



## OFFICE of GOVERNMENT INFORMATION SERVICES

June 3, 2015 - Sent via email

[REDACTED]

Re: Case No. 201500528  
HK: CM: CL

Dear [REDACTED]:

This letter responds to your March 19, 2015 request for assistance from the Office of Government Information Services (OGIS), which we received via email. Your request for assistance pertains to your Freedom of Information Act (FOIA) request [REDACTED], to the Consumer Financial Protection Bureau (CFPB).

As you are aware, Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. The goal is for OGIS to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release documents or process one request before others. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

OGIS Facilitator Christa Lemelin carefully reviewed your submission. In your correspondence with OGIS, you note you are dissatisfied with CFPB's denial of your request for a fee waiver, the agency's [REDACTED] fee estimate and the delay in the agency's response to your request. I will address each of these concerns.

To learn more about the CFPB's action on your request, we contacted CFPB FOIA Manager Martin Michalosky. Mr. Michalosky stated that CFPB is firm in its position that its response to your request was proper. When an agency is firm in its position, there is little for OGIS to do beyond providing more information about the agency's actions.

With regard to CFPB's response to your fee waiver request, the threshold for consideration of a waiver is high. According to the Department of Justice's guidance, the standard for fee waivers is that disclosure of the information (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. Further, 12 CFR §§ 1070.22(e)(1)-(2) of CFPB's FOIA regulation, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-15/pdf/2013-01737.pdf>, states that the CFPB analyzes the following four factors in considering fee waivers:

1. The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, and not remote or attenuated.
2. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased

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public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially similar form, is not as likely to contribute to the public's understanding.

3. The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.
4. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent

It has been our observation that successful fee waiver requests explain each of these factors and provide examples of how they will be satisfied, rather than simply restating them. For more information, you may wish to consult the Department of Justice's guidance on fee waivers, available at: <http://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>.

In your correspondence to OGIS and CFPB, you express concern about the agency's delay in responding to your request, particularly in light of FOIA's statutory requirement that agencies respond to requests within 20 working days (excepting Saturdays, Sundays, and legal public holidays), 5 U.S.C. § 552 (a)(6)(A)(i). The FOIA's time limit is paused, or "tolled," until the requester and the agency have agreed on the scope of the request and the requester agrees to pay any fees owed. You may wish to review the Department of Justice's guidance for agencies on tolling requests, available online at <http://www.justice.gov/oip/blog/foia-post-2008-oip-guidance-new-limitations-tolling-foias-response-time>.

I note that between [REDACTED] and [REDACTED], you exchanged several emails with CFPB FOIA staff regarding the agency's fee estimate and the agency's handling of your FOIA request. Mr. Michalosky explained to OGIS that CFPB administratively closed your request on [REDACTED] because you did not narrow the scope of your request, provide an advance payment, or agree to pay any fee amount as outlined in CFPB's interim response or discussed in your email communications with CFPB. Mr. Michalosky observed that you did not appeal CFPB's denial of your fee waiver or the requester category into which CFPB placed you.

In the future, if you are dissatisfied with any aspect of an agency's response to your request, you may wish to file an appeal. The appeal is an important part of the FOIA administrative process. By filing an appeal, you preserve your administrative rights and give the agency a chance to carefully review and reconsider every part of a request and the agency's decision.

I hope you find this information useful in understanding CFPB's response to your request. At this time, OGIS can offer no further assistance and we will close your case. Thank you for bringing this matter to OGIS.

Sincerely,

/s/

Hirsh Kravtiz, Attorney-Advisor  
Office of Government Information Services

cc: Martin Michalosky, FOIA Manager, Consumer Financial Protection Board