

VIA ELECTRONIC MAIL

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, the Revolving Door Project makes the following request for records. The records requested herein may reside in multiple components or offices within your agency. We ask that you coordinate this request across your agency in your role as the agency's FOIA contact.

In May 2008, the New York Times reported that the Federal Reserve Bank of New York had contracted with BlackRock Inc., a money management company, to use its risk management software, Aladdin, to manage the government's intervention at the investment bank Bear Stearns.¹ The following year, according to the New York Times, the Treasury Department contracted with BlackRock to manage a wide range of distressed assets of which it had taken possession following the market crash.² While the relationship between the federal government and BlackRock in this time period was widely reported on, there is surprisingly little information publicly available about the ongoing nature of these ties.

In 2008, then-Chairman of the House Committee on Energy and Commerce, (CA-33) Rep. Henry Waxman requested additional details about the process by which BlackRock was awarded the contract to manage Bear Stearns' assets. Waxman noted that there was no competitive bidding process and that the terms of the agreement, including regarding payment, were not settled.³ Responses to Waxman's numerous questions do not appear to be publicly available.

The Treasury Department's decision to work with BlackRock in 2009 appears to have elicited even less scrutiny. Despite reports of the relationship, there is no record of a contract between BlackRock and the Treasury Department in the USAspending.gov database for the year 2009. Without a publicly available contract, or any suggestive evidence regarding how the process

¹ Michael J. de la Merced, *BlackRock Is Fix-It Firm to Manage Risky Assets of Others in Distress*, New York Times, May 8, 2008, <https://www.nytimes.com/2008/05/08/business/08blackrock.html>

² Landon Thomas Jr. *At BlackRock, a Wall Street Rock Star's \$5 Trillion Comeback*; New York Times, Sept, 15, 2016, <https://www.nytimes.com/2016/09/18/business/dealbook/at-blackrock-shaping-the-shifts-in-power.html>

³ *Chairman Waxman Requests Details of Federal Reserve's No-Bid Arrangement with BlackRock*; Nancy Pelosi, Speaker of the House, Apr 7, 2008, <https://www.speaker.gov/newsroom/chairman-waxman-requests-details-of-federal-reserves-no-bid-arrangement-with-blackrock/>

unfolded with the Federal Reserve Bank of New York, the public has no way to know the nature or duration of this relationship, nor the process by which it was developed.

The lack of transparency surrounding the relationship between BlackRock and these agencies also suggests that other departments could be using BlackRock's services without the public knowing. Information regarding the federal government's contracting decisions generally, and its relationship with Blackrock specifically, is of great public interest, especially in light of BlackRock's well-recorded efforts to influence government policy.⁴

Requested Records

The Revolving Door Project requests that your agency produce the following within twenty business days:

- An electronic copy (e.g. pdfs on a CD-ROM or via email) of all contracts between any division of the Commodity Futures Trading Commission (CFTC) and BlackRock Inc. concluded in the period between January 1, 2007 and the date on which this FOIA request is completed.
- An electronic copy (e.g. pdfs on a CD-ROM or via email) of all contracts between any division of the CFTC and BlackRock Inc., concluded in the period specified above, for use of the risk-management software Aladdin, including contracts with entities believed to be subsidiaries or licensees of Aladdin.
- An electronic copy (e.g. pdfs on a CD-ROM or via email) of all contracts between any division of the CFTC and a subcontractor, concluded in the period specified above, that reflect an understanding that the subcontractor will utilize BlackRock's risk management services.
- All "requests for proposal" or any other form of solicitation to prospective vendors issued by the CFTC from January 1, 2007 until the date this FOIA request is completed that relate to "risk analytics," "comprehensive portfolio management,"⁵ or any phrases used as synonyms for either of those terms.

The Revolving Door Project additionally requests that your agency produce the following within forty-five business days:

⁴ *Lobbying Totals, 1998- 2018*, Center for Responsive Politics, <https://www.opensecrets.org/orgs/lobby.php?id=D000021872>; Ryan Tracy and Sarah Krouse, *One Firm Getting What It Wants in Washington: BlackRock*, Wall Street Journal, April 20, 2016, <https://www.wsj.com/articles/one-firm-getting-what-it-wants-in-washington-blackrock-1461162812>

⁵ *Aladdin Platform Overview*, BlackRock, <https://www.blackrock.com/aladdin/offerings/aladdin-overview>

- All records reflecting communications, including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials regarding the decision to contract with outside vendors for risk management services, like those provided by BlackRock through its program Aladdin, including any communications between CFTC staff and employees of the vendor in question. BlackRock describes the services provided by the software Aladdin as a combination of “risk analytics” and “comprehensive portfolio management.”⁶
- If no formal contract exists, all records reflecting communications regarding the decision to do business with the risk management vendor.
- If the risk management services are provided through subcontracting, all records reflecting communications regarding the contractor’s decision to subcontract for risk management services and all records reflecting communication between CFTC staff and employees of both the contractor and the subcontractor.
- Any reports or letters that explain any decision by the CFTC from January 1, 2007 until the date this FOIA request is completed to authorize non-competitive or sole source bidding for “risk analytics,” “comprehensive portfolio management,”⁷ or any phrases used as synonyms for either of those terms.

In addition to the records requested above, the Revolving Door Project 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 your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

The Revolving Door Project seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone

⁶ *Aladdin Platform Overview*, BlackRock, <https://www.blackrock.com/aladdin/offerings/aladdin-overview>

⁷ *Aladdin Platform Overview*, BlackRock, <https://www.blackrock.com/aladdin/offerings/aladdin-overview>

conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **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 are subject to the Federal Records Act and FOIA.⁸ **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 Revolving Door Project 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.**⁹

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. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **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.**¹⁰ **Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, the Revolving Door Project insists that your agency 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 Revolving Door Project is available to work with you to craft appropriate search terms. **However, custodian searches are**

⁸ 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).

⁹ 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)).

¹⁰ Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-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>

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.”¹¹ If it is your position that any portion of the requested records is exempt from disclosure, the Revolving Door Project requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). 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.”¹² 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.”¹³ 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.’”¹⁴

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably 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.¹⁵ 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 Revolving Door Project intends to pursue all legal avenues to enforce its right of access under FOIA, including litigation if necessary. Accordingly, you are on notice that litigation is reasonably foreseeable.

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 Revolving Door Project welcomes an opportunity to discuss its request with you before you undertake your search or

¹¹ FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

¹² *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

¹³ *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

¹⁴ *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))

¹⁵ *Mead Data Central*, 566 F.2d at 261.

incur search or duplication costs. By working together at the outset, the Revolving Door Project hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to the Revolving Door Project, 1611 Connecticut Avenue NW, Suite 400, Washington, DC 20009. If it will accelerate release of responsive records to the Revolving Door Project, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's implementing regulations, the Revolving Door Project requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to a better understanding of relevant government procedures in a significant way.¹⁶ Moreover, the request is primarily and fundamentally for non-commercial purposes.¹⁷

The Revolving Door Project requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government.¹⁸ Information regarding the CFTC's vendor relationships is of great public interest because it concerns potential conflicts of interest within the agency. The requested materials will shed light on this matter of great public interest.

This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records.¹⁹ As a 501(c)(3) nonprofit, the Revolving Door Project does not have a commercial purpose and the release of the information requested is not in the Revolving Door Project's financial interest. The Revolving Door Project is a non-profit educational institution, and this request is made for educational purposes and not for a commercial use.

Conclusion

We share a common mission to promote transparency in government. The Revolving Door Project looks forward to working with your agency on this request. If you do not understand any

¹⁶ 45 C.F.R. § 5.54(a).

¹⁷ *Id.*

¹⁸ 45 C.F.R. § 5.54(b)(1),(2)(i)-(ii).

¹⁹ 45 C.F.R. § 5.54(b)(3)(i)-(ii).

part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Eleanor Eagan at oversight@cepr.net or (202) 293-5380 x 124. Also, if the Revolving Door Project's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,
Jeffrey Hauser
Executive Director
The Revolving Door Project