

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

EMPOWER OVERSIGHT
WHISTLEBLOWERS & RESEARCH,
601 King St., Suite 200
Alexandria, VA 22313

Plaintiff,

v.

U.S. SECURITIES AND EXCHANGE
COMMISSION,
100 F St., NE
Washington, DC 20549

Defendant.

Civil Action No.: 23-1335

COMPLAINT

1. Plaintiff Empower Oversight Whistleblowers & Research (hereinafter, “Empower Oversight”) brings this action against Defendant U.S. Securities and Exchange Commission (“SEC”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. The records Empower Oversight seeks concern potential conflicts of interest by former high-level officials at the SEC relating to cryptocurrencies. In particular, the requested records will shine light on whether former SEC officials had conflicts of interest when declaring whether certain cryptocurrencies constitute securities, and thus are subject to SEC regulation.

3. For example, former-Simpson Thacher partner William Hinman worked as the Director of the SEC’s Division of Corporate Finance from May 2017 to

December 2020. *See William Hinman Named Director of Division of Corporation Finance*, SEC (May 9, 2017), <https://tinyurl.com/y4bkd8zy>. Hinman reportedly continued to receive millions of dollars from Simpson Thacher while working at the SEC. *See, e.g.,* Jack Newsham, *A top SEC official was receiving a \$1.6 million law-firm pension from Simpson Thacher that was 7 times his government salary*, BUS. INSIDER (Jan. 29, 2021), <https://tinyurl.com/yaak4f4p>.

4. While Mr. Hinman was working at the SEC,¹ Simpson Thacher was a member of the Enterprise Ethereum Alliance, an industry organization aiming to “drive the use of Enterprise Ethereum.” *About*, ENTER. ETHEREUM ALL., <https://tinyurl.com/fbnc9py2>. In a June 2018 speech in his official capacity as an SEC official, Mr. Hinman declared that the Ethereum cryptocurrency, Ether, was not a security. *See* Speech, *Digital Asset Transactions: When Howey Met Gary (Plastic)*, SEC (June 14, 2018), <https://tinyurl.com/yp7ucdff>. After his declaration, Ether’s value rose significantly. *See* Paul Vigna, *Crypto Market Rallies on SEC Official’s Ether Stance*, WALL ST. J. (June 14, 2018), <https://tinyurl.com/2s3zuzbc>. After departing the SEC in late 2020, Hinman rejoined Simpson Thacher as a partner. *See Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher*, SIMPSON THACHER & BARTLETT LLP (Jan. 12, 2021), <https://tinyurl.com/mp2fe6se>.

¹ Mr. Huber (@Leerzeit), TWITTER (Jul. 26, 2022, 9:23 AM), <https://twitter.com/Leerzeit/status/1551936271068561409/photo/1> (last visited May 2, 2023) (“BOMBSHELL! ☠️ Simpson Thacher left the Enterprise Ethereum Alliance sometime between May 2022 and today and is now no longer a member of the EEA!”).

5. That same month, the SEC filed a lawsuit against one of Ethereum's rivals, Ripple, alleging that its XRP cryptocurrency was a security, such that the offering and sales of XRP violated federal securities law. Press Release, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering*, SEC (Dec. 22, 2020), <https://tinyurl.com/yw95vk99>. The value of XRP fell 25% immediately after the SEC's announcement of the lawsuit. See Bilal Jafar, *XRP Plummets 25% after SEC's \$1.3 Billion Lawsuit against Ripple*, FINANCE MAGNATES (Dec. 23, 2020), <https://tinyurl.com/4tfvudjb>. Shortly after filing the lawsuit, the leader of the SEC Enforcement Division, Marc Berger, left the SEC and joined Hinman as a partner at Simpson Thacher. Matt Robinson, *Ex-Acting Head of SEC Enforcement Will Join Simpson Thacher*, BLOOMBERG LAW (Apr. 15, 2021) <https://tinyurl.com/3ks2yjk8>.

6. As another example, former SEC Chairman Jay Clayton publicly stated while at the SEC that Bitcoin was not a security. Rakesh Sharma, *SEC Chair Says Bitcoin Is Not A Security*, INVESTOPEDIA (June 25, 2018), <https://tinyurl.com/8zh8er3v>. Thereafter, the value of Bitcoin significantly rose. Olga Kharif & Eric Lam, *Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500*, BLOOMBERG (July 17, 2018), <https://tinyurl.com/2hz2sbwv>. Shortly after leaving the SEC, Clayton joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether. Emily Graffeo, *Former SEC chair Jay Clayton will advise digital asset hedge fund One River on crypto*, MARKETS INSIDER (Mar. 29, 2021), <https://tinyurl.com/bdf39p8k>.

7. These events raise serious questions about potential conflicts of interest at the root of the government's regulation of the emerging cryptocurrency market. The public deserves to know whether the government's regulation is tainted by such conflicts. Accordingly, Empower Oversight filed the FOIA Requests described herein to obtain records that will inform the public about the existence of potential conflicts of interest.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Additionally, it may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.*

9. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff Empower Oversight is a nonprofit, nonpartisan educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. Empower Oversight works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, as well as work to hold authorities accountable to act on such reports. Empower Oversight has its principal place of business located in Alexandria, Virginia, and it submitted the FOIA Requests described herein to the SEC.

11. The SEC is an agency of the federal government within the meaning of 5 U.S.C. § 552(f), and it has possession and control of the records Empower Oversight seeks.

BACKGROUND

12. To better understand whether the SEC's recent actions toward the cryptocurrency market were affected by conflicts of interest, Empower Oversight submitted several FOIA requests to the SEC. At issue in this litigation are two such requests. First, on January 28, 2022, Empower Oversight submitted a FOIA request seeking the processing notes from the SEC's processing of an earlier FOIA request that Empower Oversight submitted. *See* Ex. A ("Processing Notes Request"). Second, on December 15, 2022, Empower Oversight submitted a FOIA request seeking various documents and communications regarding potential conflicts of interest related to the SEC's cryptocurrency enforcement decisions. *See* Ex. B ("Crypto Enforcement Request"). In both instances, the SEC failed to comply with its statutory obligations to locate and release all responsive, non-exempt records.

13. Each of these requests arises in part out of an earlier FOIA request Empower Oversight submitted to the SEC. That request is already the subject of a lawsuit in the Eastern District of Virginia. *See Empower Oversight v. SEC*, No. 23-cv-0095 (E.D. Va.). Specifically, on August 12, 2021, Empower Oversight submitted a FOIA request to the SEC seeking eight categories of records relating to potential conflicts of interest at the SEC. *See* Ex. C ("August 2021 Request"). In a series of letters dated August 13, 2021, the SEC acknowledged receipt of this request, and

assigned unique tracking numbers to each of the eight parts of the August 2021 Request.

14. On December 8, 2021, after receiving no further response from the SEC, Empower Oversight filed a complaint in the Eastern District of Virginia. *See* Compl., *Empower Oversight*, No. 23-cv-0095 (E.D. Va. Dec. 8, 2021) (ECF No. 1).

15. On December 10, 2021, the SEC issued a “no records” response to the first and second items in the August 2021 Request.

16. On December 21, 2021, the SEC issued a “no records” response to the seventh item in the August 2021 Request. That response was virtually identical to the SEC’s December 10 “no records” response.

17. On January 5, 2022, the SEC issued a “no records” response to the fifth item in the August 2021 Request. Once again, that response was virtually identical to the SEC’s December 10 “no records” response.

18. On January 19, 2022, Empower Oversight submitted an administrative appeal of these “no records” responses.

19. Shortly thereafter, on January 28, 2022, Empower Oversight participated in a call with SEC counsel and the Assistant United States Attorney responsible for the litigation in the Eastern District of Virginia, where the SEC informed Empower Oversight that it had identified errors in its searches. The SEC further explained that it had corrected those errors and located 1,000 pages of records thus far.

20. In that discussion, Empower Oversight requested information about the specific search terms the SEC used to identify communications with Simpson Thacher, Enterprise Ethereum Alliance, and One River Asset Management—each of which was identified in the August 2021 Request.

21. In response, the SEC stated that it had only searched for emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com.

22. Empower Oversight pointed out to the SEC that the August 2021 Request extended beyond emails to include calendars and notes, and also beyond emails from those specific domain names to include individuals associated with each of the identified entities.

23. After the SEC refused to conduct any such searches, stating that it could not know the names of personnel from those entities, the SEC asked Empower Oversight for a list of names to use when conducting searches, which Empower Oversight provided on February 18, 2022.

24. Yet, despite having solicited the names from Empower Oversight, the SEC then refused to search for the names, suggesting that the scope of Empower Oversight's August 2021 Request did not encompass searches for those names.

25. As the SEC's about-face raised serious questions about whether it was acting in good faith when conferring with Empower Oversight about the August 2021 Request, Empower Oversight submitted two new FOIA requests to address these issues, and to finally uncover the requested records reflecting potential conflicts of interest at the SEC.

A. Processing Notes Request

26. On January 28, 2022, Empower Oversight submitted the Processing Notes Request to the SEC. *See* Ex. A. This Request sought the SEC’s FOIA processing notes for each part of the August 2021 Request where the SEC issued a “no records” response. *See id.* at 3. This Request had a total of three subparts, and it also requested a fee waiver because Empower Oversight qualifies as a member of the news media, and because the requested records are in the public interest. *See id.* at 3, 5.

27. As Empower Oversight explained, “processing notes” means “all records created by the SEC’s FOIA Research Specialists and other personnel that reflect[] the record systems and information platform that were searched, and the search terms used, to respond to” the August 2021 Request. *Id.*

28. On January 31, 2022, the SEC issued three separate acknowledgements of receipt of the Processing Notes Request, assigning separate tracking numbers for each subpart of the Request—No. 22-01118-FOIA; No. 22-01119-FOIA; No. 22-01120-FOIA. *See* Ex. D.

29. On February 1, 2022, the SEC issued its response to Empower Oversight’s fee waiver request, stating that the request was “moot because as a ‘Media-Use’ requester you are not charged for search and review time[.]” Ex. E at 1. Additionally, because the SEC would provide the records electronically, there would be no duplication charges. *See id.*

30. On February 17, 2022, the SEC sent Empower Oversight a letter stating that it would be unable to comply with FOIA's twenty-day response deadline because of unusual circumstances. *See* Ex. F.

31. On May 20, 2022, the SEC issued a partial response to the Processing Notes Request, releasing 233 pages of records with portions withheld pursuant to FOIA Exemptions 5 and 6. *See* Ex. G at 1–2. In that response, the SEC also informed Empower Oversight that it may submit an administrative appeal challenging this response. *See id.* at 2.

32. Thus, on August 15, 2022, Empower Oversight submitted an administrative appeal of the SEC's May 20, 2022 response. *See* Ex. H. Through that appeal, Empower Oversight demonstrated that the SEC had, once again, failed to conduct a search reasonably calculated to locate responsive records. *See id.* at 3.

33. On August 15, 2022, the SEC issued a letter acknowledging receipt of the appeal and assigning its tracking number 22-00516-APPS. *See* Ex. I.

34. On September 9, 2022, the SEC issued its decision on Empower Oversight's appeal, stating that “[o]n its face, it appears that the search methods used to search for responsive records were appropriate.” Ex. J. at 2. But, the SEC conceded, Empower Oversight had “identified records that indicated other responsive records exist.” *Id.* Thus, the Processing Notes Request was sent back to “the FOIA Office” for it to “complete[] [its] production of documents.” *Id.* In that response, the SEC also informed Empower Oversight of its right to challenge this decision by filing a complaint in this Court. *See id.*

35. In the nearly eight months since, Empower Oversight has not received any further communications or records from the SEC in response to the Processing Notes Request.

36. By failing to respond to this Request, the SEC is depriving Empower Oversight and the public of vital information needed to assess whether the SEC's recent actions regarding the cryptocurrency market were affected by conflicts of interest.

B. Crypto Enforcement Request

37. On December 15, 2022, Empower Oversight submitted a FOIA request to the SEC seeking various records regarding potential conflicts of interest related to the SEC's cryptocurrency enforcement decisions. *See* Ex. B.

38. In particular, this Request sought all records of communications between SEC officials and the various individuals Empower Oversight had previously identified for the SEC when discussing the August 2021 Request. As the SEC refused to search for communications involving those individuals, Empower Oversight was forced to submit a new request that expressly identified these individuals and requested their communications with SEC officials.

39. On December 19, 2022, the SEC issued three letters acknowledging receipt of the Crypto Enforcement Request and assigning separate tracking numbers to each subpart of the request—No. 23-00588-FOIA; No. 23-00589-FOIA; 23-00590-FOIA. *See* Ex. K.

40. On December 21, 2022, the SEC sent Empower Oversight a letter stating that it would be unable to comply with FOIA's twenty-day response deadline because of unusual circumstances. *See* Ex. L.

41. Since then, Empower Oversight has not received any further communications or records from the SEC in response to the Crypto Enforcement Request.

42. By failing to respond to this Request, the SEC is depriving Empower Oversight and the public of vital information needed to assess whether the SEC's recent actions regarding the cryptocurrency market were affected by conflicts of interest.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Processing Notes Request

43. Plaintiff repeats the foregoing paragraphs as if set forth fully herein.

44. The SEC is an agency of the federal government within the meaning of 5 U.S.C. § 552(f).

45. By letter dated January 28, 2022, Empower Oversight submitted the Processing Notes Request to the SEC.

46. This Request reasonably described all requested records and complied with all applicable statutes and regulations.

47. The SEC has failed to respond to that Request by conducting a search reasonably calculated to locate responsive records, as FOIA requires. *See Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

48. And the requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b).

49. The SEC has also failed to respond to Empower Oversight's request within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

50. Accordingly, Empower Oversight has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

51. By failing to release all responsive, non-exempt records, the SEC has violated FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Crypto Enforcement Request

52. Plaintiff repeats the foregoing paragraphs as if set forth fully herein.

53. The SEC is an agency of the federal government within the meaning of 5 U.S.C. § 552(f).

54. By letter dated December 15, 2022, Empower Oversight submitted the Crypto Enforcement Request to the SEC.

55. This Request reasonably described all requested records and complied with all applicable statutes and regulations.

56. The SEC has failed to respond to that Request by conducting a search reasonably calculated to locate responsive records, as FOIA requires. *See Weisberg*, 705 F.2d at 1351.

57. The requested records are not exempt from FOIA pursuant to 5 U.S.C. § 552(b).

58. The SEC has failed to respond to Empower Oversight's request within the statutory time period. *See* 5 U.S.C. § 552(a)(6).

59. Accordingly, Empower Oversight has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C).

60. By failing to release all responsive, non-exempt records, the SEC has violated FOIA. *See* 5 U.S.C. § 552(a)(3)(A).

PRAYER FOR RELIEF

WHEREFORE, Empower Oversight respectfully requests that this Court:

- i. Declare that the records sought by the Requests, as described in the foregoing paragraphs, must be disclosed pursuant to 5 U.S.C. § 552.
- ii. Order the SEC to conduct legally sufficient searches immediately for all records responsive to Empower Oversight's FOIA Requests and demonstrate that the search methods were reasonably likely to lead to the discovery of responsive records.
- iii. Order the SEC to produce by a date certain all non-exempt records responsive to Empower Oversight's FOIA Requests.
- iv. Award Empower Oversight attorneys' fees and costs incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E).
- v. Grant Empower Oversight such other and further relief as this Court deems proper.

May 11, 2023

Respectfully submitted,

/s/ Brian J. Field

BRIAN J. FIELD

D.C. Bar No. 985577

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Counsel for Plaintiff

Exhibit A

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission

EMPOWER OVERSIGHT

Whistleblowers & Research



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/>.

Exhibit B

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission

EMPOWER OVERSIGHT

Whistleblowers & Research



December 15, 2022

VIA ELECTRONIC TRANSMISSION: FOIAPA@SEC.GOV

Olivier Girod, Chief FOIA/PA Officer
Office of FOIA Services
100 F Street, N.E.
Washington, DC 20549-2465

RE: Request for Records Regarding Potential Conflicts of Interest Related to the SEC's Cryptocurrency Enforcement Decisions

Dear Chief 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 ("SEC") a Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, request seeking eight categories of records relating to potential conflicts of interest of former high-level SEC officials in the context of the SEC's emerging regulatory approach to cryptocurrencies. 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 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](mailto: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](mailto: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](mailto: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.*, 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 8, 2021—having received from the SEC no further response to its August 12th FOIA request—Empower Oversight filed, in the United States District Court for the Eastern District of Virginia (“E.D.Va.”), a complaint for declaratory and injunctive relief to compel the SEC’s compliance with its FOIA request.¹ Empower Oversight’s complaint alleges that the SEC failed to comply with the FOIA’s statutory deadlines and that it unlawfully withheld agency records. Empower Oversight seeks, among other things, an order requiring the SEC promptly to disclose all responsive, non-exempt records, an award of costs and reasonable attorney’s fees, and other such relief as the Court deems just and proper.

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 had designated as Request Numbers 21-02531-FOIA and 21-02532-FOIA. The operative text of FOIA Research Specialist Hansen’s letter states:

¹ Empower Oversight’s complaint is docketed as Case Number 1:21-cv-01370.

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 had 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 had 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.

On January 19, 2022, Empower Oversight administratively appealed the SEC's "no records" responses to FOIA Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA. The gravamen of Empower Oversight's appeal was that, based upon the circumstances, it was unable to determine whether the SEC's FOIA Research Specialists performed searches that were reasonably calculated to uncover all relevant documents, and Empower Oversight was thus forced to appeal the SEC's December 10th and 21st and January 5th "no records" responses.

The Clarifying Conference Call

On January 28, 2022, Empower Oversight participated in a conference call with SEC officials and the Assistant United States Attorney ("AUSA") assigned to our lawsuit. During the call, SEC officials notified us of errors in their initial searches and that after correcting the errors, they had located approximately 1,000 pages of records responsive to Request Number 21-02531-FOIA. They indicated they were still working on Request Number 21-02532-FOIA. On the other hand, they maintained that the SEC's "no records" responses to Request Numbers 21-02535-FOIA and 21-02537-FOIA were accurate.

Empower Oversight asked about the actual search terms used to identify communications with personnel from Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management. The SEC explained that it had made no efforts to identify or search for personnel associated with those entities who may have communicated with the SEC. Instead, the SEC officials advised that the agency limited its searches to emails with the domain names @stblaw.com, @entethalliance.org, or @oneriveram.com.

"Including" Does Not Mean "Limited to"

Consistent with its assertions in its January 19th appeal, Empower Oversight pointed out that the scope of its requests extends beyond emails (*i.e.*, they also include calendars and notes) and beyond emails from the three aforementioned domain names (*i.e.*, they also include communications with all personnel of Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management, regardless of domain that they used for their emails). An SEC

official stridently disagreed with Empower Oversight's interpretation of its own FOIA request, arguing that by listing the domain names in the request, that Empower Oversight limited the scope of the requested documents to only emails from those domain names. Of course, this is entirely inconsistent with the plain meaning of "including" (*i.e.*, comprising, but not being limited to, the whole), as Empower Oversight explained on the call.²

SEC officials then pivoted and claimed that they had no way of knowing the names of personnel from those entities, and thus no way to search for them.³ They asked Empower Oversight to provide a list of names to guide additional searches, which Empower Oversight supplied on February 18, 2022.

Bad Faith and Misrepresentations about the List of Names

After having solicited a list of names from Empower Oversight to ensure that the searches were complete, the SEC then refused to conduct those searches. It then falsely claimed in litigation that the January 28th conversation was merely part of a settlement negotiations, rather than the normal process of communicating with FOIA requestors to clarify the scope of their requests. The SEC suggested that the court should ignore the SEC's refusal to use the list of names in searches, as opposed to viewing it for what it is: evidence that its search was intentionally and unreasonably narrow.

The scope of Empower Oversight's request has been clear from the beginning. It always sought all records of communications from any personnel associated with the listed entities, not merely emails from certain domain names. By agreeing to the SEC's request to provide a specific list of names, Empower Oversight offered a concession to limit the scope of the SEC's search to particular named people rather than all personnel from each entity. Empower Oversight was also trying to assist the SEC by providing specific search terms at its request. The SEC dismissed those good faith efforts at accommodation and wasted everyone's time and resources to litigate the issue rather than simply conducting searches on the names it had requested.

RECORDS REQUEST

Accordingly, although they are already sought by Empower Oversight's August 12, 2021 request, pursuant to the FOIA, Empower Oversight specifically requests:

1. All records relating to communications from May of 2017 through December of 2020 between William Hinman and William Allen, David Azarkh, Richard Beattie, Martin Bell, Thomas Bell, Stephen Blake, Stephen Cutler, William Dougherty or Chris Lin, including calendar entries, notes, or emails;
2. All records relating to communications from May of 2017 through December of 2020 between Mr. Hinman and Marc Andreessen, Darren Azman, Alfred Browne, Brad Burnham, Vitalik Buterin, John Buttrick, Luke Cadigan, Derek Colla, Matt Corva, Chris Dixon, Joseph Evans, Patrick Gibbs, Nick Grossman, J. Dax Hansen, Ben Horowitz, Rick Howell, Jong in Jun, Rebecca Kaden, Jonathan Kim, Stephane Leavy, Joseph Lubin, Jeremy Millar, Aya Miyaguchi, Wendy Moore, Michael Morgan, Steve Nerayoff, Lowell Ness, Mike Novogratz,

² Use of the word "including" is not meant to convey a limitation. See, *In re Zick*, 931 F.2d 1124, 1126 (6th Cir. 1991). "It is hornbook law that the use of the word 'including' indicates that the specified list of carriers that follows is illustrative, not exclusive." *Puerto Rico Maritime Shipping Authority v. ICC*, 645 F.2d 1102, 1112 n.26 (D.C. Cir. 1981).

³ At least with respect to Simpson Thacher and One River Asset Management, the names of such persons easily can be accessed using open-source information available online. See, *e.g.*, www.stblaw.com, and www.oneriveram.com.

Carlos Ortiz, Alexandra Scheibe, Katharine Suominen, Andy Weissman, Albert Wenger, Fred Wilson, or Nancy Wotjas, including calendar entries, notes or emails;

3. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and William Allen, David Azarkh, Richard Beattie, Martin Bell, Thomas Bell, Stephen Blake, Stephen Cutler, William Dougherty, or Chris Lin, including calendar entries, notes or emails;
4. All records relating to communications from May of 2017 through January of 2021 between Mr. Berger and Marc Andreessen, Darren Azman, Alfred Browne, Brad Burnham, Vitalik Buterin, John Buttrick, Luke Cadigan, Derek Colla, Matt Corva, Chris Dixon, Joseph Evans, Patrick Gibbs, Nick Grossman, J. Dax Hansen, Ben Horowitz, Rick Howell, Jong in Jun, Rebecca Kaden, Jonathan Kim, Stephane Leavy, Joseph Lubin, Jeremy Millar, Aya Miyaguchi, Wendy Moore, Michael Morgan, Steve Nerayoff, Lowell Ness, Mike Novogratz, Carlos Ortiz, Alexandra Scheibe, Katharine Suominen, Andy Weissman, Albert Wenger, Fred Wilson, or Nancy Wotjas, including calendar entries, notes or emails; and
5. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and Sebastian Pedro Bea, Tutting Chen, Qin Chen, Joseph Chung, Jason Cummins, Paul Ebner, Courtney Simmons Elwood, Nathan Faber, Harold Ford Jr., Ian Gardiner, Kevin Hassett, Marcel Kasumovich, Patrick Kazley, Chris Lawn, Matt Lundy, Edward Major, Ian Malloch, Shaun Martiniak, Chase Muller, Ryan McRandal, John Orszag, Eric Peters, Lindsay Politi, Stephen Pranja, Hardin Ramani, Will Wallin, or Doug Wilson, including calendar entries, notes or emails.

DEFINITIONS

“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.

“INCLUDING” means comprising part of, but not being limited to, the whole.

INSTRUCTIONS

The time period of the requested records is May 1, 2017, through December 31, 2020.

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 the SEC has classified it as a “representative of the news media”⁴ 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’s understanding of the SEC’s emerging regulation of cryptocurrencies and whether any private financial interests have improperly influenced its decision-making.

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.

⁴ 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/>.

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

Exhibit C

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission

EMPOWER OVERSIGHT

Whistleblowers & Research



August 12, 2021

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: FREEDOM OF INFORMATION ACT REQUEST

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 those reports by, among other means, publishing information to inform the public.

Background

We write today seeking information regarding the appearance of conflicts of interest by former high-level officials at the SEC relating to cryptocurrencies. It is in the public’s interest that the government’s emerging regulatory approach to cryptocurrencies is based on objective legal principles, without the appearance that conflicted SEC officials may be picking cryptocurrency winners and losers based on personal financial interests. The way in which these former SEC officials declared whether particular cryptocurrencies were securities—and thus subject to SEC regulation—raises public integrity concerns.

As publicly reported, Mr. William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December of 2020, having previously been a partner at the law firm Simpson Thacher.¹ Mr. Hinman reportedly continued to receive millions of dollars from Simpson Thacher while employed at the

¹ “William Hinman Named Director of Division of Corporation Finance,” SEC ([May 9, 2017](#)).

SEC.² Notably, Simpson Thacher is a member of the Enterprise Ethereum Alliance, an “industry organization whose objective is to drive the use of Enterprise Ethereum.”³ In a June 2018 speech in his official capacity as an SEC official, Mr. Hinman declared that the Ethereum cryptocurrency, Ether, was not a security, stating that “based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions.”⁴ After his declaration, Ether’s value then rose significantly.⁵ When Mr. Hinman departed the SEC in December of 2020, he rejoined Simpson Thacher as a partner.⁶

That same month, the SEC filed a lawsuit against one of Ethereum’s rivals, Ripple, alleging that its XRP cryptocurrency was a security, such that the company’s offering and sales of XRP had been in violation of federal securities laws.⁷ The value of XRP fell 25% immediately after the announcement of the SEC lawsuit.⁸ Of note, the leader of the SEC’s Enforcement Division that brought the suit, Marc Berger, then left the SEC shortly thereafter, joining Mr. Hinman as a partner at Simpson Thacher.⁹

Additionally, there are potential concerns regarding former SEC Chairman Jay Clayton. As with Mr. Hinman and Ether, while at the SEC, Mr. Clayton publicly stated that Bitcoin was not a security,¹⁰ and the value of Bitcoin rose.¹¹ The SEC’s lawsuit against Ripple was filed at the end of Mr. Clayton’s tenure there. Shortly after he left, he reportedly joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether—not XRP.¹²

The SEC’s handling of cryptocurrency issues is of significant public importance, and these appearances of conflicts of interest raise substantial issues. Transparency from the SEC is the only way to ensure accountability to the public. In light of this, we are filing this FOIA request to seek the facts.

Records Request

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

² “A top SEC official was receiving a \$1.6 million law-firm pension from Simpson Thacher that was 7 times his government salary,” *Business Insider* ([Jan 29, 2021](#)).

³ Enterprise Ethereum Alliance (<https://entethalliance.org/about/>).

⁴ “Digital Asset Transactions: When Howey Met Gary (Plastic),” William Hinman ([Jun 4, 2018](#)).

⁵ “Crypto Market Rallies on SEC’s Official’s Ether Stance,” *Wall Street Journal* ([Jun 14, 2018](#)).

⁶ “Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher,” Simpson Thacher & Bartlett LLP ([Jan 12, 2021](#)).

⁷ “SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering,” SEC ([Dec 22, 2020](#)).

⁸ “XRP Plummets 25% after SEC’s \$1.3 Billion Lawsuit against Ripple,” *Finance Magnates* ([Dec 23, 2020](#)).

⁹ “Marc P. Berger, Former Acting Director of the SEC’s Enforcement Division, to Join Simpson Thacher,” Simpson Thacher & Bartlett LLP ([Apr 15, 201](#)).

¹⁰ “SEC chairman: Cryptocurrencies like bitcoin are not securities,” *CNBC* ([Jun 6, 2018](#)).

¹¹ “Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500,” *Bloomberg* ([Jul 17, 2018](#)).

¹² “Former SEC chair Jay Clayton will advise digital asset hedge fund One River on crypto,” *Markets Insider* ([Mar 29, 2021](#)).

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 William Hinman and any personnel from the Enterprise Ethereum 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 Marc 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”;
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.

Definitions

“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, 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,” 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 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 Freedom of Information Act request.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but 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, and has no commercial interest in making this request. Accordingly, pursuant to 5 U.S.C. § 552 (a)(4)(A)(ii)(II), it is subject only to “reasonable standard charges for document duplication.”

Moreover, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government.

The public has a significant interest in understanding (1) the facts and circumstances surrounding senior SEC officials past and future private sector employment, (2) whether any such relationships presented potential conflicts or public integrity concerns related to their official actions at the SEC, and (3) whether, how, and to what extent the SEC and its ethics officials properly mitigated any such issues.

Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination. Hence, information it receives that either confirms or dispels the public integrity concerns described above will be published to empower Americans to accurately assess the proper level of public confidence they should have in the integrity of the SEC—making this request undeniably eligible for a waiver or reduction of fees under 5 U.S.C. § 552 (a)(4)(A)(iii)

Thank you for your prompt attention to this matter.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

Exhibit D

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01118-FOIA (1 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Numbers 21-02531-FOIA and 21-02532-FOIA.**

Your request has been assigned tracking number 22-01118-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster
Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01119-FOIA (2 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Number 21-02537-FOIA.**

Your request has been assigned tracking number 22-01119-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster
Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01120-FOIA (3 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Number 21-02535-FOIA.**

Your request has been assigned tracking number 22-01120-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services

Exhibit E

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

February 1, 2022

Mr. Jason Foster
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **22-01118-FOIA - 22-01120-FOIA**

Dear Mr. Foster:

This letter is in reference to your requests, dated January 28, 2022 and received in this office on January 31, 2022, for three subjects as shown below. Please note each subject was assigned a FOIA tracking number.

Request No.	Subject
22-01118-FOIA	1. All processing notes relating to Request Number 21-02531-FOIA and 21-02532-FOIA
22-01119-FOIA	2. All processing notes relating to Request Number 21-02535-FOIA.
22-01120-FOIA	3. All processing notes relating to Request Number 21-02537-FOIA.

You asked for a waiver of processing fees. After reviewing your requests, we have determined that your fee waiver request is moot because as a "Media-Use" requester you are not charged for search and review time, and are entitled to receive the first 100 pages of duplication free of charge. After that point duplication costs are assessed in accordance with our [fee schedule](#). However, because any records we release would be provided electronically there will be no duplication charges.

We are consulting with other SEC staff regarding your requests. As soon as we complete our consultation, we will notify you of our findings.

Mr. Jason Foster
February 1, 2022
Page Two

22-01118-FOIA thru 22-01120-FOIA

If you have any questions, please contact Frank Mandic of my staff at mandicf@sec.gov. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Katilius". The signature is fluid and cursive, with a large initial "L" and a stylized "K".

Lizzette Katilius
FOIA Branch Chief

Enclosure

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Exhibit F

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

February 17, 2022

Mr. Jason Foster
Empower Oversight
601 King Street
Suite 200
Alexandria, VA 22314-3151

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. 22-01118-FOIA - 22-01120-FOIA

Dear Mr. Foster:

This letter is in reference to your requests, dated January 28, 2022 and received in this office on January 31, 2022, for the three subjects shown below. Please note each subject was assigned a FOIA tracking number.

Request No.	Subject
22-01118-FOIA	1. All processing notes relating to Request Number 21-02531-FOIA and 21-02532-FOIA
22-01119-FOIA	2. All processing notes relating to Request Number 21-02535-FOIA.
22-01120-FOIA	3. All processing notes relating to Request Number 21-02537-FOIA.

We will be unable to respond to your request within the Freedom of Information Act's twenty day statutory time period, as there are unusual circumstances which impact on our ability to quickly process your request. Therefore, we are invoking the 10 day extension. These unusual circumstances are: (a) the need to search for and collect records from an organization geographically separated from this office; (b) the potential volume of records responsive to your request; and (c) the need for consultation with one or more other offices having a substantial interest in either the determination or the subject matter of the records. For these reasons, we will process your case consistent with the order in which we received your request.

Mr. Jason Foster
February 17, 2022
Page 2

22-01118-FOIA
through
22-01120-FOIA

As soon as we complete processing the requests we will notify you of our findings.

In the interim, if you have any questions, please contact me at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Hansen", with a long horizontal flourish extending to the right.

Joel Hansen
FOIA Research Specialist

Enclosure

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Exhibit G

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

May 20, 2022

Mr. Jason Foster
Empower Oversight
601 King Street
Suite 200
Arlington, VA 22314

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **22-01118-FOIA, 22-01119-FOIA and
22-01120-FOIA**

Dear Mr. Foster:

This letter partially responds to your requests, dated January 28, 2022 and received in this office on January 31, 2022, for the three subjects shown below. Please note each subject was assigned a separate FOIA tracking number. Reference is also made to our letter dated February 1, 2022, in which we addressed your request for a fee waiver.

Request No.	Subject
22-01118-FOIA	All processing notes relating to Request Numbers 21-02531-FOIA and 21-02532-FOIA.
22-01119-FOIA	All processing notes relating to Request Number 21-02537-FOIA.
22-01120-FOIA	All processing notes relating to Request Number 21-02535-FOIA.

This letter partially responds to all three FOIA requests.¹

¹ Records responsive to each of these three FOIA requests are often duplicative. Therefore, FOIA request numbers 22-01119-FOIA and 22-01120-FOIA will be administratively closed and all records will be processed under FOIA request number 21-01118-FOIA.

Mr. Jason Foster
May 20, 2022
Page 2

22-01118-FOIA,
22-01119-FOIA and
22-01120-FOIA

Given the amount of time it takes to review the potentially responsive records, we will be issuing rolling responses as we complete our review of the records. Enclosed are 233 pages of records that are being provided to you, with the exception of certain information that is being withheld under 5 U.S.C. § 552(b)(5) and/or (b)(6), for the following reasons:

- Exemption 5 protects information that was prepared in anticipation of litigation, forms an integral part of the pre-decisional process, and/or contains advice given to the Commission or senior staff by the Commission's attorneys. This material is protected from release by the attorney work-product, deliberative process and/or attorney-client privileges embodied in Exemption 5. Under this exemption portions of email exchanges between SEC staff have been withheld.
- Exemption 6 protects from disclosure information that, if released, would constitute a clearly unwarranted invasion of personal privacy. Under this exemption email addresses and telephone numbers of SEC staff have been withheld.

Please be advised that we have considered the foreseeable harm standard in preparing this response.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

Mr. Jason Foster
May 20, 2022
Page 3

22-01118-FOIA,
22-01119-FOIA and
22-01120-FOIA

This concludes this portion of our response. In the interim, if you have any questions, please contact Joel Hansen of my staff at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L Katilius". The signature is fluid and cursive, with the first letter "L" being large and prominent.

Lizzette Katilius
FOIA Branch Chief

Enclosures

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Exhibit H

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission

EMPOWER OVERSIGHT

Whistleblowers & Research



August 15, 2022

Via Electronic Transmission: FOIAPA@SEC.GOV

Office of FOIA Services
Securities and Exchange Commission
100 F Street, N.E.,
Mail Stop 2465
Washington, DC 20549

RE: Freedom of Information Act Appeal
SEC FOIA Request Numbers: 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA

Dear General Counsel Coates:

Introduction

With respect to the Securities and Exchange Commission's ("SEC") Freedom of Information Act ("FOIA")¹ request numbers 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA, Empower Oversight Whistleblowers & Research ("Empower Oversight")² appeals the SEC's initial determination. Based upon an analysis of the records produced, it appears that the SEC did not conduct a search that was reasonably calculated to lead to the discovery of all responsive records.

Accordingly, Empower Oversight respectfully requests that the SEC review the nature and scope of the SEC FOIA Research Specialist's records search and correct any deficiencies that are identified.

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

² Empower Oversight is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help 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.

Background

On August 12, 2021, Empower Oversight submitted to the SEC a FOIA request seeking eight categories of records relating to potential conflicts of interest of former high-level SEC officials.

On August 13, 2021, the SEC—via eight separate letters corresponding to each of the eight categories of records included in Empower Oversight’s FOIA request—acknowledged receipt of Empower Oversight’s request and assigned unique tracking numbers to each of the eight categories of records (*i.e.*, FOIA request numbers 21-02531-FOIA through 21-02538-FOIA, respectively).

On January 28, 2022, Empower Oversight submitted to the SEC a FOIA request seeking three categories of records relating to the SEC’s processing of four categories of records included in Empower Oversight’s August 12th FOIA request.³ Specifically, Empower Oversight sought “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.

Empower Oversight’s January 28th FOIA request defined “processing records” as “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.”

On January 31, 2022, the SEC—via three separate letters corresponding to each of the three categories of records included in Empower Oversight’s January 28th FOIA request—acknowledged receipt of Empower Oversight’s request and assigned unique tracking numbers to each of the three categories of records (*i.e.*, FOIA request numbers 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA, respectively).⁴

On May 20, 2022, the SEC—via a single letter—“partially respond[ed]” to FOIA request numbers 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA.⁵ In its response, the SEC states that it has enclosed 233 pages of records with redactions pursuant to FOIA Exemptions

³ A copy of Empower Oversight’s January 28th FOIA request is attached as Exhibit 1.

⁴ Copies of the SEC’s January 31st acknowledgment letters are collectively attached as Exhibit 2.

⁵ A copy of the SEC’s May 20th “partial response” is attached as Exhibit 3.

In its May 20th correspondence, the SEC does not advise why it describes its response as “partial,” but—without defining the volume of responsive records that it has located and is considering—states that it “will be issuing rolling responses as we complete our review of the records.” Nor does it advise whether and, if so, when Empower Oversight can expect to receive the remainder of the SEC’s response to FOIA request numbers 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA.

b(5) and b(6), and apprises Empower Oversight when and where to file any administrative appeals that it deems appropriate.

ANALYSIS

The record herein appears to show that the SEC significantly erred in its search for records responsive to Empower Oversight's January 28th FOIA request. In that regard, circumstances and the records produced by the SEC tend to reveal the existence other responsive records (*e.g.*, taskings for divisions/offices other than the SEC's Office of Information Technology ("OIT"); taskings to search records systems other than Outlook; an internal approval within OIT to carry out the tasking on FOIA request number 21-02532-FOIA; a response to the SEC's FOIA Office ("FO") from OIT or its contractor, E-Discovery Services, concerning its tasking on FOIA request number 21-02532-FOIA; and a final response from OIT to repeated requests from FO—over the course of at least four months—to the simple question whether it searched for both emails and calendars with respect to FOIA request numbers 21-02535-FOIA and 21-02537-FOIA).

The legal standard governing the search for records responsive to FOIA requests requires an agency to conduct a search that is "reasonably calculated to uncover all relevant documents."⁶ Such calculation involves both an understanding of the nature and scope of the FOIA request and knowledge of where information may be stored within an agency. In the former regard, courts have found searches to be sufficient when they are based on a reasonable interpretation of the scope of the subject matter of the request.⁷

Courts tend to afford agencies a fair amount of leeway when determining the locations to search for responsive records, on the grounds that an agency generally "is not obliged to look beyond the four corners of [a FOIA] request for leads to the location of responsive" records.⁸ On the other hand, an agency "cannot in good faith ignore . . . a lead that is both clear and certain."⁹ For example, an agency cannot ignore a responsive document that "clearly indicates the existence of [other] relevant documents."¹⁰

The SEC produced numerous documents that clearly indicate the existence of other records that it did not produce. In that regard, the SEC produced tasking emails from FO to OIT relating to FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA.¹¹ It seems unlikely that OIT is the only division or office of the SEC that would have records responsive to FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, which seek communications from the former Chairman of the SEC,

⁶ Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

⁷ Larson v. Dep't of State, 565 F.3d 857, 869 (D.C. Cir. 2009) (affirming the adequacy of a search based on the agency's reasonable determination regarding records being requested).

⁸ Kowalczyk v. DOJ, 73 F.3d 386, 389 (D.C. Cir. 1996).

⁹ Kowalczyk, 73 F.3d at 389.

¹⁰ Center for National Security Studies v. DOJ, 215 F. Supp. 2d 94, 110 (D.D.C. 2002) (holding that discovery of a document that "clearly indicates the existence of [other] relevant documents" creates an "obligation" for agency to further search for those additional documents), *aff'd in part, rev'd in part & remanded on other grounds*, 331 F.3d 918 (D.C. Cir. 2003); Tarullo v. DOD, 170 F. Supp. 2d 271, 275 (D. Conn. 2001) (declaring agency's search inadequate because "[w]hile hypothetical assertions as to the existence of unproduced responsive documents are insufficient to create a dispute of material fact as to the reasonableness of the search, plaintiff here has [himself provided copy of agency record] which appears to be responsive to the request"); Kronberg v. DOJ, 875 F. Supp. 861, 870 – 871 (D.D.C. 1995) (holding that search was inadequate when agency did not find records required to be maintained and plaintiff produced documents obtained by other FOIA requesters demonstrating that agency possessed files which may contain records sought).

¹¹ See, pages 1 – 13 of the 233 pages produced by the SEC with its May 20th response.

the former Director of the SEC's Division of Corporate Finance, and the former Acting Director of the SEC's Division of Enforcement. Indeed, one would think that the offices/divisions that these gentlemen presided over would be likely repositories for their records. Yet, the SEC produced no emails from FO tasking divisions/offices other than OIT to search for records.

Additionally, the SEC produced OIT tasking emails for a "search of Outlook for email correspondence logs," relative to FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA.¹² But, FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA seek more than email; they seek all "records relating to communications"¹³ "including calendar entries, notes or emails." Even assuming that the SEC inappropriately adopted a narrow construction of Empower Oversight's August 12th FOIA requests as seeking only calendar entries, notes, and emails, a search of records systems in addition to Outlook would have been necessary to discover notes and desk calendars. Yet, the SEC produced no taskings to search records systems other than Outlook.

Additionally, with respect to OIT's taskings to search Outlook, the SEC produced OIT email threads wherein Martha Mitchell requested authority to conduct the searches that FO tasked (*i.e.*, FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA), and Elizabeth McFadden approved her requests for FOIA request numbers 21-02531-FOIA, 21-02535-FOIA, and 21-02537-FOIA.¹⁴ Similarly, the SEC produced emails from its contractor, E-Discovery Services, advising that the requested Outlook searches had been completed with respect to FOIA request numbers 21-02531-FOIA, 21-02535-FOIA, and 21-02537-FOIA.¹⁵ The SEC issued a "no records" response to FOIA request number 21-02532-FOIA on December 10, 2021, but it produced no document from Ms. McFadden responding to Ms. Mitchell's request to search Outlook for responsive correspondence logs related to FOIA request number 21-02532-FOIA, nor did it produce an email from E-Discovery Services, advising that an Outlook search related to FOIA request number 21-02532-FOIA had been performed. Given that the SEC issued a no records response to FOIA request number 21-02532-FOIA, related emails from Ms. McFadden and E-Discovery Services should have been produced.

Additionally, the SEC produced a long email thread—spanning September through December of 2021 and involving FO, OIT, and E-Discovery Services—wherein FO sought clarification that no responsive emails had been located during OIT's search of Outlook in connection with FOIA request numbers 21-02535-FOIA and 21-02537-FOIA.¹⁶ The SEC issued a "no records" response to FOIA request numbers 21-02535-FOIA and 21-02537-FOIA on January 5, 2022, and December 21, 2021, respectively. The email thread that the SEC produced, however, concludes on December 15, 2021, without FO getting the clarifying response that it sought. Given that the SEC issued a no records response to FOIA request numbers 21-02535-FOIA and 21-02537-FOIA, clarifying responses that FO sought from OIT should have been produced.

¹² See, pages 30 – 49 of the 233 pages produced by the SEC with its May 20th response.

¹³ Empower Oversight defined "communications" as:

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, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

¹⁴ See, pages 14 – 29 of the 233 pages produced by the SEC with its May 20th response.

¹⁵ See, pages 50 – 71 of the 233 pages produced by the SEC with its May 20th response.

¹⁶ See, pages 72 – 85, 93 – 122, 139 – 213, 222 – 227, and 231 – 233 of the 233 pages produced by the SEC with its May 20th response.

Similarly and finally, the SEC produced a December 7, 2021, email between an FO staffer and the FO chief, which relates to FOIA request numbers 21-02531-FOIA, 21-02532-FOIA, and 21-02534-FOIA, that includes “Joel [Hansen] went back to confirm there were no hits on the search terms for the email search.”¹⁷ The SEC produced no such inquiry from Mr. Hansen.

This evidence that the SEC produced numerous documents that clearly indicate the existence of other records that it did not produce does not inspire confidence that the SEC has satisfied its search responsibilities under the FOIA, *i.e.*, that it has conducted a search that is reasonably calculated to lead to the discovery of all responsive records. Hence, Empower Oversight respectfully requests that the SEC review the work of its FOIA staff, ascertain the nature and scope of their search plan, determine whether such plan was appropriate and followed, and correct any errors that are discovered.

Thank you for your time and consideration. Please don’t hesitate to contact me with any questions.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President

¹⁷ See, page 221 of the 233 pages produced by the SEC with its May 20th response.

Exhibit 1

EMPOWER OVERSIGHT

Whistleblowers & Research



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/>.

Exhibit 2



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01118-FOIA (1 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Numbers 21-02531-FOIA and 21-02532-FOIA.**

Your request has been assigned tracking number 22-01118-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster
Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01119-FOIA (2 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Number 21-02537-FOIA.**

Your request has been assigned tracking number 22-01119-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

January 31, 2022

Mr. Jason Foster
Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **22-01120-FOIA (3 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated January 28, 2022, and received in this office on January 31, 2022, for records regarding **all processing notes relating to Request Number 21-02535-FOIA.**

Your request has been assigned tracking number 22-01120-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services

Exhibit 3



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

May 20, 2022

Mr. Jason Foster
Empower Oversight
601 King Street
Suite 200
Arlington, VA 22314

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **22-01118-FOIA, 22-01119-FOIA and
22-01120-FOIA**

Dear Mr. Foster:

This letter partially responds to your requests, dated January 28, 2022 and received in this office on January 31, 2022, for the three subjects shown below. Please note each subject was assigned a separate FOIA tracking number. Reference is also made to our letter dated February 1, 2022, in which we addressed your request for a fee waiver.

Request No.	Subject
22-01118-FOIA	All processing notes relating to Request Numbers 21-02531-FOIA and 21-02532-FOIA.
22-01119-FOIA	All processing notes relating to Request Number 21-02537-FOIA.
22-01120-FOIA	All processing notes relating to Request Number 21-02535-FOIA.

This letter partially responds to all three FOIA requests.¹

¹ Records responsive to each of these three FOIA requests are often duplicative. Therefore, FOIA request numbers 22-01119-FOIA and 22-01120-FOIA will be administratively closed and all records will be processed under FOIA request number 21-01118-FOIA.

Mr. Jason Foster
May 20, 2022
Page 2

22-01118-FOIA,
22-01119-FOIA and
22-01120-FOIA

Given the amount of time it takes to review the potentially responsive records, we will be issuing rolling responses as we complete our review of the records. Enclosed are 233 pages of records that are being provided to you, with the exception of certain information that is being withheld under 5 U.S.C. § 552(b)(5) and/or (b)(6), for the following reasons:

- Exemption 5 protects information that was prepared in anticipation of litigation, forms an integral part of the pre-decisional process, and/or contains advice given to the Commission or senior staff by the Commission's attorneys. This material is protected from release by the attorney work-product, deliberative process and/or attorney-client privileges embodied in Exemption 5. Under this exemption portions of email exchanges between SEC staff have been withheld.
- Exemption 6 protects from disclosure information that, if released, would constitute a clearly unwarranted invasion of personal privacy. Under this exemption email addresses and telephone numbers of SEC staff have been withheld.

Please be advised that we have considered the foreseeable harm standard in preparing this response.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

Mr. Jason Foster
May 20, 2022
Page 3

22-01118-FOIA,
22-01119-FOIA and
22-01120-FOIA

This concludes this portion of our response. In the interim, if you have any questions, please contact Joel Hansen of my staff at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L Katilius". The signature is fluid and cursive, with the first letter "L" being large and prominent.

Lizzette Katilius
FOIA Branch Chief

Enclosures

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Exhibit I

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 15, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Appeal No. **22-00516-APPS** (22-01118-FOIA)

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA Appeal dated and received in this office on August 15, 2022 regarding all processing notes relating to Request Numbers 21-02531-FOIA and 21-02532-FOIA.

Your appeal has been assigned tracking number **22-00516-APPS**, and is assigned to the SEC's Office of the General Counsel for processing. You will receive a direct response from that office regarding a decision on your Appeal.

In the interim, **if you have questions about your appeal, you may contact the Office of the General Counsel by calling 202-551-5100**, or sending an email to foiapa@sec.gov. Please cite the Appeal tracking number provided above.

Sincerely,

Office of FOIA Services

Exhibit J

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Stop 9613

September 9, 2022

Via electronic mail

jf@empowr.us

Mr. Jason Foster
Empower Oversight
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Appeal, Freedom of Information Act Request Nos. 22-01118-FOIA, 22-01119-FOIA & 22-01120-FOIA, designated on appeal as Nos. 22-00516-APPS, 22-00517-APPS & 22-00518-APPS

Dear Mr. Foster:

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Office's interim response to your January 28, 2022 FOIA request for "all processing notes"¹ related to the searches conducted by the Securities and Exchange Commission (SEC) in response to FOIA Request Nos. 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA.² You identify the time period of your document request as August 12, 2021 to the present.

¹ Your request defines "processing notes" as "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."

² FOIA Request No. 21-02531-FOIA sought "[a]ll 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.'" FOIA Request No. 21-02532-FOIA sought "[a]ll records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain '@entethalliance.org.'" FOIA Request No. 21-02535-FOIA sought "[a]ll records relating to communications from May of 2017 through January of 2021 between Marc 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.'" FOIA Request No. 21-02537-FOIA sought "[a]ll 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.'"

The FOIA Office initially determined that there were no responsive records in response to each of these four requests. With regard to Request No. 21-02531-FOIA, a subsequent email search was performed after it was discovered that the incorrect email address domain name for Simpson Thacher was used to perform the initial search. The second email search located responsive records and 1,109 pages of responsive emails and calendar entries were released to you. In response to your prior administrative appeals (Nos. 22-00165-APPS, 22-00166-APPS, and 22-

By letter dated May 20, 2022, the FOIA Office issued an interim response and released to you 233 pages of records with certain information redacted pursuant to FOIA Exemptions 5 and 6. The FOIA Office informed you that its interim response was to all three FOIA requests since the responsive records are often responsive to more than one request.³

On August 15, 2022, you filed this appeal challenging the adequacy of the search conducted by the FOIA Office. You assert that “[b]ased upon an analysis of the records produced, it appears that the SEC did not conduct a search that was reasonably calculated to lead to the discovery of all responsive records.” You further state that “[c]ircumstances and the records produced by the SEC tend to reveal the existence [of] other responsive records.” You identify a number of examples of responsive records that, in your estimation, should exist based on your review of the 233 pages released to you.

I have considered your appeal and find that the issue of whether the SEC conducted a reasonable search is not ripe for determination. To locate potentially responsive records, the SEC’s Office of Information Technology (OIT) conducted a search of the emails of seventeen SEC employees’ who were involved in the processing of the four FOIA requests at issue.⁴ A total of thirteen search terms were used in the search, including variations of each FOIA Request Number to maximize the ability to locate responsive records. The email search covered emails generated from August 12, 2021 to January 28, 2021, the date of your FOIA request.

On its face, it appears that the search methods used to search for responsive records were appropriate.⁵ However, you have identified records that indicate other responsive records exist, and it is premature to address that issue until the FOIA Office completes its production of documents. I am advised that the FOIA Office has hundreds of pages of additional records to review for release to you. It is possible that the emails and records you identify as missing in your appeal do exist, but have not been reviewed and released to you.

I am instructing that the FOIA Office complete its records review as soon as practicable. If you still have reason to question the adequacy of the SEC’s search after the review is complete and all non-exempt responsive records are released to you, you may file another administrative appeal concerning this issue.

You have the right to seek judicial review of my determination by filing a complaint in the United States District Court for the District of Columbia or in the district where you reside or

00167-APPS), this office affirmed the FOIA Office’s no records determinations in response to Request Nos. 21-02532-FOIA, 21-02535-FOIA, and 21-02535-FOIA.

³ The FOIA Office also informed you that it was administratively closing Request Nos. 22-01119-FOIA and 22-01120-FOIA, with the remaining records processed under Request No. 22-01118-FOIA.

⁴ The seventeen employees are from the Office of FOIA Services, the Office of the General Counsel, and the Division of Enforcement.

⁵ “[T]he adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Jennings v. Dep’t of Justice*, 230 F. App’x 1, 1 (D.C. Cir. 2007) (quoting *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)).

have your principal place of business.⁶ Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration's Office of Government Information Services (OGIS). For more information, please visit www.archives.gov/ogis or contact OGIS at ogis@nara.gov or 1-877-684-6448. If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission
by delegated authority,

A handwritten signature in blue ink that reads "Melinda Hardy". The signature is written in a cursive, flowing style.

Melinda Hardy
Assistant General Counsel for
Litigation and Administrative Practice

⁶ See 5 U.S.C. § 552(a)(4)(B).

Exhibit K

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

December 19, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **23-00588-FOIA (1 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated and received in this office on December 15, 2022, for records regarding **all emails and all Outlook calendar entries belonging to William Hinman from 5/1/2017 through 12/31/2020.**

Your request has been assigned tracking number 23-00588-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

December 19, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **23-00589-FOIA (2 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated and received in this office on December 15, 2022, for records regarding **all emails and all Outlook calendar entries belonging to Marc Berger from 5/1/2017 through 1/31/2021.**

Your request has been assigned tracking number 23-00589-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

December 19, 2022

Mr. Jason Foster Founder & President
Empower Oversight
601 King Street, STE. 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **23-00590-FOIA (3 of 3)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated and received in this office on December 15, 2022, for records regarding **all emails and all Outlook calendar entries belonging to Jay Clayton from 5/1/2017 through 12/31/2020.**

Your request has been assigned tracking number 23-00590-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services

Exhibit L

Empower Oversight Whistleblowers & Research

v.

Securities and Exchange Commission



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

December 21, 2022

Mr. Jason Foster
Empower Oversight
601 King Street
Suite 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **23-00588-FOIA through 23-00590-FOIA**

Dear Mr. Foster:

This letter is in reference to your requests, dated and received in this office on December 15, 2022, for access to the records described below in items 1 through 5. This request was assigned three FOIA tracking numbers based on the SEC custodians identified in the request, as noted below.

23-00588-FOIA (Items 1 and 2)

1. All records relating to communications from May of 2017 through December of 2020 between William Hinman and William Allen, David Azarkh, Richard Beattie, Martin Bell, Thomas Bell, Stephen Blake, Stephen Cutler, William Dougherty or Chris Lin, including calendar entries, notes, or emails;
2. All records relating to communications from May of 2017 through December of 2020 between Mr. Hinman and Marc Andreessen, Darren Azman, Alfred Browne, Brad Burnham, Vitalik Buterin, John Buttrick, Luke Cadigan, Derek Colla, Matt Corva, Chris Dixon, Joseph Evans, Patrick Gibbs, Nick Grossman, J. Dax Hansen, Ben Horowitz, Rick Howell, Jong in Jun, Rebecca Kaden, Jonathan Kim, Stephane Leavy, Joseph Lubin, Jeremy Millar, Aya Miyaguchi, Wendy Moore, Michael Morgan, Steve Nerayoff, Lowell Ness, Mike Novogratz, Carlos Ortiz, Alexandra Scheibe, Katharine Suominen, Andy Weissman, Albert Wenger, Fred Wilson, or Nancy Wotjas, including calendar entries, notes or emails;

Mr. Jason Foster
December 21, 2022
Page 2

23-00588-FOIA
through
23-00590-FOIA

23-00589-FOIA (Items 3 and 4)

3. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and William Allen, David Azarkh, Richard Beattie, Martin Bell, Thomas Bell, Stephen Blake, Stephen Cutler, William Dougherty, or Chris Lin, including calendar entries, notes or emails;

4. All records relating to communications from May of 2017 through January of 2021 between Mr. Berger and Marc Andreessen, Darren Azman, Alfred Browne, Brad Burnham, Vitalik Buterin, John Buttrick, Luke Cadigan, Derek Colla, Matt Corva, Chris Dixon, Joseph Evans, Patrick Gibbs, Nick Grossman, J. Dax Hansen, Ben Horowitz, Rick Howell, Jong in Jun, Rebecca Kaden, Jonathan Kim, Stephane Leavy, Joseph Lubin, Jeremy Millar, Aya Miyaguchi, Wendy Moore, Michael Morgan, Steve Nerayoff, Lowell Ness, Mike Novogratz, Carlos Ortiz, Alexandra Scheibe, Katharine Suominen, Andy Weissman, Albert Wenger, Fred Wilson, or Nancy Wotjas, including calendar entries, notes or emails; and

23-00590-FOIA (Item 5)

5. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and Sebastian Pedro Bea, Tutting Chen, Qin Chen, Joseph Chung, Jason Cummins, Paul Ebner, Courtney Simmons Elwood, Nathan Faber, Harold Ford Jr., Ian Gardiner, Kevin Hassett, Marcel Kasumovich, Patrick Kazley, Chris Lawn, Matt Lundy, Edward Major, Ian Malloch, Shaun Martiniak, Chase Muller, Ryan McRandal, John Orszag, Eric Peters, Lindsay Politi, Stephen Pranja, Hardin Ramani, Will Wallin, or Doug Wilson, including calendar entries, notes or emails.

We will be unable to respond to your requests within the Freedom of Information Act's twenty day statutory time period, as there are unusual circumstances which impact on our ability to quickly process your request. Therefore, we are invoking the 10 day extension. These unusual circumstances are: (a) the need to search for and collect records from an organization

Mr. Jason Foster
December 21, 2022
Page 3

23-00588-FOIA
through
23-00590-FOIA

geographically separated from this office; (b) the potential volume of records responsive to these requests; and (c) the need for consultation with one or more other offices having a substantial interest in either the determination or the subject matter of the records. For these reasons, we will process your cases consistent with the order in which we received your requests.

You requested a fee waiver of all costs associated with your requests. We may waive or reduce search, review, and duplication fees if (A) disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and (B) disclosure is not primarily in the commercial interest of the requester, 5 U.S.C. § 552(a)(4)(iii).

Based on the information you provided, we classified you in the "media use" fee category. As such, search and review services are free of charge to you. Additionally, we typically release records electronically and do not charge copy costs. Accordingly, your request for a fee waiver is moot.

Finally, we are consulting with other SEC staff regarding your request. As soon as we complete our consultation, we will notify you of our findings.

If you have any questions, please contact Joel Hansen of my staff at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Katilius".

Lizzette Katilius
FOIA Branch Chief

Enclosure

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.