



March 29, 2023

VIA EMAIL

FDIC Legal Division, FOIA/PA Group
550 17th Street
N.W., Washington, DC 20429
E-mail: efoia@fdic.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

I write on behalf of Americans for Prosperity Foundation (“AFPF”), a 501(c)(3) nonpartisan organization dedicated to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society.¹

AFPF is investigating the unprecedented and arbitrary actions taken by the Federal Deposit Insurance Corporation (“FDIC”) and the Biden Administration in response to the Silicon Valley Bank (“SVB”) failure. Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, AFPF hereby requests the following records:²

1. All calendars or calendar entries, including any calendars maintained on their behalf, for the employees listed below from January 1, 2023, to the present.³
2. All calendars or calendar entries, including any calendars maintained on their behalf, of meetings with SVB employees or about SVB for the employees listed below from January 1, 2022, to December 31, 2022.
3. All internal or external communications (*e.g.*, email, text, and instant messaging), including attachments, that are responsive to any of the following keyword searches from January 1, 2023, to the present:
 - a. “Silicon Valley Bank” OR “SVB”
 - b. “Systemic risk” OR “bailout” OR “moral hazard”
 - c. (“consolidation” OR “sale”) AND (“antitrust” OR “hedge fund” OR “too big to fail”)

Please limit the search to the following records custodians and include any alias accounts maintained by those individuals:

- A. Chairman Martin J. Gruenberg
- B. Vice Chairman Travis Hill
- C. Director Jonathan McKernan

¹ See AMS. FOR PROSPERITY FOUND., www.americansforprosperityfoundation.org (last visited Mar. 15, 2023).

² For purposes of this request, the term “record” means any medium of information storage in the form and format maintained by the agency at the time of the request. If any portion of a “record,” so defined, is responsive to AFPF’s request, then the agency should process and disclose the record in its entirety. If the agency considers a medium of information storage to contain multiple records that it believes can be segmented on the basis of the subject-matter or scope of AFPF’s request, AFPF explicitly seeks access to those separate “records” as well. They should not be treated as “non-responsive.”

³ The term “present” should be construed as the date on which the FDIC Department begins its search for responsive records. See *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).

- D. Deputy to the Chairman and Chief of Staff Kymberly K. Copa
- E. Deputy to the Chairman for External Affairs Nikita Pearson
- F. Deputy to the Chairman for Financial Stability Arthur J. Murton
- G. Director, Office of Communications Amy C. Thompson

For purposes of this request, please omit daily news clippings or other mass mailings unless there is commentary related to them. If any portion of a record, so defined, is found to be potentially responsive to AFPP's request, then the FDIC should process the record in its entirety without any further segmentation or subject-matter scoping. If the FDIC considers a certain medium of information storage to contain multiple "records" that it believes can be broken up for purposes of responding to AFPP's request, AFPP explicitly seeks access to those separate materials, too. No discrete portion of a record should be treated as "nonresponsive." This extends to email chains—AFPP seeks the entirety of all potentially responsive email chains. Finally, if the FDIC identifies records it deems outside its legal control (e.g., personal records, congressional records, etc.), AFPP requests the agency inform AFPP that such records exist and provide a detailed control analysis that justifies their treatment.

Request for Expedited Processing

AFPP requests expedited processing of its request because (1) AFPP is "primarily engaged in disseminating information" and (2) the requested records concern "actual or alleged Federal government activity" about which there is an "urgency to inform the public."⁴

First, as discussed below, AFPP is primarily engaged in disseminating information because it qualifies as a news media requester.⁵ AFPP gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Second, in this case, the requested records concern unprecedented actions by the FDIC and other financial regulators to, among other actions, override the FDIC's \$250,000 deposit insurance limit to insure all depositors at SVB. These records unquestionably concern the activity of the federal government, and the federal action in response to SVB and other banks is ongoing and controversial.

Delay in the production of this request would compromise a significant and recognized public interest in government accountability. The Supreme Court has stated that the "core purpose of the FOIA" is to allow the American people access to information that might "contribute significantly to public understanding of the *operations or activities of the government*."⁶ The ability of a "watchdog" group like AFPP to secure records such as those sought in this request for the purposes of government accountability,⁷ especially where a current exigency and unfolding story exists, weighs in favor of expedited processing.

⁴ 5 U.S.C. § 552(a)(6)(E)(v)(II); 12 CFR § 309(3).

⁵ *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (referencing *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)).

⁶ *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775 (1989).

⁷ See *Balt. Sun v. U.S. Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001) ("[O]btaining information to act as a 'watchdog' of the government is a well-recognized public interest in the FOIA."); *Ctr. to Prevent Handgun Violence v.*

Request for a Public Interest Fee Waiver

AFPF requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”⁸

In this case, the requested records unquestionably shed light on the “operations or activities of the government” as they relate to the Biden Administration’s unprecedented and arbitrary government action in response to the failure of SVB.

AFPF intends to educate the public with the results of this FOIA request. It has the intent and ability to make those results available to a reasonably broad public audience through various media. Its staff has significant experience and relevant expertise; AFPF professionals will analyze responsive records, if any, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public. AFPF is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, and it has no commercial interest in making this request.

Request to Be Classified as a Representative of the News Media

In addition to a public interest fee waiver, AFPF requests that it be classified as a “representative of the news media” for fee purposes.⁹ As the D.C. Circuit has explained, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.¹⁰ AFPF satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience. Although not required, AFPF gathers the news it publishes from a variety of sources. It does not merely make raw information available to the public, but distributes distinct work product, including press releases, blog posts, reports, and other informative materials.¹¹ These

Dep’t of the Treasury, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁸ 5 U.S.C. § 552(a)(4)(A)(iii); 12 CFR § 309; see *Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁹ 15 C.F.R. § 4.11(b)(6)

¹⁰ See *Cause of Action*, 799 F.3d at 1121.

¹¹ See, e.g., *How the U.S. government sabotaged a program to streamline legal immigration*, AMS. FOR PROSPERITY FOUND. (Mar. 22, 2023), <http://bit.ly/3M2nEue>; *Americans for Prosperity Foundation Sues DHS Over Secretary Mayorkas’ Private Email Use During Disinformation Governance Board Launch*, AMS. FOR PROSPERITY FOUND. (Mar. 20, 2023), <http://bit.ly/3zb4eMo>; *Americans for Prosperity Foundation Launches Investigation of the Biden Administration’s Abuse of the CHIPS Act*, AMS. FOR PROSPERITY FOUND. (Mar. 20, 2023), <http://bit.ly/3FUB2go>; *AFP Foundation investigates DHS secretary’s use of private email while creating Disinformation Governance Board*, AMS. FOR PROSPERITY FOUND. (Jan. 12, 2023), <https://bit.ly/3HTpOJe>; *New emails undermine official reason for cancelling key oil and gas lease*, AMS. FOR PROSPERITY FOUND. (Sep. 8, 2022), available at <http://bit.ly/3te6boa>; *More evidence the VA is improperly delaying or denying community care to eligible veterans*, AMS. FOR PROSPERITY FOUND. (Jan. 28, 2022), available at <https://bit.ly/37mDnIX>; *AFP Foundation gets CMS to release state-level Medicaid improper payment data after years of stonewalling*, AMS. FOR PROSPERITY FOUND. (Jan. 20, 2022), available at <https://bit.ly/34sz7A2>; *Permission to Care: How Certificate of Need Laws Harm Patients and Stifle Healthcare Innovation*, AMS. FOR PROSPERITY FOUND. (Oct. 2021), available at <http://afpf.org/conreport>; *Records confirm VA’s use of inaccurate wait time numbers*, AMS. FOR PROSPERITY FOUND. (Oct. 1, 2021), available at <https://bit.ly/3a9KGel>; *Government documents reveal Export-Import Bank fails to protect taxpayers ... again*, AMS. FOR

distinct works are distributed to the public through various online outlets, such as websites, Twitter, and Facebook. The statutory definition of a “representative of the news media” contemplates that organizations such as AFPF, which electronically disseminate information and publications via “alternative media[,] shall be considered to be news-media entities.”¹²

Record Production and Contact Information

To facilitate document review, please provide the responsive documents in electronic form in lieu of paper production. If a certain portion of responsive records can be produced more readily, AFPF requests that those records be produced first, and the remaining records be produced on a rolling basis as circumstances permit. If you have any questions about this request, please contact me at KSchmidt@afphq.org. Thank you for your attention to this matter.

Kevin Schmidt

KEVIN SCHMIDT

DIRECTOR OF INVESTIGATIONS, AFPF

PROSPERITY FOUND. (Oct. 30, 2020), *available at* <https://bit.ly/3hD09Jn>; *Kansas Shut Down Businesses That Were Willing and Able to Comply with Safety Guidelines*, AMS. FOR PROSPERITY FOUND. (July 21, 2020), *available at* <https://bit.ly/3vbj7eC>; *Gone in an Instant: How Instant Messaging Threatens the Freedom of Information Act* (Mar. 16, 2020), AMS. FOR PROSPERITY FOUND., *available at* <https://bit.ly/2zQOEKI>.

¹² 5 U.S.C. § 552(a)(4)(A)(ii)(II).