

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

EMPOWER OVERSIGHT)	
WHISTLEBLOWERS & RESEARCH,)	
)	
Plaintiff,)	
)	No. 1:21-cv-1370-RDA/TCB
v.)	
)	
U.S. SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Defendant.)	

NOTICE

Please take notice that Plaintiff Empower Oversight Whistleblowers & Research recently submitted a Freedom of Information Act request to the Defendant Securities and Exchange Commission related to this litigation. A copy of the request is attached as Exhibit A.

Like the initial FOIA request that is the subject of this lawsuit, the December 2022 request seeks records of communications between agency officials and personnel from outside organizations. But the December 2022 request seeks a narrower and more specifically defined subset of the documents already sought in the initial request at issue in this case. Empower Oversight submitted this request consistent with its previously stated willingness to accommodate concerns raised by the SEC. The background section of the request explains more fully why, though it should not have been necessary, Empower Oversight decided to submit it.

In this case, the parties disagree, among other things, about the correct interpretation of the underlying FOIA request and statements made during a phone call that occurred on January 28, 2022. Empower Oversight explained in its opposition to the SEC's motion for summary judgment that the underlying FOIA request covers communications involving all personnel at Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management, not just email communications to/from the domains @stblaw.com, entethalliance.org, and @oneriveram.com.

Empower Oversight also explained that, following the January 28th conference call, which was not scheduled as a settlement negotiation, Empower Oversight provided the SEC a list of names of select Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management personnel to the agency so that the “SEC can identify additional responsive records rather than limiting its searches to just certain email address domains.” Opp. at 13 (Dkt. No. 31) (quoting a press release). In short, the SEC asked for a list of names to narrow its searches and Empower Oversight provided that list. Yet the SEC refused to do the searches. Now, in this litigation, the SEC urges this Court to ignore its refusal because the agency claims that the list supposedly came from confidential “settlement discussions.” Reply at 4–5 (Dkt. No. 33). And the SEC incorrectly claims that the “names were not encompassed in Plaintiff’s original FOIA request and not administratively exhausted.” *Id.*

Empower Oversight thus submitted the December FOIA request identifying specific names, as it previously had done in February, to conclusively remove any ambiguity about SEC’s already existing obligation under FOIA to conduct searches using those names. However, the request need not affect this litigation. The Court should deny the government’s motion for summary judgment for the reasons articulated in Empower Oversight’s opposition. The SEC undisputedly failed to comply with FOIA’s statutory deadlines; the SEC failed to conduct searches reasonably calculated to lead to responsive records; and the SEC has not carried its burden to withhold information under the FOIA exemptions at 5 U.S.C. §§ 552(b)(4), (b)(5), and (b)(6).

Respectfully submitted,

/s/ Jeffrey S. Beelaert

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