



1700 G Street NW, Washington, DC 20552

October 8, 2015

VIA EMAIL

Mr. Jacob Ma-Weaver
Cable Car Capital LLC
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San Francisco, California 94109
www.cablecarcapital.com

Re: Final Appeal Determination Denying FOIA Appeal No. 2015-290-A

Dear Mr. Ma-Weaver:

This letter constitutes the final determination of the Consumer Financial Protection Bureau (the Bureau) regarding your appeal of the Bureau's response to Freedom of Information Act (FOIA) Request No. 2015-290-F (Request). For the reasons set forth below, the appeal is denied.¹

I. Background

On September 1, 2015, the Bureau received your Request for the following documents:

- The Notice and Opportunity to Respond and Advise ("NORA") Letter from the CFPB to World Acceptance dated August 7, 2015
- The NORA response letter from World Acceptance to the CFPB

On September 9, 2015, the Bureau's Final Response notified you that "any documents responsive to the Request would be withheld in full pursuant to [] 5 U.S.C. § 552(b)(7)(A)." The same day, you filed this appeal challenging the application of FOIA Exemption 7(A) to withhold records responsive to the Request.

¹ The Bureau's FOIA regulations are codified at 12 C.F.R. §§ 1070.10 et seq. Pursuant to these regulations, the authority to determine FOIA appeals rests with the Bureau's General Counsel or her delegate. See 12 C.F.R. § 1070.21(e). The General Counsel has delegated to me the authority to determine the appeal of the Bureau's response to the Request. This letter therefore constitutes the Bureau's final response to the Request.

II. Appellate Determination

A. FOIA Exemption 7(A)

FOIA requires federal agencies to produce requested records unless one of nine exemptions applies to preclude disclosure. Exemption 7(A) applies when: (1) the requested record was compiled for law enforcement purposes and (2) disclosure of the requested record can reasonably be expected to interfere with law enforcement proceedings that are pending or reasonably anticipated.² The appeal concedes that the requested records were compiled for law enforcement purposes, stating: “[T]he requested materials admittedly concern an active enforcement investigation....” Therefore, only the second prong of the Exemption 7(A) test is addressed.

The appeal advances three arguments for release of the Bureau’s NORA letter to World Acceptance and its response. First, the appeal requests reconsideration of the Bureau’s conclusion that disclosure of the requested documents can “reasonably be expect to interfere with the proceedings.” Upon review, I find the application of Exemption 7(A) appropriate and that the requested reconsideration would serve no purpose. The Bureau’s NORA process occurs “[b]efore the Office of Enforcement recommends that the Bureau commence enforcement proceedings.”³ Under the process, the Bureau’s Enforcement Attorneys “may give the subject of such recommendation notice of the nature of the subject’s potential violations and may offer the subject the opportunity to submit a written statement in response.”⁴ The recipients of a NORA letter are advised to provide a response focused on “the legal and policy matters relevant to the potential enforcement proceedings.”⁵ Premature disclosure of the Bureau’s theories of liability, as well as the recipient’s responses to those theories, could reasonably be expected to interfere with reasonably anticipated enforcement proceedings.

Next, the appeal requests disclosure of the requested documents now, because the documents may be disclosed in a future enforcement proceeding. This argument is not persuasive. The very reason the requested documents were not produced in response to the Request was to prevent interference with a pending or reasonably anticipated enforcement proceeding.

Finally, the appeal requests the production of any non-exempt material within the requested documents. FOIA requires the production of “any reasonably segregable portion of a record...after deletion of the portions which are exempt.”⁶ The D.C. Circuit has “long

² *Citizens for Responsibility and Ethics in Washington v. U.S. Dept. of Justice*, 746 F.3d 1082, 1096 (D.C. Cir. 2014) (citing *Mapother v. U.S. Dept. of Justice*, 3 F.3d 1533, 1540 (D.C. Cir. 1993)).

³ See CFPB Bulletin 2011-04 (Enforcement), Notice and Opportunity to Respond and Advise, available at <http://files.consumerfinance.gov/f/2012/01/Bulletin10.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ 5 U.S.C. § 552(b).

recognized, however, that documents may be withheld in their entirety when nonexempt portions are inextricably intertwined with exempt portions.”⁷ Here, I find that the release of any “non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words.”⁸

B. FOIA Exemption 4

Although not identified in the Final Response to the Request, Exemption 4 also applies to prevent the disclosure of the World Acceptance NORA Response. Exemption 4 protects from disclosure records that are: (1) commercial or financial; (2) obtained from a person; and (3) privileged or confidential.⁹ The D.C. Circuit has defined the terms in the three prong test for application of Exemption 4. The terms “commercial” and “financial” are given their “ordinary meanings” and are “broadly construed.”¹⁰ A record is commercial if it “serves a commercial function,” “is of a commercial nature”¹¹ or is of “commercial interest” to its provider.¹²

The term “person” includes individuals, corporations and many other entities, but not the federal government.¹³ Finally, the test for “confidentiality” turns on whether or not the record was voluntarily provided to the government. Commercial or financial information that is voluntarily submitted to the government is deemed confidential, if it is the kind of information “that would customarily not be released to the public by the person from whom it was obtained.”¹⁴

Application of the Exemption 4 factors demonstrates that the Bureau correctly withheld the World Acceptance NORA Response. The NORA Response contains detailed information about World Acceptance’s business practices; therefore, the NORA Response is “commercial” within the meaning of Exemption 4.¹⁵ And, the NORA Response is confidential, because it was voluntarily submitted to the Bureau and it contains information that would not customarily be released to the public by World Acceptance. I conclude that the World Acceptance NORA Response was appropriately withheld pursuant to Exemption 4.

For the foregoing reasons, the appeal is denied.

⁷ *Juarez v. U.S. Dept. of Justice*, 518 F.3d 54, 61 (D.C. Cir. 2008).

⁸ *Bariko v. U.S. Dept. of Justice*, 2015 WL 4932122, at *9 (D.D.C. Aug. 18, 2015) (quoting *Nat’l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 220-21 (D.D.C. 2005)).

⁹ *Public Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C.Cir. 1983).

¹⁰ *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C.Cir. 2002) (quoting *Public Citizen Health Research Grp v. FDA*, 704 F.2d 1280, 1290 (D.C.Cir. 1983)).

¹¹ *Id.*

¹² *Baker & Hosteler LLP v. U.S. Dept. of Commerce*, 473 F. 3d 312, 319 (D.C.Cir. 2006).

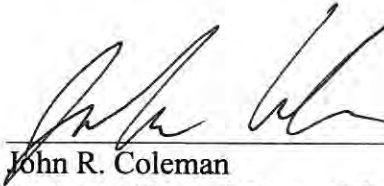
¹³ *Bd. Of Trade v. CFTC*, 627 F.2d 392, 404 (D.C.Cir. 1980).

¹⁴ *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 879 (D.C.Cir. 1992) (en banc).

¹⁵ The World Acceptance NORA Response contains business information similar in nature to information that was found to be “commercial” in *Public Citizen v. U.S. Dept. of Health and Human Svs.*, 66 F.Supp.3d 196, 207-208 (D.D.C. 2014).

If you are dissatisfied with the Bureau's final appellate determination, you may contact the Office of Government Information Services (OGIS), which offers mediation services to resolve disputes between FOIA requesters and Federal agencies pursuant to 5 U.S.C. § 552(h)(3). Using OGIS services does not affect your right to pursue litigation. Under 5 U.S.C. § 552(a)(4)(B), you may also seek judicial review of this appeal denial in the U.S. District Court where you reside, in the district where the documents are located, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Coleman", is written over a horizontal line.

John R. Coleman
Assistant General Counsel for Litigation
Consumer Financial Protection Bureau