

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

GOVERNMENT ACCOUNTABILITY & OVERSIGHT )  
1309 Coffeen Avenue, Suite No. 3556 )  
Sheridan, WY 82801 )  
Plaintiff, )

v. )

Case No. 1:23-cv-1280

FEDERAL DEPOSIT INSURANCE CORPORATION )  
550 17<sup>th</sup> Street NW )  
Washington D.C. 20429 )  
Defendant. )

**COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT**

Plaintiff GOVERNMENT ACCOUNTABILITY & OVERSIGHT, for its complaint against  
Defendant FEDERAL DEPOSIT INSURANCE CORPORATION (“FDIC”), alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.* for declaratory, injunctive, and other relief, seeking immediate processing and release of agency records responsive to one FOIA request.
2. This action is filed following the FDIC’s failure to comply with the express terms of FOIA, including but not limited to its failure to provide any substantive response to the request at issue.
3. The FDIC’s failure to comply with FOIA also includes the agency’s failure to, e.g., fulfill its obligation to make a “determination” as that term is defined in *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 816 (D.C. Cir. 2013), its failure to respond to Plaintiff’s request, and its constructive or actual withholding of responsive information and/or documents in violation of Defendant’s obligations.

**PARTIES**

4. Plaintiff Government Accountability & Oversight is a non-profit organization incorporated in the State of Wyoming and dedicated to transparency and open government. Government Accountability & Oversight uses state and federal open records laws to inform the public on the operations of government including private influences on government policymaking and other actions.
5. Defendant Federal Deposit Insurance Corporation (FDIC”) is a federal agency located in Washington, DC with a campus in Arlington, Virginia. Its website states that its mission is “to maintain stability and public confidence in the nation's financial system by: insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex institutions resolvable, and managing receiverships.”

**JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
7. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
8. Plaintiff is not required to further pursue administrative remedies before seeking relief in this Court because Defendant neither produced records nor made a timely “determination” as that term is defined in *Citizens for Responsibility & Ethics in Wash. v. Federal Election Commission*, 711 F.3d 180, 188 (D.C. Cir. 2013). See also, e.g., *Citizens for Responsibility & Ethics in Wash. v. U.S. Dept. of Justice*, 436 F. Supp. 3d 354, 359 (D.D.C. 2020) (citing various other cases and holding that the statutory text of FOIA relieves similarly situated plaintiffs of any exhaustion requirement).

**PLAINTIFF'S FOIA REQUEST**

9. On March 13, 2023, Plaintiff submitted by email a request to Defendant seeking copies of certain described email correspondence between FDIC regulators in the immediate days surrounding the collapse of Silicon Valley Bank.
10. A true and correct copy of the FOIA request at issue in this case is attached hereto as Exhibit A.
11. FDIC acknowledged the Plaintiff's request on March 14, 2023, and assigned it tracking number 2023-FDIC-FOIA-00314. A true and correct copy of the acknowledgement letter is attached hereto as Exhibit B.
12. On March 21, 2023, Defendant granted Plaintiff's request for expedited processing of its request. A true and correct copy of the letter granting expedited processing is attached hereto as Exhibit C.
13. On April 12, 2023, FDIC claimed that "unusual circumstances" prevented it from responding to Plaintiff's request. A true and correct copy of that letter is attached hereto as Exhibit D.
14. Despite claiming "unusual circumstances" prevented FDIC from providing a timely production of documents responsive to Plaintiff's FOIA request, for which FDIC had already granted expedited processing, FDIC did not provide the still-required determination of how many documents were being processed, or when the production of documents might be expected to begin or end, or what exemptions FDIC intended to claim to withhold any records.
15. The FOIA provides that a requesting party is entitled to a substantive agency response within twenty working days, including a determination of whether the agency intends to comply with

the request. 5 U.S.C. § 552(a)(6)(A)(i). Within that deadline, the agency must also “determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents,” and “inform the requester that it can appeal whatever portion of” the agency’s “determination” is adverse to the requestor. *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013).

16. 5 U.S.C. § 552(a)(6)(A) prescribes that the 20-day time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester, 5 U.S.C. § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. 5 U.S.C. § 52(a)(6)(A)(ii) (II). In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.
17. Neither of those scenarios are applicable to FDIC’s actions in the instant matter.
18. FDIC owed Plaintiff a “*CREW*” response to its request, including a “determination” as that term is defined in *CREW v. FEC*, 711 F.3d 180, 188 (D.C. Cir. 2013), on or about April 11, 2023.
19. As of this filing, FDIC has provided no substantive response or “determination” with respect to the request as that term is defined in the Freedom of Information Act and as the D.C. Circuit explained was the obligation of every agency in *CREW v. Federal Election Commission*, 711 F.3d 180, 188.
20. FDIC is now past its statutory period for issuing such a determination on the above-described request without providing any substantive response to Plaintiff’s request.

21. Defendant has yet to produce any records responsive to the FOIA request described herein, and has also otherwise failed to provide any substantive response.
22. Defendant FDIC continues to improperly deny Plaintiff access to agency records in violation of FOIA, and further declines to make the statutorily required “determination” regarding when the Plaintiff might expect to be granted access to the documents it has requested.

**FIRST CLAIM FOR RELIEF**  
**Duty to Produce Records – Declaratory Judgment**

23. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
24. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business.
25. Plaintiff has a statutory right to the information it seeks, and Defendant has unlawfully withheld the information.
26. Plaintiff is not required to further pursue administrative remedies.
27. Plaintiff asks this Court to enter a judgment declaring that:
  - a. Plaintiff is entitled to records responsive to its FOIA request described above, and any attachments thereto, but Defendant has failed to provide the records;
  - b. FDIC’s processing of Plaintiff’s FOIA request described above is not in accordance with the law, and does not satisfy FDIC’s obligations under FOIA;
  - c. FDIC must now produce records responsive to Plaintiff’s request, and must do so without cost to the Plaintiff.

**SECOND CLAIM FOR RELIEF**  
**Duty to Produce Records – Injunctive Relief**

28. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
29. Plaintiff is entitled to injunctive relief compelling Defendant to produce the records responsive to the FOIA request described herein.
30. Plaintiff asks the Court to enter an injunction ordering Defendant to produce to Plaintiff, within 20 business days of the date of the order, the requested records sought in Plaintiff's FOIA request described above, and any attachments thereto, at no cost to the Plaintiff.
31. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 30 days after Plaintiff receives the last of the produced documents, addressing Defendant's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with Plaintiff's challenges to FDIC's withholdings, if any, and any other remaining issues.

**THIRD CLAIM FOR RELIEF**  
**Costs And Fees – Injunctive Relief**

32. Plaintiff restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.
33. Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
34. This Court should enter an injunction or other appropriate order requiring the Defendant to pay reasonable attorney's fees and other litigation costs reasonably incurred in this case.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests this Court:

1. Assume jurisdiction in this matter, and maintain jurisdiction until the Defendant complies with FOIA and every order of this Court;
2. Declare Defendant has violated FOIA by failing to provide Plaintiff with the requested records, and/or by failing to notify Plaintiff of final determination within the statutory time limit;
3. Declare that the documents sought by the request, as described in the foregoing paragraphs, are public records under 5 U.S.C. § 552 *et seq.* and must be disclosed;
4. Order Defendant to expeditiously provide the requested records to Plaintiff within 20 business days of the Court's order and without cost to the Plaintiff;
5. Award Plaintiff's attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and
6. Grant such other relief as this Court deems just and proper.

Respectfully submitted this the 5<sup>th</sup> day of May 2023,

GOVERNMENT ACCOUNTABILITY & OVERSIGHT  
By Counsel:

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