve Act. In particular, I am requesting any and all communications and records concerning or relating to the Board [of Governors’] decision that detail that “the disorderly failure of AIG was likely to have a systemic effect on financial markets that were already experiencing a significant level of fragility,” as described in the meeting minutes.

6. On March 28, 2010, McKinley sent a second FOIA request to the Board of Governors seeking the following records:

I am requesting any and all communications and records regarding analysis undertaken regarding Lehman Brothers and the assessment in September 2008 or earlier of what “contagion” might have flowed from Lehman Brother’s filing of bankruptcy, as the word contagion was used in the case of the Board of Governors’ deliberations over Bear Stearns . . . or “systemic effect of financial markets” that may have flowed from a Lehman Bankruptcy as the phrase was used in the Board of Governors’ deliberations over American International Group . . . The analysis would likely have been undertaken in the context of considering whether to take action under Section 13(3) of the Federal Reserve Act to avoid a Lehman Bankruptcy.

7. On March 22, 2010, the Board of Governors received McKinley’s first FOIA request regarding AIG.

8. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the Board of Governors was required to respond to McKinley's first FOIA request within twenty (20) working days of receipt, or by April 19, 2010.

9. On March 30, 2010, the Board of Governors acknowledged receipt of McKinley's second FOIA request regarding Lehman Brothers on March 29, 2010.

10. Pursuant to 5 U.S.C. § 552(a)(6)(A)(i), the Board of Governors was required to respond to McKinley's second FOIA request within twenty (20) working days of receipt, or by April 26, 2010.

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

12. Because the Board of Governors failed to comply with the time limit set forth in 5 U.S.C. § 552(a)(6)(A)(i) or extend that time limit pursuant to 5 U.S.C. § 552(a)(6)(B)(i), McKinley is deemed to have exhausted any and all administrative remedies with respect to his FOIA requests. 5 U.S.C. § 552(a)(6)(C).

**COUNT 1**  
**(Violation of FOIA)**

13. Plaintiff realleges paragraphs 1 through 12 as if fully stated herein.

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

15. 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) order Defendant to search for and produce any and all non-exempt records responsive to Plaintiff's FOIA requests and a *Vaughn* index of allegedly exempt records responsive to the request by a date certain; (2) enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the FOIA requests; (3) 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: May 11, 2010

Respectfully submitted,

JUDICIAL WATCH, INC.



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