



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>.