

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

EMPOWER OVERSIGHT
WHISTLEBLOWERS & RESEARCH,
11166 Fairfax Blvd., Suite 500 #1076
Fairfax, VA 22030

Plaintiff,

v.

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

Defendant.

Civil Action No.: 24-754

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 conflicts of interest involving former high-level officials at the SEC relating to cryptocurrencies. In particular, the requested records will shine light on what steps, if any, the SEC took to ensure that its officials were free of any such conflicts.

3. To date, Empower Oversight has uncovered various records showing that several former-SEC officials held financial interests that call into question the

integrity of their actions at the SEC. The question now is whether the SEC took sufficient steps to investigate those actions.

4. For instance, William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December 2020. Before then, Mr. Hinman was a partner at the law firm Simpson Thacher, which continued to pay him millions of dollars while he was employed at the SEC.

5. At that same time, while Mr. Hinman was employed at the SEC, Simpson Thacher was a member of the Enterprise Ethereum Alliance (“Ethereum”), which is an organization dedicated to driving the use of Enterprise Ethereum. And, in July 2018, Mr. Hinman gave a speech, as an SEC official, in support of the Ethereum cryptocurrency, Ether.

6. When Mr. Hinman departed the SEC in December 2020, he returned to Simpson Thacher as a partner. That same month, the SEC filed a lawsuit against Ripple Labs, Inc., which is one of Ethereum’s rivals.

7. Additionally, Marc Berger, the SEC official responsible for overseeing the SEC’s Enforcement Division that brought the lawsuit against Ripple, subsequently left the SEC and joined Mr. Hinman at Simpson Thacher.

8. Through an earlier FOIA request, Empower Oversight obtained records showing that the SEC’s ethics office had cautioned Mr. Hinman about his continued financial interest in Simpson Thacher. The ethics office further informed Mr. Hinman that he had to recuse himself from any matters that directly affected the firm. *See Ex. EO1-12.*

9. Although the records produced to Empower Oversight show that the ethics office provided Mr. Hinman with instructions on how to implement this guidance, *see* Ex. EO1-10–13, Mr. Hinman ignored that guidance and continued to involve himself in SEC matters than benefited Simpson Thacher.

10. Further demonstrating the conflicts of interest held by senior SEC officials at the time, Chairman Jay Clayton also made public statements favoring Bitcoin, and the SEC’s lawsuit against Ripple was filed shortly before Mr. Clayton’s departure from the SEC. Upon his departure, Mr. Clayton joined a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether, but not Ripple’s cryptocurrency. *See* Ex. EO1-8.

11. After uncovering this information, Empower Oversight referred this evidence of possible ethics violations to the SEC’s Office of Inspector General (“OIG”). *See* Ex. EO1-1, EO1-6–44.

JURISDICTION AND VENUE

12. 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.*

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

PARTIES

14. 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 Fairfax, Virginia, and it submitted the FOIA Requests described herein to the SEC.

15. 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

16. To better understand what steps SEC's OIG took on these matters, Empower Oversight submitted a FOIA request to the SEC on May 15, 2023. *See* Ex. EO1-1-5.

17. In that request, Empower Oversight sought the following records:

- (1) All documents or communications exchanged between SEC officials referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.
- (2) All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.
- (3) All documents or communications exchanged between SEC FOIA officials and SEC officials that reference any of the following matters: (a) *Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832 (S.D.N.Y.). For the purposes of this request, Empower Oversight does not request communications between SEC attorneys and DOJ attorneys that are protected by the

attorney-client privilege or work product doctrine. Empower Oversight also does not request copies of any draft filings from the cited cases.

- (4) All documents or communications exchanged between any SEC official and any individual or entity outside of the federal government that reference any of the following matters: (a) *Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832 (S.D.N.Y.).
- (5) All communications exchanged between SEC officials referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.
- (6) All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.

See Ex. EO1-2–3.

18. On May 18, 2023, the SEC acknowledged receipt of Empower Oversight’s FOIA request, assigning it several separate tracking numbers: 23-02215-FOIA; 23-2216-FOIA; and 23-02218-FOIA through 23-02221-FOIA.¹ See Ex. EO2.

19. In that response, the SEC also stated that it was “unable to respond to your request within [FOIA’s] twenty day statutory time period, as there are unusual

¹ The SEC had previously sent an acknowledgment on May 16, 2023, but the May 18, 2023 acknowledgement amended the tracking numbers.

circumstances which impact on our ability to quickly process your request.” *See* Ex. EO2-2. Rather, the SEC “invok[ed] the 10 day extension.” *Id.*

20. Yet the SEC did not communicate further with Empower Oversight for months. Rather, on August 3, 2023, the SEC sent a letter to Empower Oversight stating that the FOIA request was “vague, overly broad and could also be considered [an] improper FOIA request[] if not modified or clarified in various respects.” Ex. EO3-2. The SEC then requested various clarifications for portions of the FOIA request. *See* Ex. EO3-2–4.

21. On September 14, 2023, Empower Oversight responded to each of the SEC’s questions about the FOIA request. *See* Ex. EO4.

22. After hearing nothing from the SEC for several months, on December 18, 2023, the SEC responded to Empower Oversight’s September 14 email with additional requests for clarification. *See* Ex. EO5-12–14.

23. On December 20, 2023, Empower Oversight responded to the SEC’s questions. *See* Ex. EO5-11–13. In that correspondence, Empower Oversight also explained that it was prepared to proceed with litigation unless the SEC provided a final response by January 31, 2024. Ex. EO5-11.

24. On December 21, 2023, the SEC responded that it did “not anticipate [being] able to issue final responses by January 31, 2024.” Ex. EO5-10. Rather, the SEC offered only to provide a status update by January 8, 2024. *Id.*

25. In that January 8, 2024 status update, the SEC explained that it was largely at the early stages of processing Empower Oversight’s request. Ex. EO5-8–9.

For instance, the SEC was still identifying relevant custodians for portions of the request. Ex. EO5-8. And searches had largely not even been started. *Id.* Additionally, the SEC requested further clarifications and narrowing from Empower Oversight. *Id.*

26. On January 10, 2024, Empower Oversight responded to the SEC's questions, agreeing to certain narrowing proposals and answering other questions. Ex. EO5-7–8. Additionally, to ensure that the SEC's process began moving forward, Empower Oversight proposed a schedule whereby the SEC would provide periodic status reports to Empower Oversight about its processing of the request. Ex. EO5-7.

27. On January 18, 2024, the SEC responded with yet another round of questions and clarifications about the status of processing. Ex. EO5-5–6. Additionally, the SEC stated that it had not yet completed conducting searches, and it refused the schedule of updates that Empower Oversight had proposed. Ex. EO5-6.

28. On January 22, 2024, Empower Oversight responded to the SEC's questions and reiterated its request for that the parties agree to a schedule where the SEC would provide frequent updates on the status of processing. Ex. EO5-4.

29. On January 24, 2024, the SEC responded to Empower Oversight's email with additional requests for clarification, and the SEC also reiterated its refusal to agree to the schedule Empower Oversight proposed for periodic updates. Ex. EO5-3–4.

30. On January 25, 2024, Empower Oversight responded to the SEC by agreeing to the SEC's proposal for less frequent status updates. Ex. EO5-3. But Empower Oversight also requested that the SEC begin processing records at a rate of approximately 500 pages per month. *Id.*

31. On January 31, 2024, the SEC responded by explaining that some searches were ongoing, and others had not even begun because the SEC was still attempting to identify custodians. Ex. EO5-2. Accordingly, the SEC rejected Empower Oversight's request that the SEC begin processing records. *Id.* Additionally, in that same response, the SEC acknowledged that the SEC's Office of Inspector General had "open[ed] [an] investigation into the matter and that they are in the final stages of completing" the investigation. *Id.*

32. As further correspondence, on February 29, 2024, the SEC sent Empower Oversight a letter stating that summarizing the parties' discussions to date and stating that the SEC would not "begin to process" the request for at least "thirty-six months"—by February 2027. *See* Ex. EO6-5. Additionally, that same day, for several parts of the request, the SEC confirmed that it still had not begun conducting searches. *See* Ex. EO5-1.

33. Accordingly, despite Empower Oversight spending months discussing the request with the SEC, it has become clear that Empower Oversight must resort to litigation to demand the SEC's compliance with its statutory obligations under FOIA.

34. 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

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

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

37. By letter dated May 15, 2023, Empower Oversight submitted a FOIA request to the SEC. Ex. EO1.

38. That request reasonably described all requested records and complied with all applicable statutes and regulations.

39. 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. U.S. Dep't of Just.*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

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

41. 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).

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

43. 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 request, 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 request 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 request.

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.

March 15, 2024

Respectfully submitted,

/s/ Brian J. Field
BRIAN J. FIELD
D.C. Bar No. 985577
SCHAERR | JAFFE LLP
1717 K Street NW
Suite 900
Washington, DC 20006
Tel.: (202) 787-1060
Email: bfield@schaerr-jaffe.com

Counsel for Plaintiff

EXHIBIT E01

EMPOWER OVERSIGHT

Whistleblowers & Research



[EMPOWR.us](https://empower.us)

May 15, 2023

VIA ELECTRONIC TRANSMISSION: SEC FOIA PORTAL

Raymond McInerney, FOIA Officer
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2465
Washington, DC 20549-2465

**RE: REQUEST FOR RECORDS RELATED TO REFERRAL OF POSSIBLE
VIOLATIONS OF ETHICS DIRECTIVES**

Dear Mr. McInerney:

INTRODUCTION

Empower Oversight Whistleblowers & Research (“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 May 9, 2022, Empower Oversight referred to the SEC’s Office of the Inspector General (“OIG”) evidence it had obtained indicating that a former high-level Securities and Exchange Commission (“SEC”) official disobeyed clear directives from the SEC’s Ethics Office. The full referral is attached as Exhibit A and is incorporated into this request by reference. (The referral is summarized briefly below, but please refer to Exhibit A for the full basis of Empower Oversight’s request.)

It had been publicly reported that William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December of 2020. Previously, Mr. Hinman had been a partner at the law firm Simpson Thacher, which continued to pay millions of dollars to Mr. Hinman while he was employed at the SEC. Further, during the time Mr. Hinman was employed at the SEC, Simpson Thacher reportedly was a member of the Enterprise Ethereum Alliance (“Ethereum”), which describes itself as an “industry organization whose objective is to drive the use of Enterprise Ethereum.” In June 2018 in his capacity as an SEC official, Mr. Hinman gave a speech favoring the Ethereum cryptocurrency, Ether. When Mr.

Hinman departed the SEC in December of 2020, he rejoined Simpson Thacher as a partner. That same month, the SEC filed a lawsuit against one of Ethereum's rivals Ripple Labs, Inc. ("Ripple"). The leader of the SEC's Enforcement Division that brought the suit against Ripple, Marc Berger, left the SEC shortly thereafter, and joined Mr. Hinman as a partner at Simpson Thacher. Exhibit A, pp. 2-3.

Additionally, there are potential concerns regarding former SEC Chairman Jay Clayton. While at the SEC Mr. Clayton publicly made statements favoring Bitcoin, and the SEC's lawsuit against Ripple was filed at the end of his tenure at the SEC. After leaving the SEC, Mr. Clayton reportedly joined a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether, but not Ripple's cryptocurrency. Exhibit A, p. 3.

On August 12, 2021, Empower Oversight filed a Freedom of Information Act ("FOIA") request seeking records regarding these potential conflicts of interest and any action taken by the SEC to mitigate them. Exhibit A, pp. 3-4. As a result of this request, and litigation in furtherance of it, the SEC produced records showing that its ethics office cautioned Mr. Hinman that he had a direct financial interest with Simpson Thacher, and thus, he had to recuse himself from any matters that would affect the firm. The SEC Ethics Office also provided guidance for Mr. Hinman on how to implement these requirements. Exhibit A, pp. 5-8. However, additional records provided by the SEC showed that Mr. Hinman failed to comply with the SEC's directives. Exhibit A, pp. 9-13.

On May 9, 2022, Empower Oversight referred this evidence of possible ethics violations to the SEC OIG. Specifically, Empower Oversight recommended that the SEC OIG conduct a comprehensive review of these circumstances to:

- (1) Understand the degree to which the conflict involving this former official exacerbated the perception that the SEC's enforcement actions have selectively targeted some cryptocurrencies while giving others a free pass;
- (2) Explain to the public how the SEC's Ethics Office failed to effectively ensure compliance with its clear directives; and
- (3) Evaluate the SEC's policies and procedures to identify ways to more effectively monitor compliance with ethics guidance.

Exhibit A, pp. 1-2.

Reportedly, some time between May 2022 and July 26, 2022, Simpson Thacher ceased its membership in Ethereum.¹

RECORDS REQUEST

Empower Oversight respectfully requests, pursuant to the FOIA, 5 U.S.C. § 552:

- (1) All documents or communications exchanged between SEC officials referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.

¹ Mr. Huber (@Leerzeit) Twitter (Jul. 26, 2022, 9:23 AM) *available at* <https://twitter.com/Leerzeit/status/1551936271068561409/photo/1> (last visited May 2, 2023); *EEA-Members*, ENTER. ETHEREUM ALL., *available at* <https://entethalliance.org/eea-members/> (last visited May 2, 2023).

- (2) All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.
- (3) All documents or communications exchanged between SEC FOIA officials and SEC officials that reference any of the following matters: (a) *Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832 (S.D.N.Y.). For the purposes of this request, Empower Oversight does not request communications between SEC attorneys and DOJ attorneys that are protected by the attorney-client privilege or work product doctrine. Empower Oversight also does not request copies of any draft filings from the cited cases.
- (4) All documents or communications exchanged between any SEC official and any individual or entity outside of the federal government that reference any of the following matters: (a) *Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) *SEC v. Ripple Labs, Inc.*, No. 1:20-cv-10832 (S.D.N.Y.).
- (5) All communications exchanged between SEC officials referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.
- (6) All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.

Empower Oversight provided to the SEC OIG evidence that raised serious questions about the ability of the SEC to properly manage and mitigate conflicts of interest and threatened to undermine public confidence in the integrity of the SEC. Thus, the willingness and ability of the OIG to act as a genuinely independent watchdog, and concerns about the SEC's handling of possible ethics violations by its officials as a whole, are subjects of public concern. Americans have an interest in learning how the SEC OIG handled this referral and understanding more about how the SEC Ethics Office dealt with the conflicts outlined in the referral. Also, the public has an interest in shedding light on communications between SEC officials and between SEC officials and individuals outside of the federal government about SEC litigation and FOIA requests where concerns about improper coordination or collaboration could occur. Finally, the public has an interest in uncovering additional records that may shed light on the conflicts of interest that were the basis for the Empower Oversight referral, including how SEC officials perceived it.

"[M]atters of substantive law enforcement policy...are properly the subject of public concern...." *ACLU v. U.S. Dep't of Justice*, 655 F.3d 1, 14 (D.C. Cir. 2011) (quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 766 n. 18 (1989)). Furthermore, since these allegations have been publicly reported, see Exhibit A *passim*, former SEC officials have limited privacy concerns in records about any OIG or other SEC inquiry into the evidence referred to it by Empower Oversight.

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,” “CONCERNS,” “CONCERNING,” “BEARS UPON,” “REFLECTING,” 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 FOIA request.

If you have any questions about this request, please contact Mike Zummer by e-mail at mzummer@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”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’s understanding of the SEC’s and SEC OIG’s handling of possible ethics violations by SEC officials, as well as 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 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,

/Tristan Leavitt/
Tristan Leavitt
President

² On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12, 2021, 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/>.

EMPOWER OVERSIGHT

Whistleblowers & Research



EMPOWR.us

May 9, 2022

VIA ELECTRONIC TRANSMISSION: OIG@SEC.GOV

Rebecca Sharek, Acting Inspector General
Office of Inspector General
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: REFERRAL OF EVIDENCE OF VIOLATIONS OF ETHICS DIRECTIVES

Dear Ms. Sharek:

Empower Oversight Whistleblowers & Research (“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.

Empower Oversight has obtained evidence that a former high-level Securities and Exchange Commission (“SEC”) official disobeyed clear directives from the SEC’s Ethics Office. The directives were intended to ensure that the official avoided conflicts involving his direct financial interest in his former employer. The evidence—including documents the SEC produced in connection with Empower Oversight’s request under the Freedom of Information Act (“FOIA”)¹—establishes that the SEC’s Ethics Office’s guidance was ignored, and the resulting financial conflicts have predictably undermined the public’s perception that the SEC’s enforcement actions are fair and objective, particularly with regard to cryptocurrencies.

This letter refers the evidence disclosed regarding the conflicts and the apparent failure to properly mitigate them to the SEC’s Office of Inspector General (“SEC-OIG”) for further investigation and evaluation. This information raises serious questions about the ability of the SEC to properly manage and mitigate such conflicts, and the circumstances they describe threatens to undermine public confidence in the integrity of the SEC.

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

However, by virtue of its mission to be an independent watchdog, the SEC-OIG has an opportunity to help the restore some measure of public trust by conducting a thorough and unflinching review of this matter. The SEC-OIG should conduct a comprehensive review of these circumstances in order to:

- (1) Understand the degree to which the conflict involving this former official exacerbated the perception that the SEC's enforcement actions have selectively targeted some cryptocurrencies while giving others a free pass;
- (2) Explain to the public how the SEC's Ethics Office failed to effectively ensure compliance with its clear directives; and
- (3) Evaluate the SEC's policies and procedures to identify ways to more effectively monitor compliance with ethics guidance

Directives without compliance monitoring and sanctions for noncompliance are not meaningful; they are window dressings. A comprehensive SEC-OIG report could increase transparency and enhance public trust by recommending meaningful improvements to the ethics policies and procedures at the SEC.

BACKGROUND

A. Circumstances from Which Empower Oversight's FOIA Request Arose

It has been publicly reported that William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December of 2020.² Previously, Mr. Hinman had been a partner at the law firm Simpson Thacher.³ He reportedly continued to receive millions of dollars from the firm while he was employed at the SEC.⁴ Further, Simpson Thacher reportedly is a member of the Enterprise Ethereum Alliance ("Ethereum"), which describes itself as an "industry organization whose objective is to drive the use of Enterprise Ethereum."⁵

In a June 2018 speech in his capacity as an SEC official, Mr. Hinman declared publicly that the Ethereum cryptocurrency, Ether, is 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."⁶ After his declaration, Ether's value rose significantly.⁷

² SEC, *William Hinman Named Director of Division of Corporation Finance* (May 9, 2017), available at <https://www.sec.gov/news/press-release/2017-97> (last accessed on May 6, 2022).

³ *Id.*

⁴ Newsham, Jack, *A Top SEC Official Was Receiving a \$1.6 million Law-Firm Pension from Simpson Thacher that Was 7 Times His Government Salary. It Shows Why Cracking Down on 'Golden Parachutes' Is So Hard* (January 29, 2021), available at <https://www.businessinsider.com/sec-simpson-partner-pay-biden-golden-parachutes-2021-1> (last accessed on April 3, 2022).

⁵ Enterprise Ethereum Alliance, *About: The EEA is All About Possibilities* (Undated), available at <https://entethalliance.org/about/> (last accessed on May 6, 2022).

⁶ SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 4, 2018), available at <https://www.sec.gov/news/speech/speech-hinman-061418> (last accessed on May 6, 2022).

⁷ Vigna, Paul, *Crypto Market Rallies on SEC's Official's Ether Stance* (June 14, 2018), available at <https://www.wsj.com/articles/crypto-market-rallies-on-secs-officials-ether-stance-1529007646> (last accessed on May 6, 2022).

When Mr. Hinman departed the SEC in December of 2020, he rejoined Simpson Thacher as a partner.⁸ That same month, the SEC filed a lawsuit against one of Ethereum’s rivals, Ripple Labs, Inc. (“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.⁹ The value of XRP fell 25% immediately after the announcement of the SEC’s lawsuit.¹⁰ Of note, the leader of the SEC’s Enforcement Division that brought the suit against Ripple, Marc Berger, left the SEC shortly thereafter, and joined Mr. Hinman as a partner at Simpson Thacher.¹¹

Additionally, there are potential concerns regarding former SEC Chairman Jay Clayton. While at the SEC, Mr. Clayton publicly stated that Bitcoin is not a security,¹² and the value of Bitcoin rose.¹³ Moreover, the SEC’s lawsuit against Ripple was filed at the end of Mr. Clayton’s tenure there. Mr. Clayton exited at the same time as Mr. Hinman, in December 2020. Fewer than four months later, Mr. Clayton reportedly joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether—not XRP.¹⁴

B. Empower Oversight’s August 12, 2021, FOIA Request

To promote the public’s interest in understanding (1) the facts and circumstances surrounding Messrs. Hinman, Berger, and Clayton’s 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 submitted a FOIA request to the SEC on August 12, 2021.¹⁵ The FOIA request seeks eight categories of records, as follows:

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”;

⁸ Simpson Thacher, *Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher* (January 12, 2021), available at www.stblaw.com/docs/default-source/related-link-pdfs/bill-hinman-rejoins-simpson-thacher_2021.pdf (last accessed on May 6, 2022).

⁹ SEC, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering* (December 22, 2020), available at <https://www.sec.gov/news/press-release/2020-338> (last accessed on May 6, 2022).

¹⁰ Finance Magnates, *XRP Plummets 25% After SEC’s \$1.3 Billion Lawsuit Against Ripple* (December 23, 2020), available at <https://www.financemagnates.com/cryptocurrency/news/xrp-plummets-25-after-secs-1-3-billion-lawsuit-against-ripple/> (last accessed on May 6, 2022).

¹¹ Simpson Thacher, *Marc P. Berger, Former Acting Director of the SEC’s Enforcement Division, to Join Simpson Thacher* (April 15, 2021), available at www.stblaw.com/docs/default-source/related-link-pdfs/marc-berger-to-join-simpson-thacher_2021.pdf (last accessed on May 6, 2022).

¹² CNBC, *SEC Chairman: Cryptocurrencies Like Bitcoin Are Not Securities* (June 6, 2018), available at <https://www.cnbc.com/video/2018/06/06/sec-chairman-cryptocurrencies-like-bitcoin--not-securities.html> (last accessed on May 6, 2022).

¹³ Bloomberg, *Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500* (July 17, 2018), available at <https://www.bloomberg.com/news/articles/2018-07-17/bitcoin-surges-after-breaking-back-through-7-000-level> (last accessed on May 6, 2022).

¹⁴ Graffeo, Emily, *Former SEC Chair Jay Clayton Will Advise Digital Asset Hedge Fund One River on Crypto* (March 29, 2021), available at <https://markets.businessinsider.com/currencies/news/bitcoin-hedge-fund-sec-chair-jay-clayton-one-river-crypto-2021-3-1030256150> (last accessed on May 6, 2022).

¹⁵ Empower Oversight’s August 12, 2022, FOIA request is attached as Exhibit 1.

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”;
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.¹⁶

Since August 13th, Empower Oversight’s FOIA request has been the subject of FOIA appeals, litigation before the United States District Court for the Eastern District of Virginia,¹⁷

¹⁶ The SEC’s eight August 13, 2021, acknowledgements of Empower Oversight’s FOIA request are attached as Exhibit 2.

¹⁷ See, *e.g.*, Empower Oversight Whistleblowers & Research v. U.S. Securities and Exchange Commission, No. 1:21-cv-1370 (RDA/TCB).

and—most pertinent to this referral—the production of records in response to SEC FOIA Request Numbers 21-02531-FOIA and 21-02533-FOIA.

The SEC’s February 22, 2022, “amended¹⁸ and partial response” to FOIA Request Number 21-02531-FOIA forwarded 1,053 pages of responsive records (hereinafter “Hinman & Simpson Thacher Emails”) that the SEC had redacted allegedly pursuant to FOIA Exemption b(6), 5 U.S.C. § 552(b)(6), which protects information the release of which would constitute a clearly unwarranted invasion of personal privacy.¹⁹ FOIA Request Number 21-02531-FOIA seeks:

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.”

The SEC’s March 25, 2021, “partial response” to FOIA Request Number 21-02533-FOIA forwarded 196 pages of responsive records (hereinafter “Hinman & Ethics Office Emails”) that the SEC had redacted allegedly pursuant to FOIA Exemption b(6) and FOIA Exemption b(5), 5 U.S.C. § 552(b)(5), which protects inter-agency and intra-agency information that would not be available by law to a party other than an agency in litigation with the agency.²⁰ FOIA Request Number 21-02533-FOIA seeks:

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.

THE SEC ETHICS OFFICE’S DIRECTIONS TO MR. HINMAN

Included among the records that the SEC produced in response to FOIA Request Number 21-02533-FOIA are emails that show that the SEC’s Ethics Office²¹ cautioned Mr. Hinman that

¹⁸ On December 10, 2021, the SEC issued a false “no records” response to SEC Request Numbers 21-02531-FOIA.

¹⁹ The SEC’s February 22, 2022, amended partial response to FOIA Request Number 21-02531-FOIA is attached as Exhibit 3. The 1,053 pages of records forwarded by the SEC’s February 22nd correspondence is available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁰ The SEC’s March 25, 2022, partial response to FOIA Request Number 21-02533-FOIA is attached as Exhibit 4. The 196 pages of records forwarded by the SEC’s March 25th correspondence is available at <https://empower.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

²¹ According to the SEC, its Ethics Office, which is subject to the guidance and oversight of the U.S. Office of Government Ethics, is responsible for advising and instructing all SEC employees about laws and regulations governing their personal and financial conflicts of interest, securities holdings and transactions, gifts, seeking and negotiating other employment, outside activities, financial disclosure, and post-employment restrictions. See, SEC, *Office of the Ethics Counsel: About the Office* (Modified January 7, 2020), available at <https://www.sec.gov/page/ethicssectionlanding> (last accessed on May 5, 2022); see also, Office of Government Ethics, *What We Do* (Undated), available at https://www.oge.gov/web/oge.nsf/about_what-we-do (last accessed on May 5, 2022).

Criminal laws governing SEC employees’ financial conflicts of interest include 18 U.S.C. §§ 203 and 208. In relevant part, Section 203(a) provides:

Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly . . . demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another . . . at a time when such person is an

he had a direct financial interest in Simpson Thacher, and thus, he must recuse himself from any matters that would affect the firm. Lest Mr. Hinman may have misunderstood the position of the Ethics Office, it explicitly told him, per the documents, not to be in any contact with Simpson Thacher personnel for any reason.²²

Specifically, the records include an April 28, 2017, email containing “initial guidance” from the SEC’s Ethics Office. The email provides that Mr. Hinman’s receipt of retirement benefits from Simpson Thacher that are calculated “based on the profits” of the firm would mean that he “could not participate in any SEC particular matters that would directly” benefit the firm because the “future interest is enough to give you a full financial interest in the firm,” as follows:

officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission . . . shall be subject to the penalties set forth in section 216 of this title.

Whereas, Section 208(a), in relevant part, provides:

. . . [W]hoever, being an officer or employee of the executive branch of the United States Government . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest . . . [s]hall be subject to the penalties set forth in section 216 of this title.

²² It is not clear from the records that the SEC produced whether Mr. Hinman fully disclosed Simpson Thacher’s role in Ethereum to the SEC’s ethics officials. Hence, it also is not clear whether the ethics officials would have approved his meetings with Ethereum personnel or his official comments about Ether had they been fully apprised of Simpson Thacher’s role in Ethereum. See, e.g., *Deposition of William Harold Hinman, Jr.*, pp. 160, 163 – 174 (July 27, 2021), filed in *SEC v. Ripple Labs, Inc., et al.*, Case No. 20-cv-10832 (AT) (S.D.N.Y.), available at www.crypto-law.us/wp-content/uploads/2021/08/Exhibit-B-to-SEC-Motion-Redacted-Version-of-Hinman-Deposition-08172021.pdf (last accessed on May 4, 2022) (referencing a meeting between Mr. Hinman and a cofounder of/investor in Ethereum; the cofounder of/investor in Ethereum in question is also the owner of ConsenSys); *Response to the SEC’s September 14, 2021, Letter Regarding Documents Over Which the SEC Has Asserted the Deliberative Process Privilege*, filed in *SEC v. Ripple Labs, Inc., et al.*, Case No. 20-cv-10832 (AT) (S.D.N.Y.), available at www.crypto-law.us/wp-content/uploads/2021/09/Letter-Reply-from-Garlinghouse-and-Larsen-on-SEC-Motion-09292021.pdf (last accessed on May 4, 2022) (referencing meetings between Mr. Hinman’s staff at the SEC and ConsenSys); CyptoLaw, *Investors Meet SEC, Ask for Free Pass on Ether and Former SEC Counsel Nancy Wotjas Reveals Hinman Speech Lifted from ETH Document*, respectively available at <https://www.crypto-law.us/timeline/investors-meet-sec-on-safe-harbor-for-ether/> and <https://www.crypto-law.us/timeline/former-sec-counsel-nancy-wotjas-warning-against-sec/> (last accessed on May 4, 2022) (discussing a meeting between SEC officials and Enterprise Ethereum Alliance representatives Ethereum prior to Mr. Hinman’s claim that Ether is not a security, and reporting that a participant in the meetings with the SEC claimed that Mr. Hinman’s characterization of Ether’s status was copied from materials shared by Ethereum advocates at the meeting).

To: (b) (6) (b) (6)
Cc: Serrano, Danae (b) (6)
From: Minton, Shira
Sent: 2017-04-28T18:11:43-04:00
Importance: Normal
Subject: retirement benefits
Received: 2017-04-28T18:11:44-04:00

Bill, we have received some initial guidance from OGE and they posed some follow up questions (see below).

Of particular note, OGE advised that if the proposal from the firm would fix the payments only during your term of government service (i.e., if you would return to receiving retirement benefits that are in part calculated based on the profits of the firm at the conclusion of your government service), you would continue to have a financial interest in the firm's profitability while you are in government. This means you could not participate in any SEC particular matters that would directly and predictably affect the firm under 18 USC 208. In other words the future interest is enough to give you a full financial interest in the firm. Is it possible for them to fix it for not just the tenure of your government service but permanently?

For the 203 problem - they indicated that the fixed payment proposal would cure the problem of 18 USC 203 (sharing in profits related to representational activities before the government). However, you and the firm should both be aware that after you leave government service, you will continue to be prohibited from sharing in any profits the firm receives for representing clients before the government during the term of your government service, even if those payments are made once you are no longer a federal employee.

OGE was not conclusive on (b) (6) and asked that we get additional information about the following:

(b) (5)

On May 12, 2017, the SEC's Ethics Office provided Mr. Hinman with a draft memorandum, which was to be issued under his own name, that detailed the "screening arrangement I have implemented to ensure that I comply with my obligation to recuse myself from certain matters with which I have a financial interest, or a personal or business relationship."²³ The arrangement described in the document stated that Mr. Hinman had instructed an employee, Tamara Brightwell, "to screen all SEC matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of

²³ Hinman & Ethics Office Emails at p. 112, available at <https://empowr.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

the entities or organizations listed above,” referring to a list of entities that included Simpson Thacher.²⁴

Later, on January 24, 2018, the SEC’s Ethics Office alleviated any grounds for misunderstanding its position, and advised Mr. Hinman not to have “any meetings with [his] old firm,” even if Simpson Thacher is merely a member of a group with whom he meets, as follows:

To: Hinman, William (b) (6)
Cc: Serrano, Danae (b) (6)
From: Minton, Shira
Sent: 2018-01-24T17:09:42-05:00
Importance: Normal
Subject: RE: AdHoc mtg in London
Received: 2018-01-24T17:09:42-05:00

The firms - but Bill, it occurs to us that you have a full financial conflict with your old firm, not just an impartiality one. hence, you should not be having any meetings with your old firm. even group meetings.

-----Original Message-----
From: Hinman, William
Sent: Wednesday, January 24, 2018 5:00 PM
To: Minton, Shira
Subject: Re: AdHoc mtg in London

Do you need the individuals partners or just the law firms?

Sent from my iPhone

> On Jan 24, 2018, at 4:36 PM, Minton, Shira <(b) (6)> wrote:
>
> if it will be less than a dozen, please provide the names so I can vet for Rob
>
> -----Original Message-----
> From: Hinman, William
> Sent: Wednesday, January 24, 2018 4:33 PM
> To: Minton, Shira
> Subject: Re: AdHoc mtg in London
>
> It's law firms only. His old firm and mine are likely to attend.
>
> Sent from my iPhone
>
>> On Jan 24, 2018, at 4:30 PM, Minton, Shira <(b) (6)> wrote:
>>
>> (b) (5)
>>
>> -----Original Message-----
>> From: Hinman, William
>> Sent: Wednesday, January 24, 2018 4:22 PM
>> To: Minton, Shira
>> Subject: Re: AdHoc mtg in London
>>
>> A number of firms other than STB and S&S will be present. Probably about a dozen. (b) (5)
>>
>> Sent from my iPhone
>>
>>> On Jan 24, 2018, at 4:10 PM, Minton, Shira <(b) (6)> wrote:
>>>
>>> (b) (5)

²⁴ *Id* at p. 114.

EVIDENCE OF MR. HINMAN'S NONCOMPLIANCE WITH THE SEC'S DIRECTIVES

Contrary to the explicit instructions from the SEC's Ethics Office, the records that the SEC produced in response to FOIA Request Number 21-02531-FOIA tend to show that Mr. Hinman failed to disclose Simpson Thacher's—and by extension his—direct financial interest in Ethereum during his speech on Ether. Moreover, Mr. Hinman—who annually received more than \$1.5 million in retirement benefits from Simpson Thacher²⁵—had repeated contact with the law firm's personnel, including the referral of a business prospect. The records do not, however, reveal efforts by Mr. Hinman to dissuade his former colleagues from contacting him, nor do they demonstrate that the SEC's Ethics Office monitored his compliance with its directives.²⁶

A. Failure to Disclosure Direct Financial Interest

Mr. Hinman's June 14, 2018, speech declaring that Ether is not a security failed to disclose to the public his direct financial interest in a member of Ethereum, Simpson Thacher. Additionally, no such disclosure has occurred subsequently in his public comments related to the speech, nor in the archived text of his speech on the SEC's website.²⁷ Furthermore, nowhere have we found in the emails or documents produced by the SEC to date any evidence that the directives regarding the screening arrangement for all matters before Mr. Hinman to ensure compliance with ethics rules²⁸ were followed in relation to his June 2018 speech.

This failure to disclose his financial interest raises serious questions about whether Mr. Hinman also failed to submit his June 2018 speech—which was reportedly borrowed from materials provided to the SEC by Ethereum advocates²⁹—to the screening process that was explicitly laid out by the SEC's Ethics Office in May 2017 or whether ethics officials failed to identify and take steps to mitigate the conflict presented by a speech about Ether in light of Mr. Hinman's direct financial interest in a member of the Ethereum alliance.

B. Business Referral

Regarding the referral of a business prospect to Simpson Thacher, on July 14, 2017, at 11:12 AM, Jonathon Wiggins, who introduced himself as the Senior Recruiting Consultant for IMS ExpertServices, which locates and engages expert consultants on behalf of law firms, sent Mr. Hinman an email that states:

I was referred to you by Patrick Daugherty. . . .

I am seeking an expert in investment banking and the IPO process in China.

²⁵ Hinman & Simpson Thacher Emails at p. 998, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁶ See generally, Hinman & Simpson Thacher Emails, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁷ SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 4, 2018), available at <https://www.sec.gov/news/speech/speech-hinman-061418> (last accessed on May 6, 2022).

²⁸ See generally, Hinman & Ethics Office Emails at pp. 112 – 114, available at <https://empowr.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

²⁹ See, *Former SEC Counsel Nancy Wotjas Reveals Hinman Speech Lifted from ETH Document*, respectively available at <https://www.cryptolaw.us/timeline/former-sec-counsel-nancy-wotjas-warning-against-sec/> (last accessed on May 4, 2022).

I'm hoping you might be able to offer a referral. Patrick said you were involved in the Alibaba IPO.

Thank you in advance for your time and consideration.³⁰

On the same day at 1:23 PM, Mr. Hinman referred Mr. Wiggins solely to his former Simpson Thacher partner, Dan Fertig, as follows:

You may want to ask Dan Fertig, a Simpson Thacher partner in Hong Kong for your referral. Given my current position at the SEC, I am not well placed to provide you the best names.³¹

Additionally, Mr. Hinman sent a courtesy copy of his email to Mr. Fertig.³²

Less than two hours later, at 3:49 AM (July 15, 2017), Mr. Fertig sent an email to Mr. Wiggins, with a courtesy copy to Mr. Hinman, that states:

Jonathan,

I am happy to **discuss or provide** relevant referrals with you. I may need a bit more detail on what you are looking for. I will email you again separately.

Bill, Thank you for thinking of me. Hope you are well.

Best regards,

Dan³³

Thus, in the middle of a workday, on his SEC-supplied email account, Mr. Hinman wasted no time conveying a business prospect, which could “directly and predictably affect the firm,” to Simpson Thacher. He received an unsolicited request for a business referral from someone seeking expert advice in investment banking and the IPO process in China, who advised that he had been referred to Mr. Hinman because of his involvement in the Alibaba IPO. About two hours later, Mr. Hinman referred the business prospect to his former partner at Simpson Thacher, Mr. Fertig. According to Simpson Thacher, Mr. Fertig has substantial investment banking experience, and he was involved with both the Alibaba and Focus Media IPOs.³⁴ Mr. Hinman, thus, likely knew that he was referring the business prospect to someone with the precise experience that the prospect requested, and perhaps he veiled his failure to name alternative/competing candidates—including ones employed by firms other than Simpson Thacher, which paid him more than \$1.5 million annually in retirement benefits—with the statement “[g]iven my current position at the SEC, I am not well placed to provide you the best names.”³⁵

³⁰ Hinman & Simpson Thacher Emails at p. 59 (emphasis original), available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

³¹ *Id.* at p. 59.

³² *Id.*

³³ *Id.* at p. 60 (emphasis added).

³⁴ See, Simpson Thacher, *Our Team: Dan Fertig*, available at <https://www.stblaw.com/our-team/partners/daniel-fertig>.

³⁵ In contrast to his using official resources and thus potentially creating the appearance that his referral was an authorized activity, he did not respectfully decline to offer a referral. Further—without suggesting or implying that doing so would modify the ethical impact of his referral—

Mr. Hinman's use of the SEC's resources to refer the potential business prospect to Simpson Thacher provided the SEC's Ethics Office with an opportunity to monitor his compliance with its directives. Consequently, it could be useful for the SEC-OIG to compile and review all communications that Mr. Hinman may have had with SEC ethics officials in July of 2017, as well as all records that the Ethics Office created, if any, in connection with the monitoring of his activities.

C. Miscellaneous Contacts

Additionally, Mr. Hinman was beset by contacts from his former colleagues at Simpson Thacher. Discounting invitations for various lunches and dinners, his former colleagues at the law firm:

- Encouraged him to modify SEC policy, raising the SEC's \$2,000 investment threshold for shareholders seeking to include a proposal on a public company's proxy statement,³⁶ and
- Invited him (and his principal, SEC's then Chairman Jay Clayton) to exclusive conferences, which would be attended by current and potential clients of his former law firm.

Specifically, after allegedly encountering Mr. Hinman on May 15, 2017, Simpson Thacher Associate Yafit Cohn sent him an email explaining that she and A.J. Kess—a Simpson Thacher partner, whom she referred to as "AJ" in her email—had authored an opinion editorial in 2015 that discussed "why the \$2,000 threshold for submitting shareholder proposals is abysmally low and . . . the potential consequences, over the long term, of not increasing that threshold."³⁷ Ms. Cohn attached her editorial to her email.³⁸ The emails produced by the SEC do not include a response from Mr. Hinman to Ms. Cohn's email.

On the other hand, the documents produced by the SEC show Mr. Hinman responding favorably to invitations to conferences that do not appear to have been open to a large number of people with a diversity of views. Rather, they appear to have been insular affairs—sponsored in part by Simpson Thacher personnel—designed to provide insiders with special access to high-level SEC officials and thereby burnish the law firm's reputation among regulated entities. For example, on May 24, 2017, Kevin Kennedy invited Mr. Hinman and "maybe a few other senior folks" to come "out to the West Coast" to speak at a "conference" sponsored by the Berkeley Center for Law Business and the Economy ("BCLBE").³⁹ About a week later, Mr. Kennedy elaborated on his vision for the "conference":

My vision for this is that this would be an invitation only, round table with senior members of the Staff (hopefully including you) and the leaders of the local mega-

he did not recommend additional qualified candidates associated with firms in which he did not hold a financial interest; disclaim the SEC's knowledge, agreement, or consent to his endorsement; nor divert the communication to his personal email resources.

³⁶ Hinman & Simpson Thacher Emails at pp. 17 – 20, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

³⁷ *Id* at p. 17.

³⁸ *Id* at pp. 18 – 20.

³⁹ *Id* at p. 23.

unicorns (Uber, Airbnb, Palantir, etc.). We'd ask them to share their views on capital raising and what, if any, regulatory concerns are preventing them from going public. The Staff, in turn, could speak about its regulatory priorities and initiatives under the new administration. It could be a way for the two sides to speak to each other directly and hopefully provide a meaningful amount of feedback both sides could use.

I think this could be a really interesting and unique event, that really couldn't be replicated in NY, San Diego or any of the other major securities conferences. We'd be offering direct access to some of the companies that I think will need to be the targets of any capital formation projects you and Jay develop.^{40, 41}

Mr. Hinman replied that Mr. Kennedy's vision sounded "like something we would want to do," and committed to get back to him with "more thoughts soon."⁴² Later, he advised that he had assigned the matter to a subordinate (and then to another subordinate) to coordinate.⁴³

Similarly, on September 5, 2017, Joshua Bonnie⁴⁴ asked Mr. Hinman whether he would be "willing to have dinner with the Ad Hoc group up in NY?"⁴⁵ He added:

I have been asked to extend the invitation. As you may (or may not!) recall we generally meet on the first Monday evening of each month (although this month it was tonight). So, for the rest of the year, we are slated for October 2, November 6 and December 4.⁴⁶

Mr. Hinman replied the next day that "[b]oth Jay [Clayton] and I would like to go to an Ad Hoc dinner," but asked about dates in 2018.⁴⁷ Mr. Bonnie responded that the first several meetings in 2018 would be on January 8, February 5, March 5, and April 2,⁴⁸ and then later in September he inquired whether Mr. Hinman had decided on a potential date in 2018.⁴⁹

On November 6, 2017, Mr. Bonnie reprised his inquiry about Mr. Hinman's preferences among the 2018 dates, and Mr. Hinman replied that he was "[c]hecking with the boss on Ad Hoc

⁴⁰ *Id* at p. 24.

⁴¹ Later, Mr. Kennedy advised that BCLBE had secured a meeting space at "the University Club at Memorial Stadium, which is pretty spectacular," that the CFO's of Airbnb and DropBox had already confirmed their attendance, and that he reckoned that "just about everyone" that BCLBE invites will "send a senior executive" to the event. *See, id* at p. 41.

⁴² *Id* at p. 26.

⁴³ *Id* at pp. 33, 49.

⁴⁴ Mr. Bonnie is a Simpson Thacher partner, who met Mr. Hinman for lunch several times during his tenure at the SEC. *See, Simpson Thacher, Our Team: Joshua Ford Bonnie*, available at <https://www.stblaw.com/our-team/partners/joshua-ford-bonnie>; *see also, generally*, Hinman & Simpson Thacher Emails, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

⁴⁵ *Id* at p. 68.

⁴⁶ *Id*.

⁴⁷ *Id* at p. 70.

⁴⁸ *Id* at p. 73.

⁴⁹ *Id* at p. 114.

dates.”⁵⁰ To which Mr. Bonnie replied, “[Let me know] what the Boss says about the field trip to the Links Club next year.”^{51, 52}

On December 5, 2017, Mr. Hinman indicated that his preference for a 2018 date to meet with the Ad Hoc group would be April 2.⁵³ Mr. Bonnie responded:

I don't think I am going out on a limb by saying that we will all be honored to have you and Jay on April 2. Let[']s book it! Thank you for getting back to me. Will let the rest of the gang know.⁵⁴

On March 7, 2018, Mr. Bonnie advised that he had heard that Mr. Hinman was encountering an administrative problem connected with his attendance at the Ad Hoc group meeting, and inquired whether the problem involved attendance of Simpson Thacher personnel at the meeting.⁵⁵ Mr. Hinman confirmed what Mr. Bonnie had heard, explaining that the SEC's ethics officials “were resisting [his] attending if Simpson Thacher was going to be present.”⁵⁶ He added, “I don't like the idea of Simpson Thacher having to miss the meeting because of me but we can talk about it.”⁵⁷ And, Mr. Bonnie asked whether the SEC's ethics officials also had problems with former Chairman Clayton's attendance if attorneys from Sullivan & Cromwell—where Chairman Clayton had been a partner—were present.⁵⁸

Mr. Bonnie subsequently offered for Simpson Thacher personnel to forgo the meeting to accommodate Messrs. Hinman and Clayton's attendance,⁵⁹ and Mr. Hinman agreed to his proposal.⁶⁰ And, on the morning of April 2, 2018, Mr. Hinman confirmed to Mr. Bonnie that he would be attending the meeting of the Ad Hoc group that evening.⁶¹

In light of this evidence, it is clear that Mr. Hinman did not faithfully follow the guidance and directives of the SEC's Ethics Office concerning communications and contacts with his former law firm at a time when he still had a direct financial interest in that firm. Accordingly, it is essential that the SEC-OIG independently study these facts and circumstances in order

⁵⁰ *Id.* at p. 129.

⁵¹ *Id.* at p. 149.

⁵² The Links Club is an exclusive social club in New York City. See, e.g., Club Leaders Forum, *America's Top Private Clubs of Excellence, 2016 – 2018*, available at <https://www.harvardclub.com/wp-content/uploads/2016/11/Platinum-Clubs-of-America-2016-2018.pdf>; Playing the Top 100 Golf Course in the World Blog, *The Links – New York City*, available at <http://top100golf.blogspot.com/2006/11/links-club.html>.

⁵³ Hinman & Simpson Thacher Emails at p. 173, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

⁵⁴ *Id.* at p. 180.

⁵⁵ *Id.* at p. 230.

⁵⁶ *Id.* at p. 240.

⁵⁷ *Id.*

⁵⁸ *Id.* at p. 268.

⁵⁹ *Id.* at p. 362.

⁶⁰ *Id.* at p. 388.

⁶¹ *Id.* at p. 441.

recommend improvements to the SEC's policies and procedures that would bolster public confidence in its commitment to policing such conflicts more effectively in the future.

Thank you for your time and consideration to this important matter.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

Exhibit 1

Exhibit A

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 2

Exhibit A



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research 2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02531-FOIA (1 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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".**

Your request has been assigned tracking number 21-02531-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 A
EO1-27



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02532-FOIA (2 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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"**.

Your request has been assigned tracking number 21-02532-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.

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Sincerely,

Office of FOIA Services

Exhibit A
EO1-28



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02533-FOIA (3 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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.**

Your request has been assigned tracking number 21-02533-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,

Exhibit A
EO1-29

Office of FOIA Services

Exhibit A

EO1-30



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02534-FOIA (4 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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"**.

Your request has been assigned tracking number 21-02534-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 A
EO1-31



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02535-FOIA (5 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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"**.

Your request has been assigned tracking number 21-02535-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 A
EO1-32



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02536-FOIA (6 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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;**.

Your request has been assigned tracking number 21-02536-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 A
EO1-33



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02537-FOIA (7 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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"**.

Your request has been assigned tracking number 21-02537-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 A
EO1-34



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

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02538-FOIA (8 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **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.**

Your request has been assigned tracking number 21-02538-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 A
EO1-35

Exhibit 3

Exhibit A



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

Office of FOIA Services

AMENDED RESPONSE

February 22, 2022

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

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
 Request No. **21-02531-FOIA**

Dear Mr. Foster:

This letter is an amended and partial response to your request, dated August 12, 2021 and received in this office on August 13, 2021, for the records described below. Reference is also made to our letter dated August 16, 2021, in which we responded to your request for a fee waiver.

Request No.	Subject
21-02531-FOIA	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"

By letter dated December 7, 2021, we informed you that we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any records responsive to your request. We also provided you with your appeal rights.

After conducting another search for records we located 1,112 pages of records that may be responsive to your request. The enclosed 1,053 pages of records are being provided to you, with the exception of certain SEC staff and third-party email addresses and telephone numbers as well as certain personal information including, for example, personal photographs and details about family vacations. This information is being withheld under 5 U.S.C. § 552(b)(6). Under Exemption 6, the release of this information would constitute a clearly unwarranted invasion of personal privacy.

Exhibit A
EO1-37

Mr. Jason Foster
February 22, 2022
Page 2

21-02531-FOIA

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.

The remaining 59 pages of records are subject to possible confidential treatment. Once the substantiation process is complete we will advise you of our findings.

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,



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 4

Exhibit A



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

Office of FOIA Services

March 25, 2022

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

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02533-FOIA**

Dear Mr. Foster:

This letter is in partial response to your request, dated August 12, 2021 and received in this office on August 13, 2021, for the eight subjects shown below. Please note each subject was assigned a separate FOIA tracking number. Reference is also made to our letter dated August 16, 2021, in which we responded to your request for a fee waiver.

Request No.	Subject
21-02531-FOIA	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"
21-02532-FOIA	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"
21-02533-FOIA	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
21-02534-FOIA	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"

**Exhibit A
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Mr. Jason Foster
 March 25, 2022
 Page 2

21-02533-FOIA

Request No.	Subject
21-02535-FOIA	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"
21-02536-FOIA	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
21-02537-FOIA	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"
21-02538-FOIA	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

This letter partially responds to FOIA Request No. 21-02533-FOIA, only.

The search for responsive records has resulted in the retrieval of 329 pages of records that may be responsive to your request. The enclosed 196 pages of records are being provided to you, with the exception of the following information:

- Under 5 U.S.C. § 552(b)(5) certain information consisting of internal staff notes and guidance are being withheld. Withheld portions of these records reflect an integral part of the pre-decisional process and therefore are protected from release by the deliberative process privilege embodied in Exemption 5.
- Under 5 U.S.C. § 552(b)(6) SEC staff emails, direct dial numbers, personal email addresses, phone numbers, information about bank accounts and financial holdings, family members and personal relationships, personal travel and property, and information about Mr. Hinman's employment arrangements prior to joining the SEC, has

Mr. Jason Foster
March 25, 2022
Page 3

21-02533-FOIA

been withheld. Under Exemption 6, the release of this information would constitute a clearly unwarranted invasion of personal privacy.

Additionally, ten (10) pages (consisting of attachments to the released emails) are being withheld in their entirety under 5 U.S.C. § 552(b)(6) for the reasons explained above.

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.

Finally, the remaining 123 pages of records contain information that is subject to possible confidential treatment and protection under 5 U.S.C. § 552(b)(4). Once the substantiation process is complete we will advise you of our findings.

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,



Lizzette Katilius
FOIA Branch Chief

Enclosures

Exhibit A
EO1-43

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 EO2



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

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

Office of FOIA Services

May 18, 2023

Mr. Michael Zummer
Empower Oversight
601 King Street Suite 200
Alexandria, VA 22314-3151

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **23-02215-FOIA, 23-2216-FOIA and
23-02218-FOIA through 23-02221-FOIA**

Dear Mr. Zummer:

This letter is in reference to your request, dated and received in this office on May 15, 2023, for six subjects as shown below. Please note each subject was assigned a FOIA tracking number.

FOIA No.	SUBJECT
23-02215-FOIA	1. All documents or communications exchanged between SEC officials referencing Empower Oversight's May 9, 2022 referral to the SEC OIG
23-02216-FOIA	2. All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing Empower Oversight's May 9, 2022 referral to the SEC OIG
23-02218-FOIA	3. All documents or communications exchanged between SEC FOIA officials and SEC officials that reference any of the following matters: (a) Empower Oversight v. SEC, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) Empower Oversight v. SEC, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) SEC v. Ripple Labs, Inc., No. 1:20-cv-10832 (S.D.N.Y.). For the purposes of this request, Empower Oversight does not request communications between SEC attorneys and DOJ attorneys that are protected by the attorney-client privilege or work product doctrine. Empower Oversight also does not request copies of any draft filings from the cited cases

Michael Zummer
 May 18, 2023
 Page 2

23-02215-FOIA, 23-2216-FOIA, and
 23-02218-FOIA through 23-02221-FOIA

(continued)

Request No.	Subject
23-02219-FOIA	4. All documents or communications exchanged between any SEC official and any individual or entity outside of the federal government that reference any of the following matters: (a) <i>Empower Oversight v. SEC</i> , No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) <i>Empower Oversight v. SEC</i> , No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) <i>SEC v. Ripple Labs, Inc.</i> , No. 1:20-cv-10832 (S.D.N.Y.)
23-02220-FOIA	5. All communications exchanged between SEC officials referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP
23-02221-FOIA	6. All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP

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 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

Michael Zummer
May 18, 2023
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23-02215-FOIA, 23-2216-FOIA, and
23-02218-FOIA through 23-02221-FOIA

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 requests.

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

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,



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 E03



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

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

Office of FOIA Services

August 3, 2023

Mr. Michael S. Zimmer
Empower Oversight
601 King Street, Suite 200 #445
Alexandria, VA 22314-3151

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **23-00013-OIG, 23-00014-OIG & 23-02218-FOIA
through 23-02221-FOIA**

Dear Mr. Zimmer:

This letter is in response to the above-referenced FOIA requests, dated and received in this office on May 15, 2023, for access to the following records:

Request No.	Subject
23-00013-OIG	All documents or communications exchanged between SEC officials referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.
23-00014-OIG	All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing Empower Oversight's May 9, 2022 referral to the SEC OIG.
23-02218-FOIA	All documents or communications exchanged between SEC FOIA officials and SEC officials that reference any of the following matters: (a) Empower Oversight v. SEC, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) Empower Oversight v. SEC, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) SEC v. Ripple Labs, Inc., No. 1:20-cv-10832 (S.D.N.Y.). For the purposes of this request, Empower Oversight does not request communications between SEC attorneys and DOJ attorneys that are protected by the attorney-client privilege or work product doctrine. Empower Oversight also does not request copies of any draft filings from the cited cases.

EO3-1

Mr. Michael S. Zummer
 August 3, 2023
 Page 2

23-00013-OIG, 23-00014-OIG &
 23-02218-FOIA through
 23-02221-FOIA

23-02219-FOIA	All documents or communications exchanged between any SEC official and any individual or entity outside of the federal government that reference any of the following matters: (a) Empower Oversight v. SEC, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) Empower Oversight v. SEC, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) SEC v. Ripple Labs, Inc., No. 1:20-cv-10832 (S.D.N.Y.).
23-02220-FOIA	All communications exchanged between SEC officials referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.
23-02221-FOIA	All documents or communications between any SEC representative and any individual or entity outside of the SEC referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP.

As you may be aware, each item in your request was separated into six (6) FOIA requests. With regard to all 6 requests listed above and after consulting with other SEC staff, we have determined that the requests are vague, overly broad and could also be considered improper FOIA requests if not modified or clarified in various respects. We will need further clarification from you in order to move forward with their continued processing. Specifically, the requests are missing some or all of the following information:

- Custodians (SEC divisions, offices, or individuals) to search: all requests would currently have the SEC conducting agency-wide searches. While this may be feasible for emails where a FOIA requester provides other means of focusing a search, we cannot perform such agency-wide searches for hard copy documents, text messages, or other types of communications identified in your request; and
- Time period: the requests provide no time period to conduct a search.

Mr. Michael S. Zummer
August 3, 2023
Page 3

23-00013-OIG, 23-00014-OIG &
23-02218-FOIA through
23-02221-FOIA

More specifically, we seek clarification regarding Request Nos. **23-00013-OIG and 23-00014-OIG**:

- Your request refers to communications that reference Empower Oversight's referral to OIG without providing any further information. Are you seeking communications from any investigation OIG may have conducted as a result of the referral? If not, please explain what you are seeking.
- For an email search, it would be helpful if you provide search terms that you believe may be appropriate if your request is not limited to an OIG investigation.
- As stated above, you should also identify custodians (to the extent you seek communications other than ones to or from OIG staff) and time periods. The start date appears to be May 9, 2022, but we need an end date.

Regarding Request No. **23-02218-FOIA**:

- Your request seeks communications between SEC FOIA officials and SEC officials that reference three matters. Could you confirm that you are seeking only communications to or from SEC FOIA staff?
- For an email search, are there search terms that you would like us to use? We could use the terms "Empower" and "Ripple," but there is a very good chance that even if limited to FOIA Office custodians, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track.
- As stated above, we will need a time period and custodians (to the extent you seek communications other than ones to or from FOIA Office staff) to conduct the search.

Regarding Request No. **23-02219-FOIA**:

- Your request seeks communications between SEC officials and any individual outside of the federal government that reference three matters. For the two Empower Oversight matters, your requests appear to seek communications to or from the FOIA Office and Office of the General Counsel

Mr. Michael S. Zummer
August 3, 2023
Page 4

23-00013-OIG, 23-00014-OIG &
23-02218-FOIA through

("OGC") staff responsible for those matters. We anticipate that most responsive documents will be communications with Empower Oversight and its counsel. Do you want to include those communications? For the Ripple litigation, your request appears to seek communications to or from the Division of Enforcement ("Enforcement") staff responsible for that matter. We anticipate that there are many communications between the Ripple litigation team and counsel for the parties in that litigation as well as others involved in the litigation. Can you be more specific about what you are seeking?

- For an email search, are there search terms that you would like us to use? As with request 23-02219-FOIA, we could use the terms "Empower" and "Ripple," but there is a very good chance that even if limited to FOIA Office, OGC, and Enforcement staff handling those matters, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track. One issue is that your request would pull in every news article the SEC staff receives that contains "Ripple."
- If your request is not limited to FOIA Office, OGC, and Enforcement staff working on the matters referred to, we will need custodians to conduct the search. We will also need a time period.

Finally, regarding Request Nos. **23-02220-FOIA and 23-02221-FOIA**:

- Your requests seek communications referencing certain individuals and certain potential conflicts of interest. You appear to be seeking communications to and from the persons named in the requests and staff in the SEC's Office of Ethics Counsel. If you are seeking additional custodians, please identify them.
- For an email search, are there search terms that you would like us to use? We would propose searching the emails of the individuals named in the requests using the following search: "conflict of interest" AND "Simpson Thacher" OR "Bitcoin" OR "Enterprise Ethereum Alliance" OR "Ether" OR "Ripple" OR "One River Asset Management" OR "XRP." We would also propose searching the emails of Office of Ethics Counsel staff using the following search: "conflict of interest" AND "Hinman" OR "Berger" OR "Clayton."

Mr. Michael S. Zummer
August 3, 2023
Page 5

23-00013-OIG, 23-00014-OIG &
23-02218-FOIA through
23-02221-FOIA

Please acknowledge receipt of this letter and provide the necessary information listed above in order to continue processing your request by no later than **September 15, 2023**.

If you have any questions, please contact me 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,



Frank Mandic
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 E04

Sent at: 9/14/2023 9:27:46 AM

Re: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

From: Mike Zummer <mzummer@empowr.us>
To: mandicf@sec.gov
Cc: Tristan Leavitt <tl@empowr.us>, Jason Foster <jf@empowr.us>

Mr. Mandic,

Thank you for your August 3, 2023 letter. Below is our response to your questions. If you have any further questions or additional clarification would help fulfill this request, please let me know.

Request Nos. 23-00013-OIG and 23-00014-OIG:

1. The SEC asked: “Your request refers to communications that reference Empower Oversight’s referral to OIG without providing any further information. Are you seeking communications from any investigation OIG may have conducted as a result of the referral? If not, please explain what you are seeking.”

Empower Oversight’s request includes, but is not limited to, communications from any investigation OIG may have conducted as a result of Empower Oversight’s referral. The request asks for all communications, which would also include any communications outside the OIG regarding the referral as well. During its search of OIG communications, the SEC can determine if the OIG communicated with other SEC entities about the referral and the request includes any communications regarding the referral by any of those entities. Empower Oversight believes other SEC entities that may have communications regarding the referral include the Office of the General Counsel, Office of the Ethics Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral.

2. The SEC asked: “For an email search, it would be helpful if you provide search terms that you believe may be appropriate if your request is not limited to an OIG investigation.”

Empower Oversight believes the request was clear as drafted. However, search terms for communications referencing the referral would include terms such as “Empower Oversight”, “Empower”, “Hinman,” “OIG”, “referral”, and any identifying number the OIG assigned to the referral or any investigation opened as a result of it. If the search terms yield too many results, they may be narrowed by using logical combinations of search terms, such as “Hinman” and “referral” or other similar combinations.

3. The SEC asked: “As stated above, you should also identify custodians (to the extent you seek communications other than ones to or from OIG staff) and time periods. The start date appears to be May 9, 2022, but we need an end date.

As described above, the SEC is capable of determining which other custodians may have communications referencing Empower Oversight’s referral by searching the communications of OIG employees and determining whether there were communications between them and other SEC entities about the referral. Empower Oversight believes other SEC entities that may have communications regarding the referral include the Office of the General Counsel, Office of the Ethics Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each

EO4-1

of the commissioners and their staffs, and any individual named in the referral. The start date is May 9, 2022. The end date is September 1, 2023.

Request No. 23-02218-FOIA:

1. The SEC asked: “Your request seeks communications between SEC FOIA officials and SEC officials that reference three matters. Could you confirm that you are seeking only communications to or from SEC FOIA staff?”

Yes, the request only seeks communications that involve SEC FOIA officials, but it specifically seeks any communications between those officials and any other SEC officials, which would include communications within the SEC FOIA section, as well as communications between SEC FOIA officials and SEC officials outside the FOIA section.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? We could use the terms ‘Empower’ and ‘Ripple,’ but there is a very good chance that even if limited to FOIA Office custodians, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track.”

Please use the terms “Empower” and “Ripple”. If those terms provide an unmanageable number of hits, then please narrow the search with references to the three identified lawsuits, including search terms such as “litigation”, “lawsuit”, “Empower Oversight v. SEC”, “SEC v. Ripple Labs”, “0095”, “1335”, and “10832”.

3. The SEC asked: “As stated above, we will need a time period and custodians (to the extent you seek communications other than ones to or from FOIA Office staff) to conduct the search.”

The time period for the requested search is from the initiation of the Ripple litigation on December 22, 2020, through September 1, 2023.

Request No. 23-02219-FOIA:

1. The SEC asked: “Your request seeks communications between SEC officials and any individual outside of the federal government that reference three matters. For the two Empower Oversight matters, your requests appear to seek communications to or from the FOIA Office and Office of the General Counsel (‘OGC’) staff responsible for those matters. We anticipate that most responsive documents will be communications with Empower Oversight and its counsel. Do you want to include those communications? For the Ripple litigation, your request appears to seek communications to or from the Division of Enforcement (‘Enforcement’) staff responsible for that matter. We anticipate that there are many communications between the Ripple litigation team and counsel for the parties in that litigation as well as others involved in the litigation. Can you be more specific about what you are seeking?”

Please do not include communications with Empower Oversight or its counsel. Regarding the Ripple litigation, please do not include communications with Ripple and its counsel. We seek communications with outside third parties.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? As with request 23-02219-FOIA, we could use the terms ‘Empower’ and ‘Ripple,’ but there is a very good chance that even if limited to FOIA Office, OGC, and Enforcement staff handling those matters, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track. One issue is that your request would pull in every news article the SEC staff receives that contains ‘Ripple.’”

Please use the terms “Empower” and “Ripple”. If those terms provide an unmanageable number of hits, then please narrow the search with references to the three identified lawsuits. Search terms such as “litigation”, “lawsuit”, “Empower Oversight v. SEC”, “SEC v. Ripple Labs”, “0095”, “1335”, “10832”.

3. The SEC asked: “If your request is not limited to FOIA Office, OGC, and Enforcement staff working on the matters referred to, we will need custodians to conduct the search. We will also need a time period.”

In addition to the FOIA Office, OGC, and Enforcement staff, please include searches of the Chairman and each of the commissioners and their staffs. The time period for the requested search is from the initiation of the Ripple litigation on December 22, 2020, through September 1, 2023.

Request Nos. 23-02220-FOIA and 23-02221-FOIA:

1. The SEC asked: “Your requests seek communications referencing certain individuals and certain potential conflicts of interest. You appear to be seeking communications to and from the persons named in the requests and staff in the SEC’s Office of Ethics Counsel. If you are seeking additional custodians, please identify them.”

In addition to the SEC’s Office of the Ethics Counsel, we are seeking the following additional custodians: OIG, Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? We would propose searching the emails of the individuals named in the requests using the following search: ‘conflict of interest’ AND ‘Simpson Thacher’ OR ‘Bitcoin’ OR ‘Enterprise Ethereum Alliance’ OR ‘Ether’ OR ‘Ripple’ OR ‘One River Asset Management’ OR ‘XRP.’ We would also propose searching the emails of Office of Ethics Counsel staff using the following search: ‘conflict of interest’ AND ‘Hinman’ OR ‘Berger’ OR ‘Clayton.’”

In searching the custodians of the Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral, Empower Oversight requests the SEC use the following search terms similar to those proposed by the SEC, essentially replacing “conflict of interest” with “conflict” or “ethic*” (with “*” meaning any word beginning with “ethic”) AND “Simpson Thacher” OR “Bitcoin” OR “Enterprise Ethereum Alliance” OR “Ether” OR “Ripple” OR “One River Asset Management” OR “XRP”.

Regarding the Office of the Ethics Counsel, Empower Oversight requests the SEC use the following search terms: “conflict” or “ethic*” (with “*” meaning any word beginning with “ethic”) AND “Hinman” OR “Berger” OR “Clayton”.

Thank you for your correspondence in this matter. If you have any further questions, please do not hesitate to reach out to Mike Zummer at mzummer@empowr.us.

| On 8/3/2023 2:30:06 PM, mandicf@sec.gov <mandicf@sec.gov> wrote:

EXHIBIT E05

Brian Field

From: Michael Zummer <mzummer@empowr.us>
Sent: Monday, March 4, 2024 4:03 PM
To: Dykstra, Samuel
Cc: Katilius, Lizzette; Tristan Leavitt; Jason Foster; Brian Field
Subject: Re: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

Thank you for your response, Mr. Dykstra.

Empower Oversight is still interested in obtaining all of the requested records, as we agreed upon. Please do not close the request.

Thank you,

Mike Zummer

From: Dykstra, Samuel <DykstraS@sec.gov>
Sent: Thursday, February 29, 2024 5:25 PM
To: Mike Zummer <mzummer@empowr.us>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>; Brian Field <bfield@schaerr-jaffe.com>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

Mr. Zummer:

Good Afternoon. Please see the attached letter regarding the processing of your request. Additionally, below are the updates we can provide regarding your request.

- Item (3) (formerly 23-02218-FOIA): We have received initial search results for this item. The volume totals approximately 25.5 gigabytes of data which qualifies this for our Complex Track. Please see the attached letter providing additional detail.
- Item (4) (formerly 23-02219-FOIA): Of the 10 offices (including former Commissioners) this item seeks records from, we have received custodians lists for 9 offices and have recently followed up with the remaining office.
- Items (5) and (6) (formerly 23-02220-FOIA & 23-02221-FOIA): Of the 16 offices (including former Commissioners) these items seek records from, we have received custodian lists for 14 offices.

Regards,

Samuel J. Dykstra
Attorney Advisor
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>
Sent: Thursday, February 1, 2024 8:45 AM
To: Dykstra, Samuel <DykstraS@sec.gov>; Brian Field <bfield@schaerr-jaffe.com>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra,

Thank you for your response. We respectfully decline the SEC's offer to provide the forthcoming OIG report in fulfillment of 23-00013-OIG and 23-00014-OIG, and in lieu of searches of OIG for 23-02220-FOIA and 23-02221-FOIA.

Thank you,

Mike Zummer

On 1/31/2024 3:57:24 PM, Dykstra, Samuel <dykstras@sec.gov> wrote:
Mr. Zummer:

Thank you for your email. As we agreed, below are the updates this office can provide regarding the four requests that we have been discussing.

- 23-02218-FOIA: The search has been submitted and we are waiting for results.
- 23-02218-FOIA: Of the 10 offices (including former Commissioners) this request seeks records from, we have received custodians lists for 9 offices and have recently followed up with the remaining office.
- 23-02220-FOIA & 23-02221-FOIA: Of the 16 offices (including former Commissioners) these requests seek records from, we have received custodian lists for 14 offices and have recently followed up with the remaining offices.

Regarding your request that we begin producing documents by February 23, 2024, we think it is premature to set processing schedules while the searches are pending. As I mentioned in my previous email, IT staff have indicated that it could take at least a month, once the remaining searches are submitted, until we receive search results. Once the searches are returned, we will need time to review records for responsiveness and then process responsive records before release or withholding, including consulting with other equity holders. Because we do not have the search results yet, we cannot commit to processing records by a certain date and therefore we cannot reasonably commit to your proposed processing schedule at this time.

If we receive search results before the end of February, we will reach out, after having a chance to review, to discuss the further processing of your requests.

Additionally, we have been discussing requests 23-00013-OIG, 23-00014-OIG, 23-02220-FOIA and 23-02221-FOIA with the SEC's Office of Inspector General (OIG). OIG has authorized us to inform you that OIG has an open investigation into the matter that they are in the final stages of completing. As a result, we would like to see if, in fulfillment of 23-00013-OIG and 23-00014-OIG and in lieu of searches of OIG for 23-02220-FOIA & 23-02221-FOIA, you would instead accept a copy of the report with appropriate redactions when the investigation is completed? If you accept the proposal, we would still proceed with the agreed upon searches of the other offices for 23-02220-FOIA & 23-02221-FOIA.

Please let us know if you are willing to accept this proposal.

Regards,

Samuel J. Dykstra
Attorney Advisor
Office of FOIA Services

U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>
Sent: Thursday, January 25, 2024 4:58 PM
To: Dykstra, Samuel <DykstraS@sec.gov>; Brian Field <bfield@schaerr-jaffe.com>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mr. Dykstra,

Thank you for your response.

Empower agrees to exclude from the scope of 23-02220-FOIA and 23-02221-FOIA: 1) records that were processed in response to the August 12, 2021 or January 28, 2022 FOIA requests, and 2) records otherwise relating to the processing of the Empower Oversight's August 12, 2021 or January 28, 2022 FOIA requests and related litigation.

Also, Empower is willing to proceed with your proposed schedule of an update on January 31 and then every 30 days thereafter.

However, we want to reiterate that our willingness to delay filing a district court complaint turns in part on whether the SEC begins issuing responses in the very near future. Accordingly, we request that the SEC begin producing documents February 23, 2024 at a rate of approximately 500 pages per month.

Mike Zummer

On 1/24/2024 3:59:36 PM, Dykstra, Samuel <dykstras@sec.gov> wrote:
Mr. Zummer:

Good afternoon. After discussing with IT staff, we should be able to conduct a search for 23-02219-FOIA with all of the domain names you have identified.

Thank you for also for noting the discrepancy regarding the inclusion of William Hinman, Marc Berger, and Jay Clayton as SEC custodians to search for requests 23-02220-FOIA and 23-02221-FOIA. Upon further review, given the agreed upon search terms for 23-02220-FOIA and 23-02221-FOIA, combined with the subjects of Empower Oversight's August 12, 2021 and January 28, 2022 requests, it's possible our searches will locate records processed in response to, or otherwise referencing, those earlier requests. For example, the inclusion of William Hinman as a custodian presents substantial overlap between the instant requests and subpart 3 of the August 12, 2021 request, assigned tracking number 21-02533-FOIA, which, generally, sought records related to William Hinman's discussions with the Office of Ethics Counsel regarding potential conflicts related to Simpson Thacher. As a result, similar to our agreements for requests 23-02218-FOIA and 23-02219-FOIA, we seek Empower Oversight's agreement to exclude from the scope of 23-02220-FOIA and 23-02221-FOIA the following categories of records which may appear in our searches:

- Records that were processed in response to the August 12, 2021 or January 28, 2022 FOIA requests.
- Records otherwise relating to the processing of the Empower Oversight's August 12, 2021 or January 28, 2022 FOIA requests and related litigations.

Please let us know if you are amenable to excluding these categories of records from the scope of 23-02220-FOIA and 23-02221-FOIA, to the extent our searches locate them.

We are amenable to providing updates by January 31, 2024, however, we think monthly updates thereafter is reasonable. It is uncommon, even in the FOIA litigation context, for agencies to provide updates more frequently than once a month. For complex requests, such as these, courts will occasionally extend the interval between status reports to 45 or 60 days. Additionally, IT staff have indicated that given the numerous domains to search it could take at least a month, once the remaining searches are submitted, until we receive search results. Therefore, while we remain committed to diligently processing these requests, it's unlikely that we would be able to provide a substantive update within an earlier timeframe.

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>
Sent: Monday, January 22, 2024 4:14 PM
To: Dykstra, Samuel <DykstraS@sec.gov>; Brian Field <bfield@schaerr-jaffe.com>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra,

Thank you for your response. Below is our response to the individual issues in your email.

1. Thank you for agreeing to include instances where the recipient forwards or otherwise comments on news clips or digest type emails.
2. We propose the following list of domains to include in the email search to avoid inflating the search results with intra-governmental emails: .com, .org, .net, .int, .edu, .us, associates, .attorney, .biz, .center, .charity, .chat, .city, .club, .college, .community, .company, .consulting, .cpa, .credit, .creditcard, .degree, .democrat, .earth, .education, .email, .esq, .finance, .financial, .forum, .foundation, .fund, .global, .gop, .google, .group, .inc, .info, .institute, .international, .investments, .law, .lawyer, .legal, .limited, .ltd, .management, .media, .money, .mortgage, .name, .network, .news, .ngo, .partners, .press, .pro, .productions, .prof, .properties, .property, .radio, .report, .republican, .review, .reviews, .school, .site, .study, .tax, .trade, .trading, .university, .ventures, .website, .work, .world.
3. Regarding your summary of our agreements over the individual requests, I believe there is one discrepancy. Regarding 23-02220-FOIA and 23-02221-FOIA, in the 9/14/2023 email, in addition to the offices listed, we asked for "any individual named in the [OIG] referral." Please include William Hinman, Marc Berger, and Jay Clayton, since those are the three SEC employees named in the OIG referral, although we understand that Clayton may be duplicative since he was chairman.
4. Instead of February 12, 2024, we propose an update by January 31, 2024 (and every 14 days thereafter).

Thank you,

Mike Zummer

On 1/18/2024 3:49:52 PM, Dykstra, Samuel <dykstras@sec.gov> wrote:
Mr. Field:

I understand from the below that I have your consent to communicate with your client regarding this matter but please let me know if I am mistaken.

Regarding Empower Oversight's email, please see our replies below:

1. We agree to include instances where the recipient forwards or otherwise comments on news clips or digest type emails.
2. We have discussed with IT staff and it is not technically possible for us to conduct a search that only includes external domains without specifying particular domains. We are open to Empower Oversight proposing additional email domains it would like included. We proposed ".com", ".edu", or ".org" as these are by far the most common non-governmental email domains and thus, reasonably likely to capture agency communications with third parties. Without an agreement, our concern is that the search results will be inflated with intra-governmental emails which we would then need to sift through individually before beginning to process any records actually responsive to this request.

For the sake of clarity, below is our office's understanding of the agreements we have reached for these requests through our correspondence with Empower Oversight beginning in August.

All requests (23-02218-FOIA through 23-02221-FOIA):

- Empower Oversight's January 10, 2024 email:
 - Empower Oversight agreed to exclude news clips or digests from all four requests, except in so far as the recipient forwards or otherwise comments on these items.

23-02218-FOIA and 23-02219-FOIA:

- Empower Oversight's September 14, 2023 email:
 - Empower Oversight specified that the date range for these requests is: December 22, 2020, through September 1, 2023.
 - For 23-02219-FOIA, Empower Oversight requested the following offices be included in the scope of the search: Office of FOIA Services, Office of General Counsel, Division of Enforcement, Office of the Chair including staff, each of the Commissioners' office including staff.
- Empower Oversight's December 20, 2023 email:
 - Empower Oversight clarified that the matter identified in their requests as "*Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.)" was a mistake and the correct matter is "*Empower Oversight v. SEC*, No. 1: 21-cv-01370 in the EDVA (E.D. Va.)."
 - Empower Oversight also agreed to exclude as non-responsive, records that were previously processed in in response to Request Nos. 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA.
 - Empower Oversight further agreed to exclude drafts and otherwise unredacted versions of records processed in response to all the underlying FOIA requests associated with the 21-cv-01370 (E.D. Va.) and 23-cv-1335 (D.D.C.) litigations.
- Empower Oversight's January 10, 2024 email:
 - Empower Oversight agreed to narrow the request to records referencing the FOIA litigations themselves.

- Empower Oversight agreed to the following search terms: “Empower Oversight v. SEC”; “Empower AND (litigation OR lawsuit OR case OR 1370 OR 1335)”; “SEC v. Ripple”; “Ripple AND (litigation OR lawsuit OR case OR 10832).”

23-02220-FOIA and 23-02221-FOIA:

- Empower Oversight’s September 14, 2023 email:
 - Empower Oversight requested the following offices be included in the scope of the searches: Office of the Ethics Counsel, Office of the Inspector General, Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, Office of the Chair including staff, and each of the Commissioners’ offices including staff.
- Empower Oversight’s December 20, 2023 emails:
 - Empower Oversight agreed to the following date range for these requests: May 1, 2017 through September 1, 2023.
- Empower Oversight’s January 10, 2024 email:
 - Empower Oversight agreed to the following search terms: (“conflict” OR “ethic**”) AND (“Hinman” OR “Berger” OR “Clayton”) AND (‘Simpson Thacher’ OR ‘Bitcoin’ OR ‘Enterprise Ethereum Alliance’ OR ‘Ether’ OR ‘Ripple’ OR ‘One River Asset Management’ OR ‘XRP’).
 - Please note: We are double-checking with IT staff to reconfirm the feasibility of this type of search.

Regarding Empower Oversight’s proposed schedule, while we remain committed to diligently processing these requests, we are unable to agree to the proposed schedule at this time. As you are aware, information necessary for the SEC to conduct searches for these requests, including date ranges and offices to be searched, was absent from Empower Oversight’s initial requests. For two of the requests, the relevant matter was incorrectly identified. Once we requested and received this necessary information, we promptly reached out to relevant offices to identify records custodians for the purposes of our searches. While the search for 23-02218-FOIA has been submitted, we are still collecting information to be able to submit the searches for the other three requests. As noted above, for 23-02219-FOIA, we are still trying to reach an agreement with Empower Oversight on appropriate search criteria to avoid an unnecessarily broad search.

Until our searches are completed and we know the volume of potentially responsive material, the complexity of the responsive records, number of consultations, as well as any potential confidential treatment issues, we cannot meaningfully agree to a processing date or schedule.

We propose to provide an update by February 12, 2024 regarding the status of our searches and the volume of potentially responsive material for any searches returned by that date.

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>
Sent: Wednesday, January 10, 2024 7:00 PM
To: Dykstra, Samuel <DykstraS@sec.gov>; Brian Field <bfield@schaerr-jaffe.com>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra,

Thank you. We appreciate the update. Although we have retained counsel for this matter, I will generally handle further communication on this matter during the administrative process.

Below are our responses to your questions.

1. We agree to exclude news digests and news clips from the request, with one caveat. Specifically, we agree to exclude any such documents unless a recipient has forwarded the news clips or otherwise commented on them. For instance, an email with news clips that the recipient forwards with commentary would still be responsive and should be produced.
2. For request 23-02219-FOIA, which seeks SEC communications external to the federal government, we cannot agree to the SEC limiting its search to communications where a participant had a ".com", ".edu", or ".org" email domain. As you are no doubt aware, there are many other non-government domains that would not be captured by such a search. With that said, we welcome any suggestions you have about how such a search could be conducted within the technological limitations of the SEC's FOIA processing platform. For instance, if it is possible to craft a search where the SEC excludes any communications where all participants have .gov addresses, that may work. But we can only agree to a limitation here if it will capture all non-government domains.
3. For requests 23-02218-FOIA and 23-02219-FOIA, we are willing to narrow the request to records referencing the FOIA litigations themselves. Empower Oversight agrees to exclude records that merely reference the underlying FOIA requests, but not the litigation.
4. Considering our narrowing of the request, we agree to the SEC's proposed search terms for 23-02218-FOIA and 23-02219-FOIA. Specifically, for subparts (a) and (b): "Empower Oversight v. SEC"; "Empower AND (litigation OR lawsuit OR case OR 1370 OR 1335)", and for subpart (c) "SEC v. Ripple"; "Ripple AND (litigation OR lawsuit OR case OR 10832)."
5. Regarding 23-02220-FOIA and 23-02221-FOIA, we agree that a combined search to capture the internal and external communications would be acceptable.
6. Also Regarding 23-02220-FOIA and 23-02221-FOIA, we agree to a combined search of all the requested offices with the terms: ("conflict" OR "ethic*") AND ("Hinman" OR "Berger" OR "Clayton") AND ('Simpson Thacher' OR 'Bitcoin' OR 'Enterprise Ethereum Alliance' OR 'Ether' OR 'Ripple' OR 'One River Asset Management' OR 'XRP').

We would also like to get a schedule in place to ensure that this matter moves forward. In particular, we would like to ensure that the SEC begins processing records it has identified thus far while it completes the other searches. To that end, we believe the following schedule is reasonable and will help avoid the need for litigation:

- By January 19 (and every 14 days thereafter): The SEC will provide Empower with an update on what searches are complete and what searches remain ongoing. As part of those updates, the SEC will identify the number of potentially responsive documents or pages identified thus far. And the SEC will identify any questions or proposals for narrowing.

• By January 31 (and every 30 days thereafter): The SEC will issue responsive, non-exempt records to Empower. For this, the SEC will process at least 750 pages each month, releasing all responsive, non-exempt records reviewed that month.

Thank you for your help,

Mike Zummer

On 1/8/2024 3:14:53 PM, Dykstra, Samuel <dykstras@sec.gov> wrote:
Mr. Field:

I am writing to provide an update regarding our processing of these four requests (23-02218-FOIA through 23-02221-FOIA). As indicated previously, following the clarifications provided on December 20, 2023 regarding the scope of these four requests, we reached out to relevant offices to identify records custodians for the purposes of our search. With the exception of 23-02218-FOIA, we are still in the process of identifying all relevant custodians based on the offices and timeframes specified for the other three requests.

However, given the scope of these requests we anticipate that initial search results will be voluminous given the timeframe, number of offices/custodians, search terms, and subject matter. As a result, we wanted to propose some additional options and seek further clarification, regarding the scope of these requests, outlined below.

A common type of email received by SEC staff on a regular basis is news digests, or news clips, that contain news articles, summaries, or excerpts thereof. We propose to exclude these records as non-responsive from all four requests. Please let us know if you agree to exclude these types of records.

For request 23-02219-FOIA, which seeks SEC communications external to the federal government, we propose limiting our search to where a participant had a “.com”, “.edu”, or “.org” email domain, which we believe might reduce the amount of potential non-responsive intra-governmental communications from our search results. Please let us know if you agree to this search parameter.

For requests 23-02218-FOIA and 23-02219-FOIA, we note that in Empower Oversight’s September 14, 2023 email, the search terms Empower Oversight proposed did not include iterations of the FOIA request tracking numbers associated with the litigations referenced in parts (a) and (b) of those requests. Can we conclude from Empower Oversight’s response that they are only interested in records referencing the FOIA litigations themselves? In other words, records that merely reference the underlying FOIA requests without a connection to the litigation would be not responsive?

If our conclusion is correct, we propose the following search terms for subparts (a) and (b), slightly modified from Empower Oversight’s proposal: “Empower Oversight v. SEC”; “Empower AND (litigation OR lawsuit OR case OR 1370 OR 1335).”

For subpart (c) of requests 23-02218-FOIA and 23-02219-FOIA, we’d similarly propose “SEC v. Ripple”; “Ripple AND (litigation OR lawsuit OR case OR 10832).”

Please let us know if you agree to the above proposed search terms for 23-02218-FOIA and 23-02219-FOIA.

Regarding 23-02220-FOIA and 23-02221-FOIA, we propose running a combined search for these two requests to capture both any potential internal (23-02220-FOIA) and external (23-02221-FOIA) communications responsive to these requests.

Similarly, we note that in Empower Oversight’s September 14, 2023 counter proposal, Empower Oversight proposed one set of search terms for all the requested offices, except the Office of the Ethics Counsel (OEC), and a second set of search terms just for OEC. However, since these requests seek records regarding specific potential conflicts of

interest with respect to the three individuals referenced therein, we think proceeding with a single set of terms integrating the two proposed sets of search terms is reasonably calculated to uncover all records responsive to these requests. Doing a combined search also potentially reduces duplicates from the search results. Please let us know if you agree to a combined search along these lines: ("conflict" OR "ethic*") AND ("Hinman" OR "Berger" OR "Clayton") AND ("Simpson Thacher" OR "Bitcoin" OR "Enterprise Ethereum Alliance" OR "Ether" OR "Ripple" OR "One River Asset Management" OR "XRP"). Please let us know if you agree to the above proposals.

We are also willing to discuss additional proposals regarding these requests.

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Dykstra, Samuel
Sent: Tuesday, January 2, 2024 3:06 PM
To: Brian Field <bfield@schaerr-jaffe.com>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Mike Zummer <mzummer@empowr.us>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

Mr. Field:

Good afternoon. We will provide a status update for these requests by January 8.

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Brian Field <bfield@schaerr-jaffe.com>
Sent: Tuesday, January 2, 2024 2:55 PM
To: Dykstra, Samuel <DykstraS@sec.gov>
Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Mike Zummer <mzummer@empowr.us>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra –

Thank you for your email. If the SEC can provide a status update by January 8, we will evaluate thereafter whether to proceed with litigation.

Best,

Brian

Brian J. Field

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900 | Washington, DC 20006

Office (202) 787-1060 | Mobile (703) 989-7780

bfield@schaerr-jaffe.com | www.schaerr-jaffe.com

From: Dykstra, Samuel <DykstraS@sec.gov>

Sent: Thursday, December 21, 2023 3:45 PM

To: Brian Field <bfield@schaerr-jaffe.com>

Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Mike Zummer <mzummer@empowr.us>;

Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>

Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

Mr. Field:

Thank you for that clarification. With the additional information provided yesterday for these four requests (23-02218-FOIA through 23-02221-FOIA), we have reached out to relevant offices to identify records custodians for the purposes of our search. However, given the holidays and staff's preplanned leave, it is possible we will not hear back until after the new year.

I also note Empower Oversight's request that the SEC issue final responses by January 31, 2024. While our office continues to diligently process these requests, at this time, we do not anticipate we will be able to issue final responses by January 31, 2024.

Collectively, these requests are broad in scope, include multiple subparts, span a timeframe of up to 5 years, and seek records from a total of 19 separate SEC offices, including departed Chairs, Commissioners, and their staff. It will take time to identify all the relevant records custodians, let alone for the searches to be run, and any responsive records to be processed.

If Empower Oversight is interested, we are willing to provide a status update regarding our efforts by January 8, 2024. We also remain open to discussing additional ways to narrow these requests and appreciate Empower Oversight's acceptance of our proposals so far.

Regards,

Samuel J. Dykstra

Office of FOIA Services

U.S. Securities & Exchange Commission

100 F. Street, N.E., Suite 2744

Washington, DC 20549-2465

202-551-2056

From: Brian Field <bfield@schaerr-jaffe.com>

Sent: Wednesday, December 20, 2023 4:32 PM

To: Dykstra, Samuel <DykstraS@sec.gov>

Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Mike Zummer <mzummer@empowr.us>;

Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>

Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra –

Thank you for touching base. That should be May 1, 2017.

Best,

Brian

Brian J. Field

SCHAERR | JAFFE LLP

1717 K Street NW, Suite 900 | Washington, DC 20006

Office (202) 787-1060 | Mobile (703) 989-7780

bfield@schaerr-jaffe.com | www.schaerr-jaffe.com

From: Dykstra, Samuel <DykstraS@sec.gov>

Sent: Wednesday, December 20, 2023 1:34 PM

To: Brian Field <bfield@schaerr-jaffe.com>

Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Mike Zummer <mzummer@empowr.us>;

Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>

Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

Mr. Field:

Good afternoon. I understand from the below that Empower Oversight has retained your services in connection with the processing of the above-referenced FOIA requests. As a result, and in accordance with the D.C. Bar's Rules of Professional Conduct, I am directing all subsequent correspondence to you.

In response to my email, Mr. Zummer responded that for Request Nos. 23-02220-FOIA and 23-02221-FOIA, the SEC should "use the start date of May 1, 2027 for these searches." As this is a date in the future, we believe it is a typo. Could you let us know what the start date for these requests should be?

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>

Sent: Wednesday, December 20, 2023 12:02 PM

To: Dykstra, Samuel <DykstraS@sec.gov>; Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>

Cc: Katilius, Lizzette <KatiliusL@SEC.GOV>; Brian Field <bfield@schaerr-jaffe.com>

Subject: RE: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Dykstra,

Thank you for reaching out. Our responses are in bold after each of the questions in your original email.

Additionally, because we had not heard from you since our September 14, 2023 response to your questions, three months ago, before your December 18, 2023 email, we had already expended resources to prepare a complaint seeking judicial resolution as the SEC's processing is still far behind what FOIA requires. However, if the SEC is able to provide a final response by January 31, 2024, we may be able to avoid going down that route. Please advise us by January 8, 2024 if that will be possible.

Please let me know if you have any questions.

Mike Zummer

On 12/18/2023 4:17:30 PM, Dykstra, Samuel <dykstras@sec.gov> wrote:
Mr. Zummer:

Good afternoon. We have reviewed your September 14, 2023 email response (below) to our August 3, 2023 letter and, after reviewing our files, believe additional clarification is needed regarding certain aspects of these requests. Specifically:

- **Requests 23-02218-FOIA and 23-002219-FOIA:**
 - These two requests, in part, seek specified documents and communications related to "(a) *Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.) and the FOIA requests associated with that litigation." We have been unable to identify any FOIA requests associated with a litigation that has that case number. In trying to find requests associated with case "No. 1:23-cv-0095," we found reference to that case number in the [Complaint](#) filed in *Empower Oversight v. SEC*, No.23-cv-1335 (D.D.C.) (see ¶ 13). That paragraph refers to requests submitted on August 12, 2021, which we believe were assigned the following tracking numbers: 21-02531-FOIA, 21-02532-FOIA, 21-02533-FOIA, 21-02534-FOIA, 21-02535-FOIA, 21-02536-FOIA, 21-02537-FOIA, and 21-02538-FOIA. However, our records indicate that these requests were the subject of the following litigation: *Empower Oversight v. SEC*, No. 1:21-cv-01370 (E.D. Va.).
 - **Question:** Could you confirm whether 21-cv-01370 and the above-referenced eight FOIA requests are the litigation and FOIA requests intended to be referenced in subpart (a) of requests 23-02218-FOIA and 23-002219-FOIA? Alternatively, if you do intend to seek records related to FOIA requests associated with "*Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.)" could you provide those FOIA request numbers?
 - **You are correct. We mistakenly cited the wrong case number. The correct case number is 21-cv-01370 in the EDVA. The eight FOIA requests associated with the 1370 case are the correct tracking numbers. We do seek records related to the 1370 case and associated tracking numbers**
 -
 -
 - **Question:** If we are correct that these requests do seek records related to 21-cv-01370, could you confirm that the search terms requested in your September 14, 2023

response email for Requests 23-02218-FOIA and 23-002219-FOIA, should be updated accordingly? (*i.e.*, omitting “0095” as a term and replacing it with “01370”).

You are correct that we would like to update the search terms to replace "0095" with "01370" regarding Requests 23-02218-FOIA and 23-002219-FOIA.

- Assuming we're correct regarding the above, we further note that subpart (b) of requests 23-02218-FOIA and 23-002219-FOIA, seek specified documents and communications related to “(b) *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation.” Three FOIA requests that are associated with 23-cv-1335 (22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA) seek the “processing notes” associated with four FOIA requests (21-02531-FOIA, 21-02532-FOIA, 21-02537-FOIA and 21-02535-FOIA) that were associated with *Empower Oversight v. SEC*, No. 1:21-cv-01370 (E.D. Va.), which we believe is the intended subject of subpart (a) of these requests (see above). Therefore, it appears that the records sought by subpart (a) of Requests 23-02218-FOIA and 23-002219-FOIA are at least partially duplicative of the records sought by 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA, and which are still the subject of the ongoing litigation *Empower Oversight v. SEC*, No. 23-cv-1335 (D.D.C.).
 - **Proposal:** As a result, we seek your agreement to exclude from requests 23-02218-FOIA and 23-002219-FOIA records that were processed in response to 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA. Please let us know if this is acceptable or if we have misunderstood what is sought by subpart (a) of these requests.
- **We agree to exclude the records that were processed in response to 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA.**
 - - **Proposal:** To the extent responsive to your requests, we further seek your agreement to exclude from both subparts (a) and (b) of requests 23-02218-FOIA and 23-002219-FOIA, draft and otherwise unredacted versions of the records processed in response to all the underlying FOIA requests associated with the 21-cv-01370 (E.D. Va.) and 23-cv-1335 (D.D.C.) litigations. Doing so may facilitate our office's ability to respond to these two requests by eliminating the need to potentially reprocess records you have already received. Please let us know if this is acceptable.

It is acceptable to exclude draft and otherwise unredacted versions of the records processed.

- **Request Nos. 23-02220-FOIA and 23-02221-FOIA**
 - **Question:** We note that for these FOIA requests you have not yet provided a start date for the searches. Could you please provide a start date for our searches for these FOIA requests? As with the other related requests, we intend to use September 1, 2023 as the search cut off.

Please use the start date of May 1, 2027 for these searches.

Please let me know if you have any questions or would like to discuss any of the above.

Regards,

Samuel J. Dykstra
Office of FOIA Services
U.S. Securities & Exchange Commission
100 F. Street, N.E., Suite 2744
Washington, DC 20549-2465
202-551-2056

From: Mike Zummer <mzummer@empowr.us>
Sent: Thursday, September 14, 2023 10:28 AM
To: Mandic, Frank <MandicF@SEC.GOV>
Cc: Tristan Leavitt <tl@empowr.us>; Jason Foster <jf@empowr.us>
Subject: Re: 23-00013-OIG, 23-00014-OIG & 23-02218-FOIA through 23-02221-FOIA Response - 23-02218-FOIA

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Mr. Mandic,

Thank you for your August 3, 2023 letter. Below is our response to your questions. If you have any further questions or additional clarification would help fulfill this request, please let me know.

Request Nos. 23-00013-OIG and 23-00014-OIG:

1. The SEC asked: “Your request refers to communications that reference Empower Oversight’s referral to OIG without providing any further information. Are you seeking communications from any investigation OIG may have conducted as a result of the referral? If not, please explain what you are seeking.”

Empower Oversight’s request includes, but is not limited to, communications from any investigation OIG may have conducted as a result of Empower Oversight’s referral. The request asks for all communications, which would also include any communications outside the OIG regarding the referral as well. During its search of OIG communications, the SEC can determine if the OIG communicated with other SEC entities about the referral and the request includes any communications regarding the referral by any of those entities. Empower Oversight believes other SEC entities that may have communications regarding the referral include the Office of the General Counsel, Office of the Ethics Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral.

2. The SEC asked: “For an email search, it would be helpful if you provide search terms that you believe may be appropriate if your request is not limited to an OIG investigation.”

Empower Oversight believes the request was clear as drafted. However, search terms for communications referencing the referral would include terms such as “Empower Oversight”, “Empower”, “Hinman,” “OIG”, “referral”, and any identifying number the OIG assigned to the referral or any investigation opened as a result of it. If the search terms yield too many results, they may be narrowed by using logical combinations of search terms, such as “Hinman” and “referral” or other similar combinations.

3. The SEC asked: “As stated above, you should also identify custodians (to the extent you seek communications other than ones to or from OIG staff) and time periods. The start date appears to be May 9, 2022, but we need an end date.

As described above, the SEC is capable of determining which other custodians may have communications referencing Empower Oversight’s referral by searching the communications of OIG employees and determining whether there were communications between them and other SEC entities about the referral. Empower Oversight believes other SEC entities that may have communications regarding the referral include the Office of the General Counsel, Office of the Ethics Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral. The start date is May 9, 2022. The end date is September 1, 2023.

Request No. 23-02218-FOIA:

1. The SEC asked: “Your request seeks communications between SEC FOIA officials and SEC officials that reference three matters. Could you confirm that you are seeking only communications to or from SEC FOIA staff?”

Yes, the request only seeks communications that involve SEC FOIA officials, but it specifically seeks any communications between those officials and any other SEC officials, which would include communications within the SEC FOIA section, as well as communications between SEC FOIA officials and SEC officials outside the FOIA section.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? We could use the terms ‘Empower’ and ‘Ripple,’ but there is a very good chance that even if limited to FOIA Office custodians, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track.”

Please use the terms “Empower” and “Ripple”. If those terms provide an unmanageable number of hits, then please narrow the search with references to the three identified lawsuits, including search terms such as “litigation”, “lawsuit”, “Empower Oversight v. SEC”, “SEC v. Ripple Labs”, “0095”, “1335”, and “10832”.

3. The SEC asked: “As stated above, we will need a time period and custodians (to the extent you seek communications other than ones to or from FOIA Office staff) to conduct the search.”

The time period for the requested search is from the initiation of the Ripple litigation on December 22, 2020, through September 1, 2023.

Request No. 23-02219-FOIA:

1. The SEC asked: “Your request seeks communications between SEC officials and any individual outside of the federal government that reference three matters. For the two Empower Oversight matters, your requests appear to seek communications to or from the FOIA Office and Office of the General Counsel (‘OGC’) staff responsible for those matters. We anticipate that most responsive documents will be communications with Empower Oversight and its counsel. Do you want to include those communications? For the Ripple litigation, your request appears to seek communications to or from the Division of Enforcement (‘Enforcement’) staff responsible for that matter. We anticipate that there are many communications between the Ripple litigation team and counsel for the parties in that litigation as well as others involved in the litigation. Can you be more specific about what you are seeking?”

Please do not include communications with Empower Oversight or its counsel. Regarding the Ripple litigation, please do not include

communications with Ripple and its counsel. We seek communications with outside third parties.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? As with request 23-02219-FOIA, we could use the terms ‘Empower’ and ‘Ripple,’ but there is a very good chance that even if limited to FOIA Office, OGC, and Enforcement staff handling those matters, such a search could result in a large amount of hits that would lead to your request being placed in our Complex track. One issue is that your request would pull in every news article the SEC staff receives that contains ‘Ripple.’”

Please use the terms “Empower” and “Ripple”. If those terms provide an unmanageable number of hits, then please narrow the search with references to the three identified lawsuits. Search terms such as “litigation”, “lawsuit”, “Empower Oversight v. SEC”, “SEC v. Ripple Labs”, “0095”, “1335”, “10832”.

3. The SEC asked: “If your request is not limited to FOIA Office, OGC, and Enforcement staff working on the matters referred to, we will need custodians to conduct the search. We will also need a time period.”

In addition to the FOIA Office, OGC, and Enforcement staff, please include searches of the Chairman and each of the commissioners and their staffs. The time period for the requested search is from the initiation of the Ripple litigation on December 22, 2020, through September 1, 2023.

Request Nos. 23-02220-FOIA and 23-02221-FOIA:

1. The SEC asked: “Your requests seek communications referencing certain individuals and certain potential conflicts of interest. You appear to be seeking communications to and from the persons named in the requests and staff in the SEC’s Office of Ethics Counsel. If you are seeking additional custodians, please identify them.”

In addition to the SEC’s Office of the Ethics Counsel, we are seeking the following additional custodians: OIG, Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral.

2. The SEC asked: “For an email search, are there search terms that you would like us to use? We would propose searching the emails of the individuals named in the requests using the following search: ‘conflict of interest’ AND ‘Simpson Thacher’ OR ‘Bitcoin’ OR ‘Enterprise Ethereum Alliance’ OR ‘Ether’ OR ‘Ripple’ OR ‘One River Asset Management’ OR ‘XRP.’ We would also propose searching the emails of Office of Ethics Counsel staff using the following search: ‘conflict of interest’ AND ‘Hinman’ OR ‘Berger’ OR ‘Clayton.’”

In searching the custodians of the Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, as well as the Chairman and each of the commissioners and their staffs, and any individual named in the referral, Empower Oversight requests the SEC use the following search terms similar to those proposed by the SEC, essentially replacing “conflict of interest” with “conflict” or “ethic*” (with “*” meaning any word beginning with “ethic”) AND “Simpson Thacher” OR “Bitcoin” OR “Enterprise Ethereum Alliance” OR “Ether” OR “Ripple” OR “One River Asset Management” OR “XRP”.

Regarding the Office of the Ethics Counsel, Empower Oversight requests the SEC use the following search terms: “conflict” or “ethic*”

(with “*” meaning any word beginning with “ethic”) AND “Hinman” OR “Berger” OR “Clayton”.

Thank you for your correspondence in this matter. If you have any further questions, please do not hesitate to reach out to Mike Zummer at mzummer@empowr.us.

On 8/3/2023 2:30:06 PM, mandicf@sec.gov <mandicf@sec.gov> wrote:

EXHIBIT E06



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

Office of FOIA Services

February 29, 2024

Mr. Michael S. Zummer
Empower Oversight
11166 Fairfax Blvd.
Ste. 500 #1076
Fairfax, VA 22030

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **23-00013-OIG, 23-00014-OIG, 23-02218-FOIA, 23-02219-FOIA 23-02220-FOIA, and 23-02221-FOIA**

Dear Mr. Zummer:

This letter responds to your request, dated May 15, 2023, and received in this office on May 15, 2023, and which, by letter dated May 18, 2023, we indicated each subpart was assigned a separate tracking number, as identified below.

FOIA No.	Subject
23-00013-OIG	(1) all documents or communications exchanged between SEC officials referencing Empower Oversight's May 9, 2022 referral to the SEC OIG
23-00014-OIG	(2) all documents or communications between any SEC representative and any individual or entity outside of the SEC referencing Empower Oversight's May 9, 2022 referral to the SEC OIG
23-02218-FOIA	(3) all documents or communications exchanged between SEC FOIA officials and SEC officials that reference any of the following matters: (a) Empower Oversight v. SEC, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) Empower Oversight v. SEC, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) SEC v. Ripple Labs, Inc., No. 1:20-cv-10832 (S.D.N.Y.)

EO6-1

Michael S. Zummer
 February 29, 2024
 Page 2

23-02218-FOIA

23-02219-FOIA	(4) all documents or communications exchanged between any SEC official and any individual or entity outside of the federal government that reference any of the following matters: (a) Empower Oversight v. SEC, No. 1:23-cv-0095 (E.D. Va.), and the FOIA requests associated with that litigation; (b) Empower Oversight v. SEC, No. 23-cv-1335 (D.D.C.), and the FOIA requests associated with that litigation; and (c) SEC v. Ripple Labs, Inc., No. 1:20-cv-10832 (S.D.N.Y.).
23-02220-FOIA	(5) all communications exchanged between SEC officials referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with SimpsonThacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP
23-02221-FOIA	(6) all documents or communications between any SEC representative and any individual or entity outside of the SEC referencing William Hinman, Marc Berger, or Jay Clayton and any potential conflict of interest related to their association with Simpson Thacher, Bitcoin, the Enterprise Ethereum Alliance, Ether, Ripple, One River Asset Management, or XRP

Upon review, please be advised that these requests are being consolidated and will be processed under the FOIA Request No. 23-02218-FOIA tracking number. FOIA Requests 23-00013-OIG, 23-00014-OIG, 23-02219-FOIA, 23-02220-FOIA, and 23-02221-FOIA will be administratively closed.

Reference is also made to our letter dated May 18, 2023 in which we addressed your fee waiver request. Additional reference is made to our letter dated August 03, 2023 as well as our email communications between September 14, 2023 and January 25, 2024 in which we made several agreements regarding the scope of this request. Specifically,

- In your email dated September 14, 2023 in response to our August 03, 2023 letter:

Michael S. Zummer
February 29, 2024
Page 3

23-02218-FOIA

- With respect to items (1) and (2) of this request, you specified that the date range for these items should be May 9, 2022 through September 1, 2023
- With respect to items (3) and (4), you specified that the date range of this request is: December 22, 2020, through September 1, 2023. You further specified regarding item (4) that the following offices should be included in the scope of the search: Office of FOIA Services, Office of General Counsel, Division of Enforcement, Office of the Chair including staff, each of the Commissioners' office including staff.
- With respect to items (5) and (6), you specified that the following offices be included in the scope of the search: Office of the Ethics Counsel, Office of the Inspector General, Office of the General Counsel, Office of Legislative and Intergovernmental Affairs, Office of Public Affairs, Office of the Secretary, Office of the Chair including staff, each of the Commissioners' offices including staff, as well as William Hinman, Marc Berger, and Jay Clayton.
- In your email dated December 20, 2023 in response to our email dated December 18, 2023:
 - With respect to item (3), you clarified that the matter identified in your request as "*Empower Oversight v. SEC*, No. 1:23-cv-0095 (E.D. Va.)" was a mistake and the correct matter is "*Empower Oversight v. SEC*, No. 1: 21-cv-01370 in the EDVA (E.D. Va.)."
 - With respect to items (3) and (4), you also agreed to exclude as non-responsive, records that were previously processed in in response to Request Nos. 22-01118-FOIA, 22-01119-FOIA, and 22-01120-FOIA. You further agreed to exclude drafts and otherwise unredacted versions of records processed in response to all the underlying FOIA requests associated with the 21-cv-01370 (E.D. Va.) and 23-cv-1335 (D.D.C.) litigations.
 - With respect to items (5) and (6), you also specified that the date range is May 1, 2017 through September 1, 2023.
- In your email dated January 10, 2024 in response to our email dated January 8, 2024:

Michael S. Zummer
February 29, 2024
Page 4

23-02218-FOIA

- o You agreed to exclude news clips or digests from this request, except in so far as the recipient forwards or otherwise comments on these items.
 - o With respect to items (3) and (4), you agreed to narrow the request to records referencing the FOIA litigations themselves. You further agreed, with respect to these items, to the following search terms "Empower Oversight v. SEC"; "Empower AND (litigation OR lawsuit OR case OR 1370 OR 1335)"; "SECv. Ripple"; "Ripple AND (litigation OR lawsuit OR case OR 10832).
 - o With respect to items (5) and (6), you agreed to the following search terms: ("conflict" OR "ethic*") AND ("Hinman" OR "Berger" OR "Clayton") AND ('Simpson Thacher' OR 'Bitcoin' OR 'Enterprise Ethereum Alliance' OR 'Ether' OR 'Ripple' OR 'One River Asset Management' OR 'XRP.
- In your email dated January 25, 2024, in response to our email dated January 24, 2024:
 - o With respect to items (5) and (6), you agreed to exclude: 1) records that were processed in response to your August 12, 2021 or January 28, 2022 FOIA requests, and 2) records otherwise relating to the processing of your August 12, 2021 or January 28, 2022 FOIA requests.

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 two 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.

Michael S. Zummer
February 29, 2024
Page 5

23-02218-FOIA

We have identified 25.5 gigabytes¹ of emails records that may be responsive to item (3) of your request. We typically estimate that it will take a staff member one (1) hour to review approximately 50 pages of email records. Therefore, we estimate a significantly large amount of time to review the records.

Under the FOIA, you are considered a "Media Use" requester. As such, you are not charged for search and review fees, and are entitled to the first 100 pages of duplication free of charge. Beyond the first 100 pages of duplication, you will be charged duplication costs of any releasable records at the rate of \$0.15 cents per page, in accordance with our [fee schedule](#). However, because any records we release would be provided electronically, no duplication charges will accrue.

Since the records are voluminous, if requested, we would process them in our Complex track. Under 5 U.S.C. § 552(a)(6)(D)(i) agencies may provide for multi-track processing of requests for records based on the amount of work or time (or both) involved in processing requests. The SEC's regulation implementing multi-track processing is located at 17 CFR § 200.80(d)(4).

Investigatory records generally consist of transcripts of testimony, exhibits, and miscellaneous evidentiary materials. Therefore, you may want to consider narrowing the scope of your request.

At present we anticipate that it may take thirty-six months or more before we can begin to process a request placed in our Complex track.

If you are interested in having us place your request in our Complex Track, please write or call me by **April 11, 2024** and identify the records of interest to you. Please be advised that if we do not hear from you within this time period, we will assume that you have elected not to pursue your request, and it will be administratively closed.

If you have any questions, or would like to discuss other ways in which to possibly avoid the Complex processing track, please contact me at dykstras@sec.gov or (202) 551-2056. You may also contact me at foiapa@sec.gov or (202) 551-7900. You

¹ Please note the search results may have yielded several false hits, duplicates, or material that is otherwise non-responsive, which we cannot determine until we begin our review of the records.

Michael S. Zummer
February 29, 2024
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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 written in a cursive style with a large initial "L".

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.

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 Under 5 U.S.C. §552, Def. is required to search for & produce all non-exempt records responsive to Pl.'s FOIA request

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
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VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>	If yes, please complete related case form
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DATE: 03/15/2024	SIGNATURE OF ATTORNEY OF RECORD /s/ Brian J. Field
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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

EMPOWER OVERSIGHT WHISTLEBLOWERS
& RESEARCH,

Plaintiff

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

Defendant

)
)
)
)
)
)
)
)
)
)

Civil Action No. 24-754

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

U.S. SECURITIES AND EXCHANGE COMMISSION
100 F Street, N.E.
Washington, DC 20549

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field
Schaerr | Jaffe LLP
1717 K Street NW, Suite 900
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

EMPOWER OVERSIGHT WHISTLEBLOWERS
& RESEARCH,

Plaintiff

v.

Civil Action No. **24-754**

U.S. SECURITIES AND EXCHANGE COMMISSION,

Defendant

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Matthew M. Graves, U.S. Attorney for the District of Columbia
U.S. Attorney's Office
Attn: Civil Process Clerk
601 D Street, NW
Washington, DC 20530
USADC.ServiceCivil@usdoj.gov

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Brian J. Field
Schaerr | Jaffe LLP
1717 K Street NW, Suite 900
Washington, DC 20006

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

United States District Court For the District of Columbia

EMPOWER OVERSIGHT)
 WHISTLEBLOWERS & RESEARCH,)
)
 vs Plaintiff)
)
 U.S. SECURITIES AND EXCHANGE)
 COMMISSION,)
)
 Defendant)

Civil Action No. 24-754

CERTIFICATE RULE LCvR 26.1

I, the undersigned, counsel of record for Empower Oversight Whistleblowers & Research certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries or affiliates of Empower Oversight Whistleblowers & Research which have any outstanding securities in the hands of the public:

None.

These representations are made in order that judges of this court may determine the need for recusal.

Attorney of Record

/s/ Brian J. Field

Signature

Brian J. Field

Print Name

Schaerr | Jaffe LLP, 1717 K Street NW, Suite 900

Address

Washington, DC 20006

City

State

Zip Code

(202) 787-1060

Phone Number

985577

BAR IDENTIFICATION NO.