

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

HISTORY ASSOCIATES INCORPORATED,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION,

Defendant.

Case No. 1:24-cv-1857-ACR

JOINT STATUS REPORT

Pursuant to this Court’s Minute Order of February 11, 2025, Plaintiff, History Associates Incorporated, and Defendant, the Federal Deposit Insurance Corporation (“FDIC”), hereby submit this joint status report.

1. On November 8, 2023, History Associates filed a Freedom of Information Act (“FOIA”) request for the FDIC to produce supervisory letters (“pause letters”) that the FDIC sent to certain banks asking them to “pause all crypto-asset-related activity” and “not [to] proceed with planned activities, pending supervisory feedback.” Dkt. 1, ¶ 38. The “pause letters” are described in an October 2023 FDIC Office of Inspector General report, OIG, FDIC Strategies Related to Crypto-Asset Risks (Oct. 2023), <https://www.fdicigo.gov/sites/default/files/reports/2023-10/EVAL-24-01-Redacted.pdf>. History Associate’s appealed the FDIC’s denial of the FOIA request, and after the appeal was denied, History Associates initiated this lawsuit on June 27, 2024 by filing a Complaint alleging violation of FOIA, 5 U.S.C. § 552.

2. On February 12, with leave of the Court, History Associates filed an amended complaint alleging that the FDIC has unlawful FOIA policies or practices. Dkt. 37.

3. The Court stayed the FDIC's deadline to answer the amended complaint and required the parties to file status reports every two weeks regarding the FDIC's progress in providing the requested information. Tr. of Feb. 11, 2025 Status Conference, at 15, 17 (Exhibit A); *see also* February 11, 2025 Minute Order. In lieu of the FDIC's answering the complaint immediately, the Court suggested that the FDIC and History Associates "work cooperatively" on resolving the policy-or-practice claims. Ex. A at 15. The Court stated that if "during the course of that cooperation" History Associates is "not satisfied that [it is] getting the full story, then certainly come back to me and I'm happy to order a 30(b)(6) [deposition] very quickly. But, I just don't think a bunch of litigation is the most efficient use of anyone's time, especially since you now have a cooperative agency that's highly motivated to help you out." *Id.*

4. This is the parties' first joint status report since the February 11 status conference. On February 12, History Associates emailed the FDIC asking the agency to respond by February 19, to an initial list of information requests. *See* Exhibit B. On February 19, the FDIC provided its initial answers to History Associates' information requests. *See* Exhibit B.

5. The parties agree to continue working together and will report on progress made in the next joint status report.

History Associates' Position Regarding The FDIC's Responses

6. History Associates initial information requests (one clarified in follow-up correspondence) focused on: the status of the FDIC's indexing and searching the 9,000 previously non-text-searchable documents; the status of the FDIC's "quality control review of RADD"; whether RADD keeps deleted documents and, if so, whether any exist; the FDIC's written policies regarding the specific policies and practices History Associates raised in its amended complaint; and the "safeguards" to prevent document destruction and "due diligence" completed to ensure no docu-

ments had been deleted, both of which the FDIC mentioned at the February 11 status conference. Exhibit A at 11:10-11; *see also* Exhibit B.

7. On February 19, the FDIC provided its initial answers to History Associates' first list of information requests. *See* Exhibit B. The FDIC's answers disclose, among other things, that: the FDIC has searched the 9,000 previously non-text-searchable documents and located 8 additional responsive records that were not previously produced; the FDIC is now "re-reviewing" additional documents it found using other "crypto-related search terms" to reconsider whether they are responsive to History Associates' FOIA request; and the RADD database does retain "deleted" files in its archives, and the FDIC has found approximately 160 "archived" documents, including 70 non-duplicate records that the FDIC has yet to review. The only written FOIA policy the FDIC identified relating to the policies and practices discussed in the amended complaint is FDIC Directive 1023.01, available at <https://www.fdic.gov/formsdocuments/d1023-1.pdf>.

8. History Associates appreciates the FDIC's February 19 responses, which confirm History Associates' concerns expressed in its amended complaint and at the February 11 hearing that even the FDIC's February 5 production and the searches preceding it were still incomplete. The FDIC's belated review of the 9,000 records the agency previously acknowledged it had failed to index or search uncovered another eight responsive records. It has also revealed that approximately 160 documents in the RADD database were apparently "deleted" and stored only in its "archive[s]," which the FDIC never previously disclosed and is only now reviewing for responsiveness to History Associates' FOIA request. And the FDIC is now "re-reviewing" an unspecified number of records that its earlier parsimonious search terms had failed to uncover but that other (also unspecified) "crypto-related search terms" identified. These developments further demonstrate the serious lapses in the FDIC's handling of History Associates' FOIA request and in its

compliance with the Court's directions until now. And they cement the need for the Court to continue closely monitoring the FDIC's fulfillment of its statutory FOIA obligations and its undertakings to the Court.

9. At the same time, History Associates already has serious concerns with the FDIC's first set of responses. For example, in response to History Associates' request for any FDIC written policies regarding specified aspects of the FDIC's processing of FOIA claims (directly relevant to the amended complaint's policy-or-practice claims), the FDIC directed History Associates to a single public document (FDIC Directive 1023.01) that does not address the specific policies or practices that History Associates identified. The FDIC's response to provide details regarding its representation to the Court on February 11 that the agency had undertaken "due diligence" to identify any instances of document destruction did not describe any due-diligence efforts but merely recited the agency's position that its RADD database was "the most reasonable place" for it to look for records and that the RADD database has a 30-year "Retention Schedule." Exhibit B. And the FDIC has provided no concrete timelines for completing its "re-reviewing" of records that its prior searches failed to capture or its review of "archived" records in the RADD database.

10. History Associates will accordingly continue to work in good faith with the FDIC to obtain additional information from the agency. History Associates trusts and expects that the agency will provide prompt, complete responses consistent with the Court's prior instructions.

FDIC's Statement Regarding Progress

11. In its February 7, 2025 Notice Regarding Document Production to the Court, the FDIC made clear that its efforts to search for and locate responsive documents were continuing. *See* Dkt. 32. This included any documents that may be located after the agency reindexed and reviewed approximately 9,000 documents that were previously unsearchable. In its Position Re-

garding the FDIC Responses, above, Plaintiff contends that the FDIC conducted a “belated review of the 9,000 records the agency previously acknowledged it had failed to index or search.” The FDIC submits the agency has made every effort to review a large volume of documents in a short period of time, including documents pertaining to institutions not in the FDIC’s internal tracking system of institutions that were engaged in or sought to offer crypto-related services. *Id.* at p. 3-4. The previously unsearchable 9,000 documents were reindexed in a legacy system of record and reviewed within a week—demonstrating the agency’s commitment to marshalling its resources and working expeditiously on this matter. After searching the previously unsearchable documents, the agency located eight documents that are potentially responsive to History Associate’s FOIA Requests. The agency anticipates that these documents will be posted to the FDIC’s online FOIA reading room on February 21.

12. Plaintiff’s information requests read like broad discovery requests. Nevertheless, the FDIC provided fulsome responses to each request. It did so while simultaneously reviewing documents and conducting quality control efforts on its earlier searches—all within a week of the requests being propounded. *See* Exhibit B.

13. Plaintiff complains about the FDIC’s efforts in this litigation, but the FDIC’s response to History Associate’s email inquiry goes beyond the reasonableness standard applicable to agencies in FOIA litigation:

We have undertaken several quality control measures to ensure the accuracy of our production. First, we leveraged a copy of RADD’s Correspondence Folders on another FDIC platform. We ran searches on that platform and cross-compared them to the RADD searches using purview searches. This gave us confidence using the RADD search function.

Second, we are currently re-reviewing documents that hit on crypto-related search terms but did not necessarily contain the word pause or similar language in the RADD Correspondence Folders for all

FDIC-supervised institutions that were not in the FDIC's tracking system. Again, this is being done to demonstrate the FDIC's commitment to enhanced transparency, beyond what is required by the Freedom of Information Act (FOIA), while also attempting to fulfill the spirit of the FOIA request. If there are any responsive documents, we intend to redact and publish to the FOIA reading room. We will endeavor to produce promptly and will keep you posted as we work together to prepare future joint status reports.

Exhibit B. The FDIC's responses to the Plaintiff's other inquiries are equally direct and open. The FDIC is continuing to use reasonable efforts to complete its search and production. *See* Exhibit B.

14. As evidence of its good faith, absent an order from the Court (*see* Exhibit A at 15:24-16:1) and absent credible evidence of document destruction (*Id.* at 16:1), the FDIC undertook to review archived documents to assuage any concerns Plaintiff's counsel may have. The FDIC undertook a search of all archived documents for over 100 Banks from 11.8.23 – 1.23.25 from RADD's Correspondence Folder. The agency found approximately 160 archived documents and is in the process of pulling non-duplicative documents for review. Metadata indicates a low likelihood that any are responsive, but if they are, the FDIC will redact and publish such documents in the FOIA reading room as expeditiously as possible. These actions demonstrate that the FDIC's retention procedures are working as designed and we have conducted due diligence into document destruction and found that no relevant documents have been "destroyed."

15. As relayed to Plaintiff, the retrieval of archived documents is a laborious and time-consuming effort on a legacy system. The FDIC has limited staff who can perform these complicated queries and doing so takes that same staff's time away from other responsibilities.

16. The FDIC focused its efforts over the last eight days on the review of documents and quality assurance. The FDIC will continue to collect and review any documents that may be

relevant to its FOIA policies, including training materials, and will provide those documents to Plaintiff.

17. The FDIC will continue to work with History Associates to resolve this litigation.

Date: February 21, 2025

Respectfully submitted,

/s/ Jonathan C. Bond

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Exhibit A

P R O C E E D I N G S

THE CLERK: We're on the record in civil case 24-1857, History Associates Incorporated versus FDIC.

Starting with plaintiff's counsel, please state your appearance for the record.

MR. HARPER: Good morning, Your Honor. Nick Harper for plaintiff History Associates Incorporated.

THE COURT: Thank you.

MR. HARPER: With me on the Zoom are my colleagues Jonathan bond, I believe Reed Brodsky is here, and Aaron Hauptman. And then we also have from our client, Coinbase, in-house counsel Dugan Bliss and I believe Ryan VanGrack with Coinbase also might be joining.

THE COURT: All right. FDIC.

MS. SONI: Good afternoon Your Honor my name is Lina Soni and I'm counsel for the FDIC. With me here on Zoom is Andrew Dober, senior counsel. I'm having some trouble with my video, but I'm trying to correct it.

THE COURT: Okay. All right. Well, I'll trust you're on, but if you could get on video that would be great. All right. So first things first, I don't see any issue with filing -- either with me granting -- I don't see any issue with filing the amended complaint on the public docket, does FDIC have any concern?

MS. SONI: Your Honor, we haven't had an opportunity

1 to review the amended complaint. But we're happy to do so and
2 get back to you.

3 THE COURT: All right. Just -- I don't think it's
4 going to take you very long in terms of the sealing issue,
5 because so far as I understand it doesn't contain -- you know,
6 what we were concerned about was any allegations about what
7 Mr. Williams had said or done with respect to the FDIC, but
8 I'll give you 24 hours to review it. If you could just let us
9 know I guess by sometime 1:00 or 2:00 tomorrow whether you
10 oppose. And if you don't we'll go ahead and grab the motion
11 and get the complaint filed. Okay?

12 MS. SONI: Great. Thank you.

13 THE COURT: All right. Secondly, I think you all
14 have seen by now, but we received a motion either yesterday or
15 the day before from Mr. Williams seeking leave to intervene.
16 And to get access to the docket and to be able to reach out to
17 you all and particularly the FDIC for purposes of serving
18 notices and court-related things, which I am inclined to grant
19 or have granted. We have granted. So he will now have the
20 ability to do that. As you'll recall, I gave him until
21 February 17th to make the motion to intervene.

22 So the -- I think what he's doing is challenging the
23 Court's jurisdiction. So to the extent FDIC that you want me
24 to, you know, keep a protective order in place it would be
25 helpful to know if reaching out the people in the venue is

1 sufficient for purposes of personal jurisdiction, because
2 that's obviously going to be an issue.

3 All right. Does that make sense?

4 MS. SONI: It does.

5 THE COURT: All right.

6 MS. SONI: So he'd like --

7 THE COURT: Go ahead.

8 MS. SONI: So he would like to serve us, is that
9 what --

10 THE COURT: Right. Exactly.

11 MS. SONI: That's fine.

12 THE COURT: I mean -- go ahead, whoever.

13 MR. DOBER: If I can interject and Ms. Soni will be
14 taking the lead on virtually all other matters. I did have a
15 little bit of concern and I just got the -- I just got it
16 recently with No. 3 the ability to email for the -- seems like
17 ECF filings will necessarily go to counsel of record. But it
18 does say for the sole purpose of serving communications. So
19 we'll see how that goes.

20 THE COURT: Well, the --

21 MR. DOBER: I understand that.

22 THE COURT: If he abuses it, the second he abuses it
23 just let us know and we'll do what we need to do.

24 MR. DOBER: Thank you, Your Honor.

25 THE COURT: Mr. Dober, did you have surgery last

1 week.

2 MR. DOBER: I did, Your Honor. I had it two weeks
3 ago, yes.

4 THE COURT: Everything went okay.

5 MR. DOBER: It did, yeah. It was a hip surgery and
6 it -- I'm on crutches and hobbling around a little bit, but
7 all things considered it went well.

8 THE COURT: Okay. I'm glad to hear it.

9 MR. DOBER: Thank you. And I appreciate the Court's
10 attention to the matters that arose --

11 THE COURT: Oh, yeah. Of course --

12 MR. DOBER: -- right around this time.

13 THE COURT: I am facing the possibility of surgery,
14 shoulder surgery myself, so I'm sympathetic. And whoever said
15 youth was wasted on the young clearly was someone who hit 50
16 and tried to continued to exercise.

17 All right. Well, let me just ask you guys, I just
18 read from press reports and that is it, that the FDIC has
19 produced I think hundreds of more letters or something. So
20 is -- are you guys talking about potentially sort of narrowing
21 your dispute or even settling this or where are we?

22 MR. HARPER: Your Honor, that is the first item I
23 was hoping to address. You're right, last week, Wednesday,
24 the FDIC published in its FOIA reading room around 790 pages
25 of additional documents in compliance with the Court's order

1 requiring it to produce all pause letters.

2 THE COURT: Nice to here our orders are being
3 followed.

4 MR. HARPER: Yes. We think this is a welcome step
5 in the right direction. And we appreciate the acting chair's
6 decision to finally disclose these documents. At the same
7 time we think this production sort of accentuates the
8 inadequacy of the FDIC's processes to this point. The
9 production includes numerous additional letters from the FDIC
10 to banks that were not included in prior productions that
11 reiterate that banks must cease or pause crypto-related
12 activities. We think those records are directly responsive to
13 our request and should have been produced long ago.

14 Beyond that, the FDIC's production is still
15 potentially incomplete. The FDIC said in the notice it filed
16 with the Court last week that it has to search around 9,000
17 documents that were previously unsearchable within one of its
18 FOIA databases. We don't know exactly why that is. We
19 understand that to mean that they weren't full text
20 searchable. And so the FDIC is still reviewing those to
21 determine whether there are additional documents that need to
22 be produced. But we think that all of this just further
23 confirms the need for us to conduct a prompt investigation
24 into the FDIC's FOIA practices and what led to this very tardy
25 production of these documents.

1 THE COURT: Well, I mean, I appreciate that. But
2 there is sort of the proverbial new sheriff in town. And
3 FOIA's not sort of designed to investigate how agencies go
4 about doing their work. I mean, I'll hear from the FDIC. My
5 inclination is for you all to continue working together on
6 this and, you know, if you run into any hiccups or if you
7 think you're not going fast enough -- I mean, I can't order
8 them to go fast, but my guess just based on what I've read,
9 again, is that, you know, it's a priority for the new
10 administration to get all this information out there. So I
11 don't think you're going to have a problem with speed.

12 And to the extent that they didn't do the search
13 correctly, you know, the first time around, I'm not going to
14 waste -- I mean, let me rephrase that, if you want to bring a
15 claim for that under -- if you think that's something I can
16 look at under FOIA in terms of redress or if -- or, you know,
17 if you want to add it to sort of your fees request, you know,
18 we can take it up then. But if I were you I would just focus
19 on we have cooperation now going forward and let's make the
20 most of that cooperation and not have the attorneys instead
21 spending their time trying to reconstruct what happened you
22 know last year. I understand the frustration, but I'm also
23 very much, you may have heard, like, let's just get this done
24 efficiently kind of person.

25 MR. HARPER: No, I completely understand that, Your

1 Honor. I think two responses to that, one is there are still
2 outstanding concerns about document preservation that those
3 are allegations referenced in the Senator Lummis letter and we
4 still haven't gotten a straight answer from the FDIC, as far
5 as I'm aware, about whether there were any documents that were
6 lost or destroyed that are responsive to our request, what
7 investigation they've done with respect to that, why no
8 litigation hold was put in place in this case. And so I think
9 we do still think it's important to look into those issues and
10 promptly.

11 And the second piece is that I think, you know,
12 these -- our amended complaint asserts these policy and
13 practice claims. And the whole point of these claims as I
14 understand them is to allow FOIA requesters to get judicial
15 rulings on the adequacy of the FDIC's backwards looking
16 practices with -- because those practices may currently still
17 be in force. And we have other requests pending before the
18 FDIC that may be subject to these same processes. And we want
19 to make sure that we don't run into these same roadblocks
20 going forward.

21 And we understand there's a new administration, but
22 I'm not sure to what extent that trickles down to the FOIA
23 policies and processes that are put in place at sort of the
24 line level. So we want to make sure we understand what those
25 policies are and we can get a judicial ruling about whether

1 those policies are lawful or not.

2 THE COURT: But let me ask you this, wouldn't --
3 let's just say tomorrow you become satisfied that they have
4 now found everything they were supposed to find and you have
5 everything relevant to this FOIA request. Just, I know you
6 don't -- don't fight the hypo just if tomorrow the FDIC
7 assures shows you and you are convinced you have everything
8 you need and this FOIA request is done, wouldn't you lack
9 standing to -- I mean, the case would be moot, right? I mean
10 maybe if you had a new FOIA concern, or is the -- I don't know
11 the law on this. Is the law that no you have standing to
12 figure out what the processes were even after you've gotten
13 complete production.

14 MR. HARPER: That's exactly right, Your Honor, this
15 is sort of an anti-mootness doctrine. It is -- the point of
16 these policy and practice claims are to ensure that the Agency
17 can't sort of moot out a case about its FOIA policies by
18 producing the documents and making the case go away.

19 THE COURT: Okay. I'll hear from FDIC on this.

20 MS. SONI: Sure, Your Honor, the plaintiff --

21 THE COURT: Ms. Soni, just before we get to this
22 issue on the policies and procedures, is it agency practice to
23 issue hold letters in FOIA requests or not, in general?

24 MS. SONI: It is not the Agency's practice to issue
25 a legal hold in response to a FOIA request.

1 THE COURT: But what about when lawsuits commence?

2 MS. SONI: In situations such as this one, we have
3 an APA record, closed administrative record. In the event
4 that there is --

5 THE COURT: Ms. Soni -- Ms. Soni, I'm happy to let
6 you say whatever you want, but can you answer my question yes
7 or no, and then you can say whatever you want. Because what
8 happens is --

9 MS. SONI: Oh, sure.

10 THE COURT: -- if people don't do that I never get
11 to the yes or the no. So yes or no, once litigation is filed,
12 does the FDIC issue hold notices.

13 MS. SONI: No, in APA cases where there is a closed
14 record the FDIC does not routinely issue legal holds in those
15 circumstances.

16 THE COURT: But is a FOIA case an APA case?

17 MS. SONI: It is. It is a closed record, an APA
18 case. It is not subject to de novo review. It is based on
19 the administrative record created below.

20 MR. HARPER: Your Honor, if I can just interject --

21 THE COURT: That can't be right --

22 MR. HARPER: I don't believe that's correct. 5
23 U.S.C. 552(a)(4)(B) says that FOIA cases are decided de novo
24 and they're not based on an administrative record.

25 THE COURT: Okay. Well, we don't have to get into

1 that now, but let's -- we can decide that. We can -- you
2 know, I'll give everyone a chance to brief this.

3 Has the FDIC done an investigation into whether any
4 documents have been destroyed? Does it plan --

5 MS. SONI: It has.

6 THE COURT: So --

7 MS. SONI: So putting a pin in the fact that the
8 plaintiffs have not come forward with any credible or reliable
9 evidence that documents have been destroyed, the FDIC has done
10 some due diligence into whether or not any such destruction
11 took place. Moreover, it has put in the safeguards to ensure
12 nothing more can be destroyed going forward. There is no
13 indication that any relevant documents were destroyed. On the
14 contrary, the RAD, the relevant system of record here is
15 backed up every 24 hours, and archives documents in the
16 correspondence folder, which is the relevant folder for
17 purposes of this litigation, for 30 years. If the plaintiffs
18 were to come forward with credible, reliable evidence that a
19 document is missing or deleted, we could, albeit time
20 consuming, run a search against this archive to retrieve any
21 allegedly missing or destroyed documents.

22 Nevertheless, the FDIC heard your concerns with
23 respect to a legal hold and it put one in place. It placed a
24 hold on over 300 people at the Agency. It also put a hold on
25 over a hundred bank's correspondence folders in the RAD. So

1 moving forward there is no concern about document destruction.
2 But we don't need to get there. Because our practice is that
3 these -- this system of record is backed up every 24 hours and
4 that it is archived for 30 years.

5 THE COURT: Mr. Harper, that's a pretty good
6 response.

7 MR. HARPER: So, Your Honor, I just -- I think these
8 are things that we would need to test. There are allegations
9 that there have been documents that have been destroyed. FDIC
10 is saying they have these safeguards. I don't know to what
11 extent these safeguards can or have been manipulate or whether
12 there are holes in them that can result in documents not
13 being --

14 THE COURT: Mr. Harper, who made the allegations,
15 like where are the -- Ms. Soni has a point, I mean, if Charlie
16 Brown came in today and alleged something, I mean -- well I
17 guess not Charlie Brown, not Snoopy -- well, I like all the
18 Peanuts characters, so I won't use a Peanuts character -- but
19 if some random person walked in today and said, hey, the FDIC
20 is destroying documents. I would ask, well, who are you and
21 on what basis do you have to make that assertion and are you a
22 credible human being. So just there are allegations passive
23 tense, I always tell my clerks to use active tense, doesn't
24 really do much for me. And if the person that we're talking
25 about is Mr. Williams, you're going to have to satisfy me that

1 he is, in fact, a credible individual.

2 MR. HARPER: So here's all I know, Your Honor,
3 admittedly it's difficult for us sitting here to know what the
4 FDIC has or has not done with its documents. But we know that
5 there were multiple whistle blower allegations made to a
6 sitting senator, who found these allegations credible enough
7 to write a letter to the Acting FDIC chair --

8 THE COURT: Mr. Harper -- Mr. Harper --

9 MR. HARPER: I'm sorry, the former FDIC chair.

10 THE COURT: Mr. Harper, with all due respect to
11 members of Congress, a member of Congress saying whistle
12 blowers have gone to them and therefore -- and they find it
13 credible and therefore I should find it credible, I don't
14 think -- first of all, it's pure hearsay. It certainly
15 wouldn't be enough on a evidentiary basis, so you're going to
16 have to do a little bit better than that.

17 MR. HARPER: So two additional things. As Your
18 Honor suggested at the January 22nd hearing I did reach out to
19 Senator Lummis's office and asked about the bases for these
20 allegations. And what I have been able to ascertain is
21 that -- Mr. Williams was one of the whistle blowers but not
22 the only one. There were multiple others that reported these
23 same allegations.

24 And what I will say about Mr. Williams -- and I'm in
25 the here to defend Mr. Williams' conduct towards the FDIC in

1 this case -- but I will say that a couple of the things Mr.
2 Williams has told me about the FDIC's FOIA processes have
3 borne out. For example, he told me multiple weeks ago that
4 there were as many as 150 documents that were responsive to
5 our request that were never produced. And it turns out that
6 there were many documents responsive to our request that had
7 not yet been produced.

8 In addition, he told me that there were documents
9 within the RAD database that were not text searchable and that
10 we needed to specifically ask the FDIC for those documents.
11 And now it turns out there were 9,000 such documents that were
12 not text searchable and that the FDIC is currently reviewing.
13 And so I do think there is some credibility, despite his
14 actions, to the things that he has said about the FDIC's FOIA
15 processes. And beyond him there are at least multiple
16 other whistle blowers --

17 THE COURT: Do we know who the other whistle blowers
18 are?

19 MR. HARPER: I have been trying to get in touch with
20 them, Your Honor, I have not yet been able to. But I've been
21 told there were multiple others.

22 THE COURT: Okay. Well, I have a case involving
23 whistle blowers, which has created litigation between House
24 Judiciary and DOJ, and let's just say there's a lot of dispute
25 about whether or not those whistle blowers were actually

1 whistling anything. Whistle blower writ large is just not
2 going to do very much for me.

3 And I'm not going to -- well, let me put it to you
4 this way, if I were you here's what I would do: I would file
5 my complaint, which we will put on the public docket. I am
6 going to stay FDIC's need to answer or respond. And I am
7 going to -- and if I were you, I would work diligently with
8 current counsel. I think they've been properly motivated now,
9 both by a new chair and some press as to their practices, to
10 work cooperatively with you.

11 If during the course of that cooperation -- during
12 the course of that cooperation you can have conversations with
13 them about what their practices have been and were. If you're
14 not satisfied that you're getting the full story, then
15 certainly come back to me and I'm happy to order a 30(b)(6)
16 very quickly. But I just don't think a bunch of litigation is
17 the most efficient use of anyone's time, especially since you
18 now have a cooperative agency that's highly motivated to help
19 you out.

20 Now, with respect to whether anything was destroyed,
21 look, if you find out that there's a credible allegation that
22 something was destroyed, I'm happy to make them look at back
23 up tapes. If you want to look at back up tapes now, I'm happy
24 to let you do that if you pay for it. So, you know, I'm not
25 going to have the FDIC pay to search back up tapes when

1 there's not any sort of credible document that appears to be
2 a --

3 So for example if you had a document that said there
4 was a memo on January 6th sent from Jane Doe to Mike Smith,
5 and you look at Jane Doe's custodial file and Mark Smith's
6 custodial file and it's not there and the FDIC can't otherwise
7 find it, and the memo was sent on January 17th, yeah at that
8 point I would have the FDIC go to the back up tapes and not
9 pay for it. But if the allegation is just we think there's
10 documents out there, if you want to search their back up tapes
11 I'll make you pay for it but I'll let you do it.

12 My guess is that you're going to be better off and
13 your client is going to be better off if you all just take a
14 break on the litigation, move forward, I'm happy to make them
15 move forward quickly. I'm happy to have, you know, status --
16 joint status reports due every 21 days or 30 days or two
17 weeks, whatever you all want, but I think you're going to get
18 a lot more a lot faster that way than, you know, the
19 litigation process.

20 MR. HARPER: We're happy to proceed in that
21 cooperative fashion, Your Honor. I do think that status
22 reports every two weeks would be helpful to sort of put teeth
23 into this. And I do think it would be helpful -- you know,
24 our experience with the FDIC, I appreciate there's new
25 leadership, but our experience has been that unless there's a

1 court order requiring them to do something it's hard to get
2 information out of them. But, you know, if the Court could
3 just make clear they're to work with us on ascertaining the
4 policies and practices that they have with respect to FOIA,
5 get information about those, get those policies themselves,
6 you know, we're happy to work with them cooperatively on that
7 and come back to you if necessary.

8 THE COURT: Ms. /Soni.

9 MS. SONI: Your Honor, we are, as you noted that
10 this matter is being reviewed by the highest levels of the
11 agency and that we are motivated to work cooperatively with
12 the plaintiff. Is the question regarding the status updates
13 every two weeks?

14 THE COURT: No, I'm -- that's just what I needed to
15 hear.

16 All right. Here's what we're going to do: I'm
17 going to put this complaint on the public docket. I'm going
18 to enter a administrative stay of the case so that FDIC does
19 not need to do anything right now. I am going to -- I'm just
20 going to stay the case. But you all can -- other than for you
21 all to file joint status reports.

22 Mr. Harper, you're responsible for drafting the
23 joint status reports, getting them cleared by FDIC, and filed
24 every two weeks. If I find that things are moving along
25 expeditiously and you're not getting push back, I'll move it

1 back to every three weeks or every 30 days. I will personally
2 review these status reports.

3 Ms. Soni, if I find that nothing much is happening
4 and the status report says nothing much is happening and
5 plaintiffs have a problem with that, we're going to all come
6 up here very quickly. So, basically, I am trusting you all to
7 do the right thing and do it expeditiously and do it
8 correctly. And the second Mr. Harper tells me it's not
9 happening I will not hesitate to step back in, okay?

10 MS. SONI: Understood.

11 THE COURT: All right. So let's make it two weeks
12 every Friday. So starting -- or how about every two weeks
13 every Monday, so two weeks from 2/10 is when? 24th. So the
14 first one will be due the 24th. Actually, that's not fair,
15 because then the FDIC has to work over the weekend. Let's
16 make the first one due the 20th and then two weeks after the
17 20th, every two Fridays, okay? The 21st.

18 MR. HARPER: That works.

19 THE COURT: All right.

20 MS. SONI: Yes, I'm just pulling a calendar, you
21 said the first one is?

22 THE COURT: February -- February 21st.

23 MS. SONI: February 21st.

24 THE COURT: All right. And, Mr. Harper, you're the
25 one in charge of doing this whole thing. I'm not going to

1 make the FDIC sort of write-up the status things. And you get
2 them to them on Thursday.

3 MR. HARPER: Yes. Understood.

4 THE COURT: All right. Anything else?

5 MR. HARPER: One additional question, Your Honor, on
6 the sealing issue, I'm not sure there are other documents that
7 will be filed under seal in this case. But to the extent the
8 documents are filed under seal going forward, can we get
9 permission to share those documents with Coinbase, because
10 they are the party in interest in this case, they're directing
11 litigation. And it makes it a little difficult to coordinate
12 when we can't share the sealed documents with them.

13 THE COURT: Any objection to that?

14 MS. SONI: No objection, Your Honor.

15 THE COURT: Okay. So you can do that. But they're
16 under the order too, right, I mean, just because you get it to
17 them doesn't mean --

18 MR. HARPER: That's right.

19 THE COURT: All right. Thank you, everyone.

20 MS. SONI: Thank you.

21 (The proceedings were concluded 1:24 p.m.)

22 I, Christine Asif, RPR, FCRR, do hereby certify that
23 the foregoing is a correct transcript from the stenographic
24 record of proceedings in the above-entitled matter.

25 /s/
Christine T. Asif
Official Court Reporter

Exhibit B

From: [Soni, Lina D.](#)
To: [Harper, Nick](#); [REDACTED]; [Dober, Andrew J.](#); [Kurtenbach, Daniel](#); [REDACTED]
Cc: [Bond, Jonathan C.](#); [Nestor, Branton](#); [Scalia, Eugene](#); [Hauptman, Aaron](#)
Subject: RE: [EXTERNAL MESSAGE] History Associates v. FDIC, No. 1:24-cv-1857-ACR
Date: Wednesday, February 19, 2025 6:01:46 PM
Attachments: [image002.png](#)

This Message Is From an External Sender

This message came from outside your organization.

Nick,

Sorry for the late hour. As per your request, our answers are below in red. We know you are supposed to draft a status report. We think this information goes beyond what would normally be included in a joint status report and would be happy to work with you on a brief submission.

1. Please confirm that you have reindexed and searched the 9,000 unsearchable documents within the RADD database discussed in your February 7 Notice and provide any additional responsive documents that you identified during that review.

Yes, we can confirm that the approximately 9,000 previously unsearchable documents have been reindexed. To ensure redundancy and in an effort to be thorough, we re-ran the previous RADD search on the entire universe of documents in the Correspondence Folders for all banks in RADD (approximately 5,200 institutions), including the 9,000 or so that previously were unsearchable. We continue to review documents and expect to be in a position to redact and publish an additional 8 documents to the FOIA reading room by the end of this week.

2. Please provide the status of the ongoing “quality control review of RADD” described in your February 5 email and whether it has revealed any additional responsive documents.

We have undertaken several quality control measures to ensure the accuracy of our production. First, we leveraged a copy of RADD’s Correspondence Folders on another FDIC platform. We ran searches on that platform and cross-compared them to the RADD searches using purview searches. This gave us confidence using the RADD search function.

Second, we are currently re-reviewing documents that hit on crypto-related search terms but did not necessarily contain the word pause or similar language in the RADD Correspondence Folders for all FDIC-supervised institutions that were not in the FDIC’s

tracking system. Again, this is being done to demonstrate the FDIC's commitment to enhanced transparency, beyond what is required by the Freedom of Information Act (FOIA), while also attempting to fulfill the spirit of the FOIA request. If there are any responsive documents, we intend to redact and publish to the FOIA reading room. We will endeavor to produce promptly and will keep you posted as we work together to prepare future joint status reports.

3. Please confirm whether the RADD database keeps records of deleted documents. If so, please describe the nature of those records, how long they are preserved, whether any such records currently exist, and whether they were searched in response to our FOIA request and the Court's orders.

Yes, the RADD database keeps records of "deleted" documents from the Correspondence Folder. All supervisory business records, including "deleted" documents, are retained in the RADD or archived for 30 years pursuant to the FDIC's Record Retention schedule (with some exceptions not relevant here).

The Court did not require the FDIC to review archived documents. *See* February 11, 2025 Transcript, 15:24-16:1. Nevertheless, in an effort to assuage any concerns you may have, we undertook a search of all archived documents for over 100 Banks from 11.8.23 – 1.23.25 from RADD's Correspondence Folder and found approximately 160 archived documents. The more than 100 banks include the 24 banks that received "pause letters" as detailed in the FDIC's Office of Inspector General's (OIG) October 2023 report entitled "FDIC Strategies Related to Crypto-Asset Risks" (FDIC OIG EVAL-24-01 Oct. 2023), as well as approximately 80 FDIC-supervised banks from our internal tracking system that were not the 24 banks discussed above. Approximately 90 are duplicates or rescans. We are in the process of pulling the other approximately 70 documents for review. If any are responsive, we will redact and publish them in the FOIA reading room. However, based on the known coding and metadata, we believe that the likelihood that documents are responsive is very low. Please note this is a laborious and time-consuming effort on a legacy system. We are happy to discuss this further with you.

4. Please provide copies of any written policies regarding how FOIA officers or other employees responsible for responding to FOIA requests: (1) apply Exemption 8; (2) construe FOIA requests; (3) search for records responsive to FOIA requests; and (4) ensure the preservation of documents responsive to FOIA requests both upon filing of the request and a lawsuit challenging the FDIC's decision on the request.

We refer you to FDIC Directive 1023.01 – Freedom of Information Act Requests, *see* [FDIC](#)

Directive 1023.01, Change 1, Freedom of Information Act Requests. FOIA officers are guided by the law to conduct a reasonable search, which is determined on a case-by-case basis. FOIA responses are retained for 6 years after the Corporation's final determination or 3 years after court's final determination of appeal, whichever is longer.

5. Please describe the measures the FDIC has had in place since January 1, 2022, as well as the additional "safeguards" described during the February 11 status conference that the FDIC implemented during this litigation, to ensure that documents are preserved and are not intentionally or unintentionally destroyed.

The RADD is backed up every 24 hours and, pursuant to the FDIC's Record Retention schedule, all supervisory business records are retained for 30 years (with some exceptions not relevant here). Notwithstanding these measures, the agency has placed over 300 FDIC employees as well as the RADD Correspondence Folders for over 100 banks on hold.

6. Please describe any known instances since January 1, 2022, of documents within FDIC repositories or databases having been intentionally or unintentionally destroyed.

We note that your February 14 email clarified that you were requesting "details of any due diligence the agency undertook to determine whether documents have been intentionally or unintentionally destroyed." As stated before, RADD is the central repository for supervisory business records and therefore is the most reasonable place for the agency to search for records relevant to the FOIA requests and the court's orders. Pursuant to the FDIC's Record Retention schedule, supervisory business records are (with some exceptions not relevant here) retained for 30 years. Therefore, all relevant documents are stored in RADD. Also, please see our Response to #3 above.

Regards,
Lina

Lina Soni
Counsel
Federal Deposit Insurance Corporation
3501 Fairfax Drive, D7038
Arlington, VA 22226

[REDACTED]
[REDACTED]



From: Harper, Nick [REDACTED]
Sent: Friday, February 14, 2025 8:01 PM
To: [REDACTED]; Soni, Lina D. [REDACTED]; Dober, Andrew J. [REDACTED]; Kurtenbach, Daniel [REDACTED]
Cc: Bond, Jonathan C. [REDACTED]; Nestor, Branton [REDACTED]; Scalia, Eugene [REDACTED]; Hauptman, Aaron [REDACTED]
Subject: RE: [EXTERNAL MESSAGE] History Associates v. FDIC, No. 1:24-cv-1857-ACR

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Thanks [REDACTED]; we appreciate it. On Request #6, Ms. Soni mentioned at this week's hearing that the FDIC had done some "due diligence into whether or not any [document] destruction took place" (see attached transcript at 11). If you could let us know the details of any due diligence the agency undertook to determine whether documents have been intentionally or unintentionally destroyed, that would be great.

Nick Harper
Partner

T: +1 202.887.3534 | [REDACTED]
[REDACTED]

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1700 M Street, N.W., Washington, D.C. 20036-4504

Sent: Friday, February 14, 2025 2:43 PM
To: Harper, Nick [REDACTED]; Soni, Lina D. [REDACTED]; Dober, Andrew J. [REDACTED]; Kurtenbach, Daniel [REDACTED]
Cc: Bond, Jonathan C. [REDACTED]; Nestor, Branton [REDACTED]; Scalia, Eugene [REDACTED]; Hauptman, Aaron [REDACTED]
Subject: RE: [EXTERNAL MESSAGE] History Associates v. FDIC, No. 1:24-cv-1857-ACR

Nick, thank you for your email regarding the February 21 Joint Status Report. As the Court urged, we look forward to working cooperatively with you and your team to resolve this litigation. In that vein, we are diligently working on providing answers to your questions and, per your request, will provide responses by February 19. To the extent that we need additional time to track down answers, we will also let you know that by February 19. While we are diligently working on answers to all your requests, please understand that we are prioritizing and concurrently working to complete our document review and any necessary production in response to your client's FOIA requests.

We are concerned, however, with the breadth of Request No. 6. To the best of our present knowledge and belief, there has been no intentional or unintentional destruction of relevant documents. If you have any credible evidence to the contrary, please let us know and we'd be happy to do our due diligence to investigate.

Regards,

[REDACTED]

[REDACTED]
Counsel, Corporate Litigation Unit
Federal Deposit Insurance Corporation

[REDACTED]
[fdic.gov](https://www.fdic.gov)

FDIC

From: Harper, Nick [REDACTED]
Sent: Wednesday, February 12, 2025 11:53 AM
To: [REDACTED] Soni, Lina D. [REDACTED] Dober, Andrew J.
[REDACTED] Kurtenbach, Daniel [REDACTED]
[REDACTED]
Cc: Bond, Jonathan C. [REDACTED] Nestor, Branton [REDACTED]
Scalia, Eugene [REDACTED] Hauptman, Aaron [REDACTED]
Subject: [EXTERNAL MESSAGE] History Associates v. FDIC, No. 1:24-cv-1857-ACR

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recognize the sender and know the content is safe.

Counsel:

Per the Court's instructions at the status conference that we work collaboratively to investigate the claims raised in our amended complaint, below is an initial list of information we would like you to provide. If you could provide this information by Wednesday, February 19, so that we can draft a status report updating the Court by the February 21 deadline, we would appreciate it.

1. Please confirm that you have reindexed and searched the 9,000 unsearchable documents within the RADD database discussed in your February 7 Notice and provide any additional responsive documents that you identified during that review.
2. Please provide the status of the ongoing "quality control review of RADD" described in your February 5 email and whether it has revealed any additional responsive documents.
3. Please confirm whether the RADD database keeps records of deleted documents. If so, please describe the nature of those records, how long they are preserved, whether any such records currently exist, and whether they were searched in response to our FOIA request and the Court's orders.
4. Please provide copies of any written policies regarding how FOIA officers or other employees responsible for responding to FOIA requests: (1) apply Exemption 8; (2) construe FOIA requests; (3) search for records responsive to FOIA requests; and (4) ensure the preservation of documents responsive to FOIA requests both upon filing of the request and a lawsuit challenging the FDIC's decision on the request.
5. Please describe the measures the FDIC has had in place since January 1, 2022, as well as the additional "safeguards" described during the February 11 status conference that the FDIC implemented during this litigation, to ensure that documents are preserved and are not intentionally or unintentionally destroyed.
6. Please describe any known instances since January 1, 2022, of documents within FDIC repositories or databases having been intentionally or unintentionally destroyed.

Thanks very much,
Nick

Nick Harper
Partner

T: +1 202.887.3534 | [REDACTED]

GIBSON DUNN
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