

EMPOWER OVERSIGHT

Whistleblowers & Research



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January 28, 2022

VIA ELECTRONIC TRANSMISSION: FOIAPA@SEC.GOV

Olivier Girod, Acting Chief FOIA/PA Officer
Office of FOIA Services
100 F Street NE
Washington, DC 20549-2465

RE: Request for Processing Notes Relating to SEC FOIA Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA

Dear FOIA Officer:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

BACKGROUND

On August 12, 2021, Empower Oversight submitted to the Securities and Exchange Commission’s (“SEC”) a Freedom of Information Act (“FOIA”)¹ request seeking eight categories of records relating to potential conflicts of interest of former high-level SEC officials and requesting a fee waiver. Specifically, Empower Oversight’s FOIA request seeks:

1. All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain “@stblaw.com”;
2. All records relating to communications from May of 2017 through December of 2020 between Mr. Hinman and any personnel from the Enterprise Ethereum

¹ The FOIA is codified at 5 U.S.C. § 552.

Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain “@entethalliance.org”;

3. All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Hinman’s continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm;

4. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@stblaw.com”;

5. All records relating to communications from May of 2017 through January of 2021 between Mr. Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@entethalliance.org”;

6. All records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC’s Office of the Ethics Counsel, regarding Mr. Berger’s discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher;

7. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain “@oneriveram.com”; and

8. All records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Clayton’s discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management.

On August 13, 2021, the SEC—via eight separate letters corresponding to each of the eight items of Empower Oversight’s FOIA request (*i.e.*, items “1” through “8” set forth above)—acknowledged receipt of Empower Oversight’s request; assigned unique tracking numbers to each of the eight items of the request (*i.e.*, SEC FOIA Request Numbers: 21-02531-FOIA through 21-02538-FOIA, respectively); and advised that one or more FOIA Research Specialist(s) would be assigned to address the request.

On December 10, 2021, SEC FOIA Research Specialist Joel Hansen issued a “no records” response to the first and second items of Empower Oversight’s August 12th FOIA request, which the SEC designated as Request Numbers 21-02531-FOIA and 21-02532-FOIA. The operative text of the FOIA Research Specialist Hansen’s letter states:

Based on the information you provided in your letter, we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any records responsive to your requests.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.

On December 21, 2021, SEC FOIA Research Specialist Frank Mandic issued a "no records" response to the seventh item of Empower Oversight's August 12th FOIA request, which the SEC designated as Request Number 21-02537-FOIA. With the exception of revising the plural "requests" to a singular "request" at the end of the first paragraph, the operative text of SEC FOIA Research Specialist Mandic's December 21st letter is identical to the text of SEC FOIA Research Specialist Hansen's December 10th "no records" response, which is quoted above.

On January 5, 2022, SEC FOIA Research Specialist Mandic issued a "no records" response to the fifth item of Empower Oversight's August 12th FOIA request, which the SEC designated as Request Number 21-02535-FOIA. With the exception of revising the plural "requests" to a singular "request" at the end of the first paragraph, the operative text of SEC FOIA Specialist Mandic's January 5th letter is identical to the text of SEC FOIA Specialist Hansen's December 10th "no records" response, which is quoted above.

RECORDS REQUEST

Pursuant to the FOIA, 5 U.S.C. § 552, Empower Oversight hereby requests all processing notes relating to:

1. The first and second items of Empower Oversight's August 12th FOIA request, which the SEC designated as Request Numbers 21-02531-FOIA and 21-02532-FOIA, and SEC FOIA Research Specialist Joel Hansen's December 10, 2021, "no records" response.
2. The seventh item of Empower Oversight's August 12th FOIA request, which the SEC designated as Request Number 21-02537-FOIA, and SEC FOIA Research Specialist Frank Mandic's December 21, 2021, "no records" response.
3. The fifth item of Empower Oversight's August 12th FOIA request, which the SEC designated as Request Number 21-02535-FOIA, and SEC FOIA Research Specialist Frank Mandic's January 5, 2022, "no records" response.

DEFINITIONS

"PROCESSING NOTES" means all records created by the SEC's FOIA Research Specialists and other personnel that reflects the record systems and information platforms that were searched, and the search terms used, to respond to Empower Oversight's August 12th FOIA request.

"COMMUNICATION(S)" means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not

limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, Slack messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” “REGARDING,” “RELATES,” “RELATING TO,” “CONCERNS,” “BEARS UPON,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

INSTRUCTIONS

The time period of the requested records is August 12, 2020, through the present.

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this FOIA request.

If you have any questions about this request, please contact Bryan Saddler by e-mail at bsaddler@empowr.us.

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that it qualifies as a “representative of the news media”² and requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, which helps insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same. Empower Oversight has no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the SEC’s compliance with its obligations under the FOIA.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

² On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12th FOIA request, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a “media requestor” in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>.