



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

August 2, 2021

Mr. Michael Kaszuba  
Public Record Media  
P.O. Box 8205  
St. Paul, MN 55108

Re: *Freedom of Information Act Request No. FOIA-2021-00075;*  
*Appeal No. APP-2021-00007*

Dear Mr. Kaszuba:

This is in response to your electronic message dated May 30, 2021, and received by the Board's Information Disclosure Section ("IDS") on June 1, in which you appeal, pursuant to 12 C.F.R. § 261.14, the Deputy Secretary's decision to deny your request for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

By electronic message dated and received by IDS on May 18, 2021,<sup>1</sup> you requested:

Correspondence and/or legal opinion[s] at the Federal Reserve System level on whether Federal Reserve regional banks in the U.S., such as the Federal Reserve Bank of Minneapolis, are subject to the Freedom of Information Act.

By letter dated May 28, 2021, the Deputy Secretary informed you that staff searched Board records and consulted with knowledgeable subject matter experts but did not locate documents responsive to your request. The Deputy Secretary's response noted that you may wish to contact each of the Federal Reserve Banks ("Reserve Banks") regarding their individual FOIA policies.

By electronic submission dated May 30, 2021, and received by IDS on June 1, you sought to appeal the Deputy Secretary's determination. In addition to noting that you

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<sup>1</sup> By electronic message dated and received by IDS on May 14, 2021, you separately requested, in Request No. FOIA-2021-00073, a variety of communications between staff at the Federal Reserve Bank of Minneapolis ("FRB Minneapolis") and outside entities in relation to the Page Amendment. By electronic message dated May 17, 2021, IDS staff recommended that you submit a request directly to FRB Minneapolis for the information you seek.

appealed the determination that there are no documents responsive to your request, you also posed the following questions:

[W]ho determines whether a regional Federal Reserve Bank is subject to FOIA? Is it left to the regional bank? Is there an overall policy regarding FOIA as it pertains to regional banks. Are some regional Federal Reserve Banks covered by FOIA, while others are not? Is there correspondence related to all of this -- if so, who has it?

The purpose of this response is to provide clarification regarding the Deputy Secretary's determination dated May 28, 2021 ("May 2021 response") and address the questions you posed in your appeal. Please note, however, that the FOIA is a federal statute pursuant to which members of the public may request copies of federal agency records. It does not provide a means for asking questions.<sup>2</sup> Nevertheless, as a courtesy and in an effort to more fully explain the basis for the May 2021 response, I have included further information regarding the processing of your May 18, 2021, request, as well as the applicability of the FOIA to the Reserve Banks.

With regard to the search for records in response to your FOIA request dated May 18, 2021, please be advised that in connection with the May 2021 response, staff searched Board records and consulted with knowledgeable subject matter experts to determine whether there were any communications between Board and Reserve Bank staff about whether the Reserve Banks are subject to the FOIA but did not locate any such communications.

With respect to the questions posed in your appeal, please note that the Reserve Banks retain their own legal counsel to advise on a variety of legal issues, including whether Reserve Banks, in carrying out their own authorities, are subject to the FOIA. In this regard, it is our understanding that the position of the individual Reserve Banks is that they are not "agencies" that are subject to the FOIA when carrying out their own authorities. Accordingly, to the extent you remain interested in communications between staff at the FRB Minneapolis and outside entities in relation to the Page Amendment (as referenced in footnote 1 of this letter), such community outreach would have been conducted by FRB Minneapolis pursuant to their own authority independent from the Board.

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<sup>2</sup> See *Thomas v. Comptroller of Currency*, 684 F. Supp. 2d 29, 33 (D.D.C. 2010) ("To the extent that plaintiff's FOIA requests were questions or requests for explanations of policies or procedures, these are not proper FOIA requests requiring the [agency's] response."); see, e.g., *Judicial Watch, Inc. v. Dep't of State*, 177 F. Supp. 3d 450, 456 (D.D.C. 2016) (finding that "[a] question is not a request for records under FOIA and an agency has no duty to answer a question posed as a FOIA request.").

Please note that when Reserve Banks carry out functions on behalf of the Board (i.e., when they act under authority delegated to them from the Board), Reserve Banks must comply with the FOIA solely with respect to actions they take under the Board's authorities. When this occurs, that is, when a Reserve Bank receives a request for information related to actions it took on behalf of the Board, the Reserve Bank must forward that request for information to the Board for a response. Additionally, please note that, pursuant to the Board's Rules Regarding Availability of Information, records in the possession of the Reserve Banks constitute Board records subject to the FOIA if such records were created or obtained in the performance of Board functions delegated to the Reserve Bank.<sup>3</sup>

I hope this information clarifies the May 2021 response to your FOIA request. If you believe that the determination that no responsive records exist in response to your request is incorrect, you may appeal this determination by writing to Office of the Secretary, Board of Governors of the Federal Reserve System, Attn: FOIA Appeals, 20th Street & Constitution Avenue NW, Washington, DC 20551; by facsimile to 202-872-7565; or electronically to [FOIA-Appeals@frb.gov](mailto:FOIA-Appeals@frb.gov) or <https://foia.federalreserve.gov/app/Home.aspx>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.<sup>4</sup>

Very truly yours,



Michele Taylor Fennell  
Deputy Associate Secretary of the Board

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<sup>3</sup> See 12 C.F.R. § 261.2(d)(ii).

<sup>4</sup> As an alternative to an administrative appeal, you may contact the Board's FOIA Public Liaison, Ms. Candace Ambrose, at [REDACTED] for further assistance. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001; email at [ogis@\[REDACTED\]](mailto:ogis@[REDACTED]); telephone at [REDACTED] or toll free at 1-877-684-6448; or facsimile at 202-741-5769.