

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

HISTORY ASSOCIATES INCORPORATED,  
7361 Calhoun Place, Suite 310  
Rockville, MD 20855,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
550 17th Street, NW  
Washington, D.C. 20429,

Defendant.

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

**AMENDED COMPLAINT**

Coinbase, Inc., the largest digital-asset trading platform in the United States, retained Plaintiff History Associates Incorporated to submit a Freedom of Information Act (“FOIA”) request seeking records from the Federal Deposit Insurance Corporation (“FDIC”). The FDIC denied that request. History Associates now files this amended complaint to compel the FDIC to cease its unlawful FOIA policies and practices.

**INTRODUCTION**

1. For several years, a wide array of federal financial regulators—including the Securities and Exchange Commission (“SEC”), the FDIC, and the Federal Reserve Board—have used every regulatory tool at their disposal to try to cripple the digital-asset industry. This FOIA lawsuit seeks to bring to light the FDIC’s role in that unlawful scheme.

2. In October 2023, a report by the FDIC’s own Office of Inspector General (“OIG”) revealed that the FDIC had sent letters (the “Pause Letters”) to an undisclosed number of supervised financial institutions asking them to pause crypto-related activities—indefinitely. The

OIG report criticized the Pause Letters as inconsistent with previous FDIC guidance on crypto-related activities, and it explained that the letters created a “risk that the FDIC would inadvertently limit financial institution innovation and growth in the crypto space.”

3. But there was nothing inadvertent about it. The Pause Letters were part of a deliberate and concerted effort by the FDIC and other financial regulators to pressure financial institutions into cutting off digital-asset firms from the banking system.

4. This playbook was not new. More than a decade ago, under the leadership of the same Chair, the FDIC and other agencies attempted to bully banks into terminating their relationships with payday lenders. Termed “Operation Choke Point” by the regulators, their coordinated assault on a disfavored industry was halted only after a congressional investigation and a successful lawsuit.

5. The FDIC apparently did not learn its lesson. Together with other agencies, it mounted Operation Choke Point 2.0—a similar scheme designed to prevent banks from offering or engaging in digital-asset activities and to deprive the digital-asset industry of the banking services it needs (like all businesses) to operate in today’s economy. The Pause Letters were a critical component of that campaign.

6. Operation Choke Point 2.0, like its predecessor, was unlawful. It is illegal for financial regulators to coerce regulated institutions in secret to cut ties with businesses the government disfavors—particularly those outside the regulators’ jurisdiction. *See Cmty. Fin. Servs. Ass’n of Am., Ltd. v. FDIC*, 132 F. Supp. 3d 98 (D.D.C. 2015). Indeed, the Supreme Court recently confirmed unanimously that these kinds of regulatory pressure campaigns violate the most basic rights protected by the Constitution. *Nat’l Rifle Ass’n of Am. v. Vullo*, 144 S. Ct. 1316 (2024).

7. To try to pull back the curtain, Coinbase, Inc., the largest digital-asset trading platform in the United States, turned to FOIA—a statute designed “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (quotation marks omitted).

8. Coinbase retained Plaintiff History Associates to submit a FOIA request seeking copies of the Pause Letters. But even though the OIG’s report had already revealed the existence of the Pause Letters—and had even quoted from them—the FDIC refused to disclose even one word of a single letter, saying that even if the letters existed, they would be exempt from disclosure. The FDIC then doubled down after an administrative appeal. That refusal violated the FDIC’s FOIA obligations, and History Associates brought this FOIA suit in June 2024 to compel disclosure of the Pause Letters.

9. The FDIC’s conduct before and throughout this lawsuit, combined with the FDIC’s responses to other FOIA requests submitted by History Associates and allegations from whistleblowers reported by a U.S. Senator, have raised serious concerns that FOIA violations are commonplace at the FDIC.

10. Despite this Court’s direction to produce redacted versions of the Pause Letters to History Associates (along with its *Vaughn* index), the FDIC initially refused to do so. That refusal necessitated a further order from the Court reiterating its instruction that the FDIC produce redacted Pause Letters. Yet in response, the FDIC produced heavily redacted letters that the Court described as reflecting an apparent “lack of good-faith effort in making nuanced redactions” because the FDIC “cannot simply blanket redact everything that is not an article or preposition.” December 12, 2024 Minute Order. Those concerns prompted still another Court order mandating that the agency “make more thoughtful redactions” and be prepared to defend each one. *Id.*

11. But even then, far from resolving those concerns, the FDIC's response only exacerbated them. The revised redacted letters the FDIC produced still appear to contain unlawful and unnecessary redactions. Moreover, the FDIC revealed that its original search (and production) was incomplete and somehow failed to uncover two letters altogether, which it belatedly produced without explaining how its original search missed them. Worse still, the FDIC disclosed that it had taken an implausibly narrow view of the scope of History Associates' request all along and never looked for any Pause Letters the FDIC sent to banks but did not previously provide to its OIG. And at the same time, whistleblower allegations recounted by a U.S. Senator asserted that the FDIC was destroying documents—allegations the FDIC declined to answer when questioned by History Associates and was unable to refute when questioned by the Court, in part based on the FDIC's admission that it never implemented a litigation hold for this case.

12. Ultimately, this Court agreed that the FDIC was wrong to narrowly interpret History Associates' request and ordered the FDIC to produce all of the Pause Letters. In response to that order, the FDIC finally disclosed numerous Pause Letters that it had not previously produced, along with other related documents. As the current Acting FDIC Chair explained in an accompanying press release, those documents revealed that banks seeking FDIC clearance to engage with crypto “were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence ... to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity.” Press Release, *FDIC Releases Documents Related to Supervision of Crypto-Related Activities* (Feb. 5, 2025), <https://tinyurl.com/3t7cmaa5>. These actions, the Acting Chair explained, “sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward. As a result, the vast majority of banks simply stopped trying.” *Id.*

13. Even after all this, the FDIC's production *still* might be incomplete. The agency has said that it is conducting an unexplained quality control review of its FOIA database, which might reveal additional documents.

14. The FDIC's most recent production underscores the extent of its prior recalcitrance and the vital importance of rigorous enforcement of FOIA. And History Associates' experience with other previously filed FOIA requests confirms that the FDIC's misconduct here is not a one off. Instead, the FDIC appears to employ a number of unlawful FOIA policies and practices designed to avoid its obligation to disclose governmental records to the public. History Associates brings this action to compel the FDIC to produce all documents responsive to History Associates' requests and to enjoin the FDIC's unlawful FOIA policies or practices.

#### **PARTIES**

15. Plaintiff History Associates Incorporated is a nationally recognized research and analysis consultancy with expertise in obtaining records through federal FOIA requests, state and local Freedom of Information Law requests, and other sunshine laws. Over the past two years, History Associates has filed fourteen FOIA requests to the FDIC on behalf of Coinbase seeking information related to digital assets. Nine of those requests remain pending.

16. Defendant the FDIC is an agency of the federal government within the meaning of FOIA, 5 U.S.C. § 552(f), and is in possession or control of the agency records sought here.

#### **RELATED PARTIES**

17. Coinbase, Inc. is the largest and only publicly traded digital-asset trading platform in the United States. It is also a leading provider of financial infrastructure and technology for the crypto economy.

## **JURISDICTION AND VENUE**

18. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

19. Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B), which allows a FOIA suit to be brought in “the district court of the United States ... in the District of Columbia.” Venue is also proper under 28 U.S.C. § 1391(e) because the FDIC resides in the District of Columbia.

## **BACKGROUND**

20. For the second time in a decade, the FDIC is using its supervisory authority to pressure financial institutions into denying financial services to industries the agency disfavors.

### **A. The FDIC And Other Regulators Implemented Operation Choke Point To Try To Shut Down Payday Lenders**

21. Around the time Chair Gruenberg took office in 2011, the FDIC, in coordination with the Department of Justice and other federal financial regulators, began leveraging its supervisory authority over financial institutions to “get at payday lending” and other industries that the FDIC does not regulate. *See* Staff of H. Comm. on Oversight & Gov’t Reform, 113th Cong., *Federal Deposit Insurance Corporation’s Involvement in “Operation Choke Point,”* at 9 (Dec. 8, 2014) (“Staff Oversight FDIC Report”), <https://tinyurl.com/yjsdb6fr>. As a congressional staff report detailed, “senior policymakers in FDIC headquarters oppose[d] payday lending on personal grounds, and attempted to use FDIC’s supervisory authority to prohibit the practice.” *Id.* at 8.

22. To that end, the FDIC issued both formal and informal regulatory guidance labeling as “high-risk merchants” payday lenders and other industries the agency disfavored, thereby pressuring banks not to do business with them. FDIC, *Supervisor Insights, Managing Risks in Third-Party Payment Processor Relationships* at 3, 11 (2011). The FDIC “provided no explanation

or warrant for the ... ‘high-risk’” designations. Staff of H. Comm. on Oversight & Gov’t Reform, 113th Cong., *The Department of Justice’s “Operation Choke Point”: Illegally Choking Off Legitimate Businesses?*, at 8 (May 29, 2014) (“Staff Oversight DOJ Report”), <https://tinyurl.com/359t7y83>.

23. The FDIC combined that guidance with threats to exercise its enforcement discretion unfavorably towards banks that continued to serve payday lenders and other targeted merchants. A former FDIC Chairman dubbed these actions an “attack on [the] market economy.” Staff Oversight DOJ Report at 2 (quoting William Isaac, *Operation Choke Point: Way Out of Control*, Am. Banker (Mar. 21, 2014)).

24. These kinds of government coercion campaigns are unlawful, but they are unfortunately and predictably effective—particularly in the banking industry. The close regulatory supervision the government exercises over banks and the reputational damage that a bank suffers from a government investigation—let alone actual enforcement measures—give financial regulators enormous power to force banks to refrain from perfectly lawful conduct that regulators nevertheless want to eradicate for personal or political reasons.

25. In one recent case, for example, the head of the New York Department of Financial Services allegedly succeeded in pressuring financial institutions to stop doing business with a disfavored industry by merely sending letters “point[ing] to the ‘social backlash’ against” that industry and “encourag[ing]” “prompt actions” to manage the “reputational risks” of doing business with the industry. *Vullo*, 144 S. Ct. at 1324.

26. It is no surprise, then, that the original Operation Choke Point was effective. The government knew “that banks would be ‘sensitive’ to the risk of federal investigation,” and thus

capitulate. Staff Oversight DOJ Report at 9. And that is exactly what happened: Banks big and small closed the accounts of payday lenders. *Id.* at 6.

27. The FDIC halted Operation Choke Point only reluctantly when brought to heel by the public, Congress, and litigation. In 2013, following public reporting on Operation Choke Point, Congress began investigating the program and the FDIC's involvement. Staff Oversight FDIC Report at 17. Using information obtained through the congressional oversight, the targeted industries eventually gathered enough evidence to file a lawsuit challenging Operation Choke Point as a violation of due process and the Administrative Procedure Act. *See Cmty. Fin. Servs. Ass'n*, 132 F. Supp. 3d at 105.

28. Only after the district court refused to dismiss the industry's lawsuit—and after a change in Administration—did the government settle the case and officially end Operation Choke Point.

## **B. The FDIC And Other Regulators Implement Operation Choke Point 2.0 To Try To Shutter The Digital-Asset Industry**

29. Over the last few years, again under the leadership of then-Chair Gruenberg, the FDIC returned to its old ways. The FDIC again used informal guidance and pressure tactics, in coordination with other federal regulators, to coerce banks to choke off another industry—this time the digital-asset industry.

### **1. With Coinbase's Help, Digital Assets Have Grown Into A Transformative, Multi-Trillion-Dollar Industry**

30. Digital assets (also known as “cryptocurrencies,” “crypto assets,” or “tokens”) are computer code entries recorded on a blockchain. A blockchain generally is a public ledger that records digital-asset transactions on the Internet so that they can be viewed and verified by anyone with an Internet connection. A blockchain is typically decentralized, meaning in part that no single person or entity operates it.



31. Bitcoin was the first blockchain and digital asset, invented in 2008. Many other blockchains and digital assets, such as Ethereum, have been created since, with capabilities well beyond peer-to-peer transfers. For example, some digital assets serve as a medium for exchange on applications, function as a digital currency, or help secure digital networks.

32. Digital assets are now a mainstream part of global financial markets, with a market capitalization of around \$2 trillion and hundreds of millions of users around the world.

33. Coinbase is the largest and only publicly traded digital-asset trading platform in the United States, serving millions of Americans. It was founded in 2012 to bring economic freedom worldwide by creating a more open, inclusive, and efficient financial system leveraging digital assets and blockchain technology. *See* Brian Armstrong, *Coinbase Is a Mission Focused Company*, Coinbase Blog (Sept. 27, 2020), <https://bit.ly/4huLjR0>.

34. Since its founding, Coinbase has been an industry leader in compliance and regulator engagement. Coinbase has been registered as a money-services business with the Financial Crimes Enforcement Network (FinCEN) since 2013; is a member of the federal Bank Secrecy Act Advisory Group; is licensed by the New York Department of Financial Services; and is authorized to transmit money in dozens of States. Coinbase is also a critical partner to law-enforcement agencies around the world, having trained thousands of law-enforcement agents and analysts in blockchain analytics and other cutting-edge investigative techniques.

## **2. The Federal Government Declares War On Crypto**

35. Starting around 2022, federal financial regulators have taken concerted steps designed to cripple the digital-asset industry.

36. The SEC, for example, had for years taken the position that it had at most limited authority over digital assets. But starting in 2022, the agency asserted a sweeping and untenable view of its authority over digital assets. Despite repeated entreaties from regulated parties, the

SEC has refused to explain (through rulemaking or otherwise) which digital assets it now believes are subject to the securities laws or how digital-asset firms could possibly comply with its existing, inapt rules, which a Third Circuit judge indicated may violate due process. *See Coinbase, Inc. v. SEC*, 126 F.4th 175, 204-15 (3d Cir. 2025) (Bibas, J. concurring) (“The SEC repeatedly sues crypto companies for not complying with the law, yet it will not tell them how to comply. That caginess creates a serious constitutional problem.”).

37. Instead, the agency has launched a scorched-earth enforcement campaign against digital-asset firms designed to run them into the ground.

38. Alongside the SEC’s enforcement war, other federal financial regulators implemented an Operation Choke Point 2.0—a coordinated effort to cut off the digital-asset industry from the banking sector.

39. As before, the FDIC played a leading role in this sequel to Operation Choke Point. Along with other banking regulators, the FDIC issued a series of informal guidance documents describing the purported risks of banking the crypto industry. *See, e.g.*, FDIC, Financial Institution Letter 16-2022: Notification of Engaging in Crypto-Related Activities (Apr. 7, 2022); Federal Reserve, FDIC, & OCC, *Joint Statement on Crypto-Asset Risks to Banking Organizations* (Jan. 3, 2023), <https://tinyurl.com/37a3vyst>; Federal Reserve, FDIC, & OCC, *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (Feb. 23, 2023), <https://tinyurl.com/36yve8b7>. The FDIC also reportedly “told several banks to cap deposits from crypto companies.” Veronica Irwin, *Regulators Are Limiting Banks Serving Crypto Clients. Does That Violate the Law?* Unchained (Oct. 8, 2024), <https://tinyurl.com/mvefreaa>.

40. The FDIC was not alone. In 2023, for example, the Federal Reserve issued guidance effectively prohibiting state member banks from holding digital assets on their own

accounts and from issuing crypto tokens. Federal Reserve, *Policy Statement on Section 9(13) of the Federal Reserve Act*, 88 Fed. Reg. 7848 (Feb. 7, 2023). And in 2022, the SEC issued Staff Accounting Bulletin No. 121 (“SAB 121”), 87 Fed. Reg. 21015 (Apr. 11, 2022), which makes it prohibitively expensive for financial institutions to hold digital assets on their balance sheets. In May 2024, bipartisan majorities of both Houses of Congress voted to overturn SAB 121 under the Congressional Review Act, but the President vetoed the legislation.

41. Just as in the first Operation Choke Point, moreover, the FDIC and others sent a clear message that they will exercise their supervisory and enforcement powers against banks that do business with digital-asset firms. In early 2023, for example, regulators abruptly shuttered Signature Bank—a solvent bank with significant digital-asset customers—and put it into FDIC receivership. The FDIC then required the buyer of Signature Bank to give up the bank’s entire crypto business—a move that former Congressman Barney Frank, then a Signature Bank board member, said was meant “to send a message to get people away from crypto.” Ed. Bd., *Barney Frank Was Right About Signature Bank*, Wall St. J. (Mar. 20, 2023), <https://tinyurl.com/ywxdmrd4>.

### **C. The FDIC Issues “Pause Letters” To Supervised Financial Institutions**

42. The FDIC’s Pause Letters were a critical component of Operation Choke Point 2.0.

43. In October 2023, the FDIC’s Office of Inspector General issued a report revealing that, between March 2022 and May 2023, the FDIC sent supervised financial institutions letters asking them to cease all crypto-related activities. OIG, *FDIC Strategies Related to Crypto-Asset Risks* (Oct. 2023) (“OIG Report”), <https://tinyurl.com/3kudyyn>.

44. Quoting directly from the Pause Letters, the report stated that the letters instructed institutions to “pause all crypto asset-related activities” and to “not proceed with planned activities,

pending FDIC supervisory feedback.” OIG Report at 11-12. The Pause Letters also requested information about the banks’ crypto-related activities. *Id.* at 5.

45. Although in earlier guidance the FDIC had promised to review banks’ crypto-related activities in a timely manner, the agency issued the Pause Letters without a clear timeframe for reviewing the banks’ crypto-related activities or allowing banks to un-pause their crypto-related activities. *See* OIG Report at 4, 11-13. The OIG report states that, as of August 2023, only a subset of the institutions that received a Pause Letter had received any feedback on their crypto-related activities. *Id.* And there is no indication that the FDIC has taken any steps to allow any banks to resume crypto-related activities.

46. The OIG report criticized the FDIC for creating “uncertainty in the [supervisory] process,” which “creates risk that the FDIC will be viewed as not being supportive of financial institutions participating in crypto activities.” OIG Report at 13. That view, the report explained, “leads to risk that the FDIC would inadvertently limit financial institution innovation and growth in the crypto space.” *Id.*

47. Halting the innovation and growth of crypto was in fact the whole point. The Pause Letters weren’t a good-faith effort to supervise the crypto-related activities of financial institutions. They were a transparent effort to stop those activities altogether—part and parcel of the FDIC’s and other regulators’ scheme to cut off digital-asset firms from necessary banking services.

48. Like the first Operation Choke Point, the Pause Letters and the rest of Operation Choke Point 2.0 were an unlawful scheme of government coercion. *See Cmty. Fin. Servs. Ass’n*, 132 F. Supp. 3d at 124; *Vullo*, 144 S. Ct. at 1322. Yet they had their intended effect. Digital-asset firms “have run into widespread banking problems in recent years.” Angel Au-Yeung, *Majority of Crypto Hedge Funds Report Facing Banking Issues in Recent Years* (Dec. 20, 2024),

<https://tinyurl.com/5t4kaxe7>. According to one recent report, “[o]ut of 160 crypto hedge funds, *three-quarters* reported issues with basic banking services over the past three years.” *Id.* (emphasis added). For example, citing “changes in the regulatory environment,” Metropolitan Commercial Bank announced in January 2023 that it was closing its digital-asset business. Press Release, *Metropolitan Bank Holding Corp. to Exit Crypto-Asset Related Vertical* (Jan. 9, 2023), <https://tinyurl.com/mv5beu52>. Before it was shut down, Signature Bank began “paring back its relationships with crypto depositors.” Rachel Louise Ensign & David Benoit, *Banks Are Breaking Up with Crypto During Regulatory Crackdown*, Wall St. J. (Feb. 16, 2023), <https://tinyurl.com/bdzkmwbk>. And banks “that kept their distance from crypto are trying even harder to stay away, closing accounts and shunning customers with potential connections to the industry.” *Id.*

#### **D. FOIA Requires Disclosure Of Government Records**

49. “Sunlight is said to be the best of disinfectants.” *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam). To try to shine a light on the FDIC’s unlawful conduct, Coinbase turned to FOIA.

50. Congress enacted FOIA “to open agency action to the light of public scrutiny,” *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989), and to “ensure an informed citizenry, vital to the functioning of a democratic society,” *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 152 (1989). FOIA ensures the transparency and accountability “needed” to “hold the governors accountable to the governed.” *John Doe Agency*, 493 U.S. at 152.

51. To that end, unless one of nine limited exemptions applies, FOIA requires that federal agencies release information to the public on request. 5 U.S.C. § 552(a)(3)(A).

52. Even if a record falls within a FOIA exemption, the agency still must disclose it unless “the agency reasonably foresees that disclosure would harm an interest protected by [the]

exemption.” 5 U.S.C. § 552(a)(8)(A)(i). Moreover, when only portions of a record are exempt, the agency is required to “take reasonable steps necessary to segregate and release nonexempt information.” *Id.* § 552(a)(8)(A)(ii); *see also id.* § 552(b).

53. Within 20 business days of an agency’s receipt of a FOIA request, the agency must “determine ... whether to comply” with the request. 5 U.S.C. § 552(a)(6)(A)(i). The agency must “immediately notify” the requester of “such determination and the reasons therefor,” as well as “the right ... to appeal to the head of the agency” any “adverse determination.” *Id.* If an agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requestor. *Id.* § 552(a)(6)(C)(i).

54. When an agency violates FOIA, federal courts have the power and obligation to correct the agency’s unlawful action—and to ensure the accountability and transparency demanded by Congress. They do so by reviewing the agency’s decision *de novo* and “order[ing] the production of any agency records improperly withheld.” 5 U.S.C. § 552(a)(4)(B). This judicial review makes FOIA more than empty parchment: It empowers and directs courts to hold agencies to Congress’s mandate and to protect the “public right to secure such information from ... unwilling official hands.” *John Doe Agency*, 493 U.S. at 151.

**E. History Associates Requests Copies Of The Pause Letters, But The FDIC Unlawfully Denies History Associates’ FOIA Request**

55. Coinbase engaged Plaintiff History Associates, a nationally recognized expert in obtaining records through federal FOIA requests, to submit a series of requests designed to uncover Operation Chokepoint 2.0, including a request for copies of the Pause Letters.

56. On November 8, 2023, History Associates submitted a FOIA request to the FDIC seeking “[c]opies of all ‘pause letters’ described in the OIG report.”

57. On January 22, 2024, the FDIC denied History Associates' FOIA request. The FDIC provided only a conclusory explanation. It stated that the information requested, "if it exists and could be located," would fall under Exemption 4, which applies to "trade secrets, or confidential or privileged commercial or financial information obtained from a person," and Exemption 8, which applies to "information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions." *See* 5 U.S.C. § 552(b)(4), (8).

58. The FDIC further asserted, without any explanation, that "it is reasonably foreseeable that disclosure would harm an interest protected by" a FOIA exemption.

59. Consistent with the FDIC's FOIA regulations, History Associates administratively appealed the FDIC's denial on March 25, 2024.

60. History Associates explained that the FDIC's conclusory invocations of Exemptions 4 and 8 fell far short of meeting the agency's burden of establishing with "reasonable specificity" that the requirements of the claimed exemptions were met. *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015).

61. Among other problems, History Associates explained that no harm would follow from disclosing the Pause Letters. Disclosing the Pause Letters with appropriate redactions would neither reveal confidential information nor impair the FDIC's relationship with the banks it regulates. And to the extent the Pause Letters contained any bank-specific information, appropriate redactions would eliminate any harm.

62. The FDIC denied History Associates' appeal on May 8, 2024. Apparently recognizing that Exemption 4 does not apply, the FDIC asserted only that the Pause Letters were "part of the examination and supervision of ... banks by the FDIC," and thus fell under

Exemption 8. The FDIC further asserted that, because in its view the Pause Letters were a “type of record[]” that “would be exempt,” there was no need for the FDIC to make any attempt to segregate exempt from non-exempt portions of the Pause Letters.

63. Finally, the FDIC maintained that disclosing the letters would “necessarily reveal information about the particular banks that the letters were sent to and would intrude into the heart of the communications between financial institutions and their regulator.” The FDIC did not explain why it could not eliminate any such harm through appropriate redactions.

64. Through its thinly reasoned and unlawful denial of History Associates’ FOIA request, the FDIC has stonewalled Coinbase’s efforts to shine a light on Operation Choke Point 2.0 and financial regulators’ attempts to cut off digital-asset firms from the banking sector.

65. After exhausting its administrative remedies, History Associates filed a timely suit to compel the FDIC to comply with its FOIA obligations in June 2024.

#### **F. The FDIC Stonewalls History Associates’ FOIA Request During This Litigation**

66. In the more than six months since History Associates filed its initial complaint in this case, the FDIC has continued to delay and obfuscate.

67. After the FDIC filed its answer to History Associates’ complaint, the parties filed pre-motion notices and responses, and the Court held a pre-motion conference on September 18. At the hearing, the Court ordered the FDIC to produce a “Vaughn index declaration” within 30 days and further directed that, in preparing the index, the FDIC “go through the [pause] letters ... and determine whether any part of the letter can be sent over with the rest of it redacted” “along with the declaration.” ECF 25-1, at 9:7-8, 10:5, 14-18. The Court stated that, if History Associates was “not satisfied” with the FDIC’s production, the Court would review in camera a “random



sample” of letters to determine whether “there are redactions that could have been made such that some of the letters should go to [History Associates].” ECF 25-1, at 9:11-15, 10:11-13.

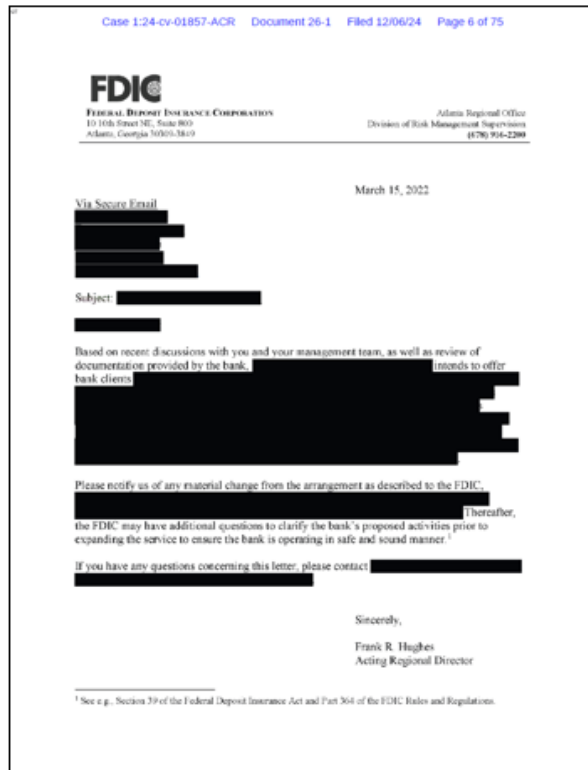
68. The FDIC failed to comply with the Court’s instructions. By October 28 it had produced a *Vaughn* index but refused to produce any of the pause letters (redacted or otherwise). After attempting unsuccessfully to resolve the issue with the FDIC, History Associates was forced to seek intervention from this Court to enforce its prior order. This Court granted that request, ordering the FDIC to produce the redacted Pause Letters by November 22 “[p]ursuant to the Court’s instructions at the September 18, 2024” hearing. November 4, 2024 Minute Order.

69. On November 22, the FDIC produced 23 highly redacted letters. ECF 26-1, at 2-75. The FDIC indiscriminately redacted entire paragraphs and even *pages* of some letters. *See, e.g., id.* at 45-48 (letter #16); *id.* at 52-57 (letter #18). And the FDIC redacted information that, as later came to light, ran zero risk of identifying a recipient bank or interfering with the FDIC’s supervisory relationships. *See, e.g.,* ECF 27-2, at 43 (revised letter #15 revealing that prior version of the letter redacted “the ability to buy, sell, and hold bitcoin through the Bank’s online banking website”). Unsatisfied with these redactions, History Associates requested in camera review of a subset of the pause letters.

70. On December 12, following its in camera review of four of the pause letters, this Court issued a minute order expressing “concern[] with what appears to be FDICs lack of good-faith effort in making nuanced redactions.” December 12, 2024 Minute Order. The FDIC, the Court said, “cannot simply blanket redact everything that is not an article or preposition.” *Id.* The Court ordered the FDIC to “re-review the documents, make more thoughtful redactions, and provide the new redactions to Plaintiff by January 3, 2025.” *Id.* And the Court further instructed

that the FDIC “should be prepared to defend each new redaction in an ex parte discussion with the Judge.” *Id.*

71. On January 3, the FDIC produced revised redacted versions of the Pause Letters to History Associates. The letters in that production contained far fewer redactions, confirming the inadequacy of the agency’s prior production.



72. Even still, the FDIC’s revised redactions (once again) appeared to violate FOIA and this Court’s orders. Most of the letters still appear to redact information that is either not protected by Exemption 8 or whose disclosure would be harmless (including the identities of third-party digital-asset firms that the banks were proposing to partner with and the names of public blockchains that the banks were seeking to use).

73. Even more troubling than the FDIC's continued apparent failure to make appropriate redactions, however, its latest production brought to light serious problems with the adequacy of its searches for Pause Letters.

74. First, the revised production contains 25 Pause Letters—two more than the FDIC's initial production. According to the FDIC, the agency found the two additional Pause Letters after conducting a “second search” in response to a question from History Associates seeking clarification on whether any Pause Letters were sent after October 21, 2022—the date of the last letter in the initial production and six months before the end of the period the OIG report described in which the FDIC sent Pause Letters. ECF 27-3, at 10. The FDIC did not explain, however, why its original search had failed to uncover these two Pause Letters or even how its first and second searches differed in scope or methodology, let alone provide any assurance that its latest search was comprehensive as FOIA requires.

75. Second, the FDIC revealed for the first time, in the course of disclosing its second search, that it had adopted an untenable misreading of the scope of History Associates' FOIA request from the start. As noted above, History Associates sought “[c]opies of all ‘pause letters’ described in the OIG report.” When transmitting the revised Pause Letters to History Associates, however, the FDIC cryptically stated that the 25 produced letters were “all the letters *shared with* the OIG and thereby responsive to” History Associates' FOIA request. ECF 27-3, at 10. The FDIC confirmed in later correspondence and in a status report that it had adopted that narrow construction of the request all along. *See* ECF 27-3, at 2; ECF 28, at 2-4.

76. History Associates' FOIA request contained no such limitation. That request sought copies of any Pause Letters “described in” the OIG report, whether or not the agency provided every letter to the OIG. The OIG's report describes the “pause letters” as documents

issued by the FDIC that “asked that the institutions pause from proceeding with planned activities or expanding existing activities and provide additional information.” By the terms of History Associates’ FOIA request, the FDIC should have searched for ““all pause letters”” meeting that “descr[ption],” irrespective of whether any particular letters were provided to the OIG.

77. Indeed, History Associates had no way of knowing whether there were Pause Letters the FDIC had not furnished to the OIG, and no reason to expect that possibility. Only the FDIC could know whether it had withheld any Pause Letters from the OIG. And the FDIC’s “shared with” gloss on the request is implausible; no rational FOIA requester seeking to unearth evidence of an agency’s publicly reported effort to cut off an entire industry from access to banking services would exclude from its request Pause Letters that the agency withheld from its own watchdog.

78. The FDIC never informed History Associates when processing its FOIA request or at any point until January 15, 2025—and only after repeated requests from History Associates—that it had so construed the request’s scope. Nor did the FDIC seek clarification from History Associates about whether its request encompassed Pause Letters not provided to the OIG but that fall within the OIG report’s description. The agency chose to stand on its undisclosed, jaundiced reading of History Associates’ request—bypassing the kind of cooperative clarification of FOIA requests in which other agencies often engage.

79. The agency’s never-before-articulated description of the letters it produced—those “*shared with* the OIG”—prompted History Associates to inquire directly whether any Pause Letters of the kind “described in” the OIG report were *not* shared with the OIG (and thus omitted from the FDIC’s search and production). In response, the FDIC revealed that it did not know

because it admittedly had never searched for Pause Letters beyond those it shared with the OIG. And the agency insisted that it had no obligation to do so.

80. The agency later insisted that it had “reasonably interpreted” History Associates’ original FOIA request as seeking only letters shared with the OIG, and that any other documents are outside the scope of the request. Specifically, in a strained, post-hoc attempt to justify that interpretation, the FDIC argued that the OIG report defines the term “pause letters” to encompass only those letters that the FDIC sent banks between March 2022 and May 2023 (which apparently are the only letters the agency shared with the OIG). ECF 28 at 3. But the OIG report nowhere mechanically defines “pause letters” in that way. Instead, the report variously uses the term “pause letters” as shorthand for letters “asking [banks] to pause, or not expand, planned or ongoing crypto-related activities”—sometimes without any accompanying date-range or number-of-recipients limitation. *See* OIG Report at 8, 11.

#### **G. Whistleblowers Allege Document Destruction At The FDIC**

81. At the same time the FDIC was stonewalling History Associates, U.S. Senator Cynthia Lummis sent a letter to the then-FDIC Chair stating that she had been informed by FDIC “whistleblowers” that “destruction of materials is occurring with respect to the digital asset activities of your agency”; that “staff access to these materials is being closely monitored by management to prevent them from being supplied to the Senate before they can be destroyed”; and “that certain staff have been threatened with legal action to prevent them from speaking out.” *Letter from Sen. Cynthia M. Lummis to Hon. Marty Gruenberg* (Jan. 16, 2025), <https://bit.ly/40Cglkb> (“Senator Lummis Letter”).

82. Senator Lummis directed the Chair to “cease and desist destruction of all materials and end all retaliatory actions immediately” and to “preserve all existing materials, including documents, communications, electronic information and metadata, relating to the FDIC’s digital

asset activities since January 1, 2022.” Senator Lummis Letter. Senator Lummis emphasized that “[t]his is illegal and unacceptable.” *Id.*

**H. This Court Instructs The FDIC To Produce All Pause Letters And Allows History Associates To Investigate Unlawful FDIC FOIA Policies Or Practices**

83. History Associates raised these issues with the Court in a status report and informed the Court that it intended to move for leave to file an amended complaint to assert FOIA policy-or-practice claims. *See* ECF 27, at 2, 6. The Court held a hearing on these topics on January 22.

84. At the start of that hearing, the Court asked the FDIC to “explain ... why [it] took the position [it] did with respect to the interpretation of the FOIA request, which was pretty obvious on its face not limited as [the FDIC] limited it?” Exhibit A, at 2:18-21. The FDIC responded by “request[ing] that the Court stay the case for three weeks.” *Id.* at 3:7-8. The Court declined to stay the case and asked the FDIC “[w]ho took the incredibly narrow illogical view of [History Associates’] FOIA request.” *Id.* at 3:16-17, 3:22. The FDIC was unable to answer. *Id.* at 3:23-25.

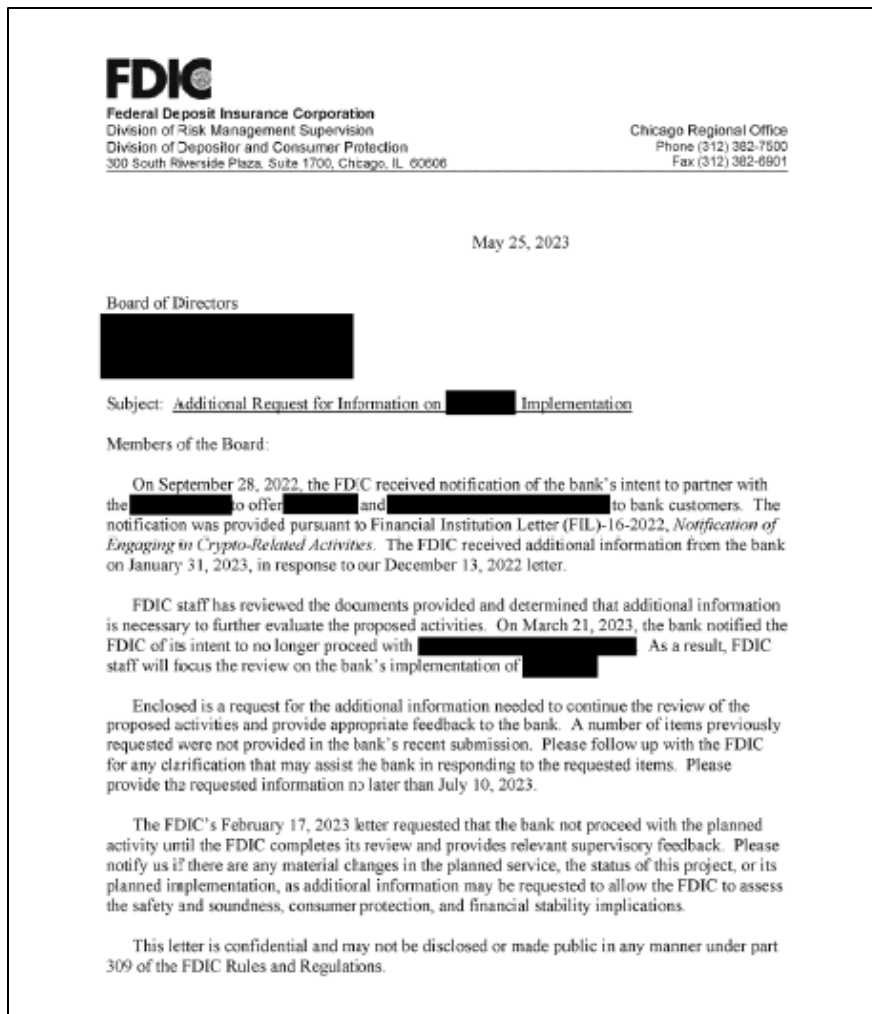
85. The Court then asked the FDIC whether “any documents whatsoever, emails, texts, hard copies, soft copies, anything sent by carrier pigeon [had] been destroyed since the issuance of the FOIA request” on November 8, 2023. Exhibit A, at 4:16-19. The FDIC could neither confirm nor substantiate that nothing had been destroyed. *See id.* at 4:24-5:1. The Court asked “[w]hen ... th[e] litigation hold [was] put in place” in this case. *Id.* at 5:14-15. The FDIC admitted that it never put a litigation hold in place—not even after History Associates filed suit. *Id.* at 5:22-24. The FDIC could not explain why it did not institute a litigation hold, and the agency admitted that it did not even undertake any investigation to determine why there was no litigation hold. *Id.* at 6:20-22.

86. The Court ordered the FDIC to produce any remaining Pause Letters by February 7. *See* Exhibit A, at 24:21-22; Jan. 22, 2025 Minute Order. It also granted History Associates’ request for leave to amend its complaint to bring policy-or-practice claims. Exhibit A, at 11:1; Jan. 22, 2025 Minute Order. And the Court suggested that a deposition of the FDIC under Rule 30(b)(6) may be appropriate and invited History Associates to move for leave to conduct such a deposition. Exhibit A, at 20:15-17, 21:20-22, 25:8-9.

**I. The FDIC’s Most Recent Production Reveals Additional Pause Letters And Still May Be Incomplete**

87. On February 5, the FDIC produced, and published in its FOIA reading room, “additional correspondence with the 24 banks that received ‘pause letters,’” as well as “correspondence and other records with additional institutions beyond those 24 banks involving crypto-related activity.” *See* FDIC Records—Correspondence Related to Crypto-Related Activities (Feb. 5, 2025), <https://bit.ly/4hu1Vsi> (“Feb. 5 Production”). On February 7, the FDIC notified this Court that it considered that publication to fulfill the agency’s obligation under this Court’s order. *See* ECF 32.

88. This partially redacted production includes numerous additional Pause Letters the FDIC had not previously produced directing that banks suspend various kinds of crypto activities—showing that the FDIC’s initial, narrow reading of History Associates’ request led to it withholding records responsive to the request. For example:



Feb. 5 Production at 37.

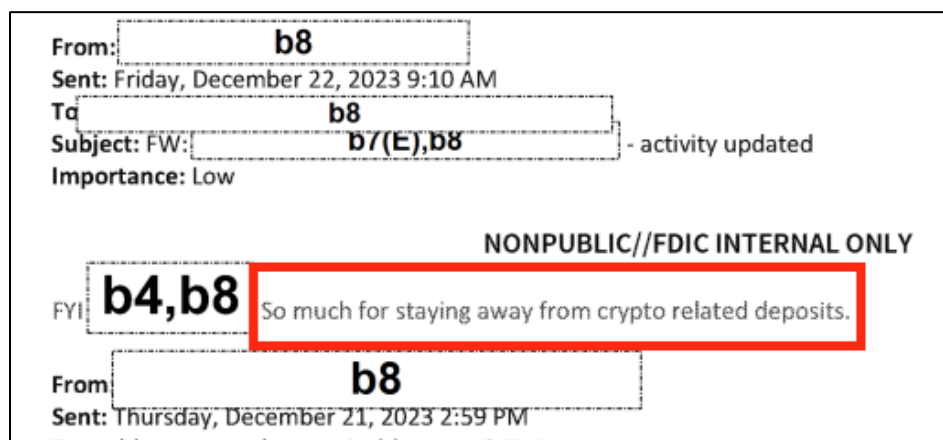
89. The production shows that the Pause Letters had their intended effect. As the Acting FDIC Chair explained in a press release accompanying the production:

The documents that we are releasing today show that requests from these banks were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence as institutions waited for responses, to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity. Both individually and collectively, these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward. As a result, the vast majority of banks simply stopped trying.

90. The production also demonstrates that the Pause Letters were only the first step in the FDIC's regulatory pressure campaign to discourage banks from innovating in the crypto space.



When banks answered the FDIC’s first set of questions, they were often met with either a second set of questions or a regulatory visitation. Ultimately, many banks got the message and canceled their planned crypto activities. One bank, for example, after receiving a Pause Letter and then being subject to a visitation by the FDIC, terminated its crypto activities while the visitation findings were being finalized. *See, e.g.*, Feb. 5 Production at 29-30. Other documents in the FDIC’s production show that the FDIC discouraged banks from providing even traditional banking services to crypto clients:



Feb. 5 Production at 654; *see also, e.g.*, Feb. 5 Production at 503 (FDIC Case Manager: “the bar for being a suspicious activity is low, and that it can be reasonably assumed that many of these [crypto company] deposits would be suspicious in nature”).

91. Though the FDIC’s most recent production is more extensive than its first, its search still appears wanting in certain respects. Among other things, the FDIC has admitted that even now it does not know whether even this latest production is complete. The FDIC’s notice indicates that its database contains 9,000 documents that are not currently searchable, and thus would not turn up in the FDIC’s full-text searches. ECF 32, at 3-4. It does not explain why that is the case, how long such issues have existed, or why the FDIC did not bring this issue to the Court’s or History Associates’ attention until the agency made its production. Nor does the notice

explain why the agency did not conduct a manual review of these records, or why it did not search collaboration platforms such as Microsoft Teams. And the FDIC still has not represented to this Court that it has implemented a litigation hold. *See* ECF 32.

**J. History Associates’ Experience, Combined With Whistleblower Allegations, Reveal Apparent Unlawful FOIA Policies Or Practices At The FDIC**

92. The FDIC’s cumulative conduct in responding to History Associates’ FOIA request—including its initial complete withholding of the Pause Letters, its failure to produce redacted letters to History Associates despite this Court’s direction, its lack of good-faith effort in making its original redactions (as its revised redactions confirm), the failure of its original search to uncover two additional Pause Letters, its unilateral and illogical narrowing of History Associates’ request, its most recent suggestion that there may still be more responsive documents, and its failure to implement a litigation hold—raises serious concerns that there are fundamental breakdowns in the FDIC’s FOIA processes. Considered along with History Associates’ experience filing other FOIA requests with the FDIC and the public whistleblower allegations with which Senator Lummis confronted the FDIC, the FDIC’s treatment of the Pause Letters appears to be the product of several unlawful FOIA policies or practices that the FDIC employs to avoid fulfilling its FOIA obligations.

93. *First*, the FDIC appears to have a policy or practice of making blanket assertions that requested records are categorically subject to Exemption 8 in their entirety and so completely immune to disclosure—sometimes going so far as to refuse to confirm whether the records exist. Through that policy or practice, the FDIC systematically avoids its obligations under FOIA to search for and review records for segregable information. *See* 5 U.S.C. § 552(a)(8)(A).

94. For example, in response to History Associates’ request for the Pause Letters, the FDIC asserted that, “[b]y its very nature, the information that [History Associates] requested, if it

exists and could be located, would be ... information ... exempt from disclosure under” Exemption 8. Exhibit B. And on administrative appeal, the FDIC confirmed that “the decision to withhold was based upon a determination that the type of records being requested would be exempt, rather than making exemption determinations on a document-by-document basis.” Exhibit C. And as History Associates has now shown, the FDIC was refusing to disclose segregable portions of the letters that plainly could have and should have been disclosed with modest redactions.

95. The FDIC made a similar determination for a separate request filed by History Associates. In November 2023, History Associates requested copies of the FDIC’s Crypto Asset Working Group meeting minutes. Exhibit D. The FDIC responded that the meeting minutes were “withheld in full under FOIA Exemptions (b)(5) and (b)(8)” with no further explanation. Exhibit E, at 4. Upon History Associates’ administrative appeal of that decision, the FDIC remanded the request to the FOIA officer, but did not give the FOIA officer any instructions about how to apply those exemptions on remand. Exhibit F.

96. *Second*, the FDIC appears to have a policy or practice of narrowly construing FOIA requests to the point of misreading them, contrary to its statutory “duty to construe a FOIA request liberally.” *Nation Mag., Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995).

97. As discussed, the FDIC unreasonably construed History Associates’ request for “[c]opies of all ‘pause letters’ described in” the OIG report, as a request only for copies of the Pause Letters *shared with* the OIG in preparing its report. *See* ECF 27-3, at 2; *supra* at 19-20. This Court described that as a “narrow illogical view” of History Associates’ request. Exhibit A, at 3:16-17. And for good reason: History Associates request was directed at learning the content

of the Pause Letters, not the scope of the OIG’s review. Beyond illogical, the FDIC’s narrow interpretation of the request was unknowable. History Associates could not know how many Pause Letters existed, and but for the FDIC’s late-breaking and cryptic description of its production, its narrow interpretation may have never been known. And as the FDIC’s latest production reveals, that narrow interpretation had real bite: It resulted in the withholding of additional Pause Letters, which the FDIC has only now produced—together with voluminous additional internal and external correspondence revealing its efforts to cut off crypto from access to banking.

98. The same sort of undisclosed and unknowable misinterpretation appears likely to have infected at least some of History Associates’ other requests. For example, in response to History Associates’ separate FOIA request for documents concerning a crypto-related blog post published by the White House National Economic Council in January 2023, the FDIC unilaterally “interpreted the search to be for documents and communication with the FDIC Board of Directors and/or FDIC Staff who would be reasonable custodians of the requested documents.” Exhibit G. But the FDIC never explained who those custodians were, leaving History Associates with no way to evaluate whether the FDIC’s *sua sponte* narrowing of History Associates’ request was reasonable. On the basis of its preferred version of History Associates’ request, the FDIC asserted that there “were no records responsive to [the] request.” *Id.*

99. *Third*, the FDIC appears to have a policy or practice of failing to search for all records within the FDIC’s custody or control, as required under FOIA. *See, e.g., McGehee v. C.I.A.*, 697 F.2d 1095, 1110 (D.C. Cir. 1983) (agency must “release documents that are in the agency’s ‘custody’ or ‘control’”); *Evans v. Fed. Bureau of Prisons*, 951 F.3d 578, 584 (D.C. Cir. 2020) (agency must make “a good faith effort to conduct a search for the requested records, using

methods which can be reasonably expected to produce the information requested”) (quotation marks omitted).

100. History Associates’ experience again illustrates such failures. With respect to its Pause-Letters request, the FDIC initially produced only 23 letters in response to this Court’s order. But when pressed by History Associates about whether that represented the full universe of Pause Letters, the agency conducted a “second search” and found two additional Pause Letters—without explaining how or why the first search had missed those letters or even how the two searches differed in scope or methodology. ECF 27-3, at 10. And even the FDIC’s most recent production may not be comprehensive until the agency completes an unexplained “quality control review” of its FOIA database. Exhibit H.

101. Moreover, in response to other digital-asset-related requests filed by History Associates, the FDIC has produced zero documents from any collaboration platforms (such as Microsoft Teams), and an implausibly low number of documents overall. For example, History Associates requested documents relating to a February 2023 joint statement issued by the FDIC and other bank regulators titled “Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities.” Exhibit I. Although this was an important FDIC policy statement, the FDIC identified only 28 pages of records (and withheld most of them). *See* Exhibit J.\* Similarly, the FDIC denied additional requests submitted by History Associates on the ground that it found *no* records relating to a highly publicized Federal Reserve policy statement and National Economic Council blog post on similar issues. Exhibits G, K.

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\* The FDIC recently granted History Associates’ administrative appeal regarding those withholdings.

102. *Fourth*, the FDIC appears to have a policy or practice of failing to take necessary steps to ensure that records responsive to FOIA requests are properly preserved, including implementing litigation holds when a FOIA suit is brought. *See U.S. ex rel Miller v. Holzmann*, 2007 WL 781941, at \*2 n.2 (D.D.C. Mar. 12, 2007) (explaining that failure to implement a litigation hold following a FOIA suit is “negligent conduct” that “should be deemed sanctionable”); *see also Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009) (agency may not “intentionally transfer[] or destroy[] a document after it has been requested under FOIA”).

103. During the January 22 hearing, when asked about the allegations of document destruction, the FDIC could muster only a cursory denial based on its purported “document retention practices” and informal conversations with unspecified staff in the FDIC’s “bank supervision section,” rather than any investigation into what actually took place here. Exhibit A at 4:25, 7:1-11. The FDIC also admitted that it did not implement a litigation hold after History Associates filed its FOIA request or even after History Associates filed this FOIA lawsuit, creating a serious risk that responsive documents could be or have been inadvertently or intentionally destroyed. At a minimum, the FDIC’s failure to implement a litigation hold may make it impossible to determine definitively whether any records were destroyed. *Id.* at 6:3-6 (Court observing that “serious sanctions” may be appropriate either if “any documents were destroyed, or if we can’t figure out whether any documents were destroyed”).

104. And the risk of destruction is acute here. As discussed, a recent letter sent by Senator Cynthia Lummis to the then-FDIC chair alleges that “destruction of materials is occurring with respect to the digital asset activities of your agency.” *See supra* at ¶ 81. The FDIC has been aware of these allegations for weeks. Yet the FDIC to date has been unable to represent, in

response to direct questions from History Associates and the Court, that no documents related to History Associates' FOIA request in this case (let alone History Associates' other pending FOIA requests) have been destroyed.

105. Even the notice accompanying the FDIC's most recent production does not deny that responsive records have been lost or destroyed. *See* ECF 32. Instead, just as at the January 22 hearing, the FDIC simply asserts that the database it searched has a "record retention schedule"—*i.e.*, a policy that has "some exceptions" the agency does not identify but asserts (without explanation) are "not relevant here." *Id.* at 2. That is little better than the FDIC's generic invocation at the January 22 hearing of its unspecified "robust document retention practices." Exhibit A at 4:25. And it provides cold comfort absent any investigation to ascertain whether the agency complied with those practices here.

## COUNT I

### **Violation of FOIA, 5 U.S.C. § 552 (Unlawful Search for and Withholding of Pause Letters)**

106. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

107. The FDIC is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1).

108. The Pause Letters are a record within the meaning of 5 U.S.C. § 552(f)(2).

109. FOIA demands an adequate search for records. "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Inst. for Just. v. IRS*, 941 F.3d 567, 569-70 (D.C. Cir. 2019) (internal citations and quotations removed).

110. On information and belief, the FDIC has conducted an inadequate search for the Pause Letters in response to History Associates’ FOIA request and the Court’s order by, among other things, failing to use appropriate search terms and search all relevant databases.

111. FOIA also demands the production of non-exempt records. FOIA was designed “to open agency action to the light of public scrutiny.” *Tax Analysts*, 492 U.S. at 142 (quotation marks omitted). Its purpose is “to provide for open disclosure of public information, and it has long been understood to create a strong presumption in favor of disclosure.” *Pub. Citizen, Inc. v. Rubber Mfrs. Ass’n*, 533 F.3d 810, 813 (D.C. Cir. 2008) (citations and quotation marks omitted).

112. Even if a FOIA exemption applies, FOIA requires an agency to produce any “reasonably segregable,” non-exempt portion of responsive records through appropriate redactions. 5 U.S.C. § 552(b). In addition, even if a record is entirely protected by an exemption, an agency must release the record if doing so “would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.” *Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 436 F. Supp. 3d 90, 105-06 (D.D.C. 2019) (quotation marks omitted); 5 U.S.C. § 552(a)(8)(A). The agency bears the burden of justifying any redactions it makes to responsive records. *Inst. for Just. v. IRS*, 547 F. Supp. 3d 1, 5 (D.D.C. 2021); *see also* December 12, 2024 Minute Order (FDIC “should be prepared to defend each new redaction”).

113. The FDIC initially withheld the Pause Letters in full (and unlawfully) based on FOIA Exemption 8. Although the FDIC has since produced redacted versions of the Pause Letters as well as redacted versions of related documents, the agency continues to redact certain information in the Pause Letters that must be disclosed under FOIA because it is either segregable, non-exempt information or would not reasonably harm any interest protected by Exemption 8.



114. Among other things, the Pause Letters the FDIC has produced appear to unlawfully redact the identities of third-party digital-asset firms that the banks were proposing to partner with, the names of public blockchains that the banks were seeking to use, and information that was unredacted in a prior production by the agency. Disclosing that information would neither identify any of the recipient banks nor impair the FDIC’s supervisory relationship with any bank.

115. History Associates has exhausted its administrative remedies by appealing the FDIC’s adverse determination. 5 U.S.C. § 552(a)(6)(A)(ii).

116. By failing to release the Pause Letters, the FDIC has violated FOIA. 5 U.S.C. § 552(a)(3)(A).

## COUNT II

### **Violation of FOIA, 5 U.S.C. § 552 (Unlawful FOIA Policies or Practices)**

117. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

118. “FOIA authorizes a court not only to ‘order the production of any agency records improperly withheld,’ but also to ‘enjoin the agency from withholding agency records.’” *Jud. Watch, Inc. v. U.S. Dep’t of Homeland Sec.*, 895 F.3d 770, 777 (D.C. Cir. 2018) (quoting 5 U.S.C. § 552(a)(4)(B)). Thus, even if an agency ultimately produces the documents sought by a FOIA requester, courts retain equitable authority to enjoin a “formal or informal” agency “policy or practice” that violates FOIA and “will impair the party’s lawful access to information in the future.” *Id.* (quoting *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 491 (D.C. Cir. 1988)).

119. Based on History Associates’ experience and the public whistleblower allegations, *see supra* ¶¶ 92-105, the FDIC appears to have multiple policies or practices that violate FOIA’s requirements and that have harmed and will continue to harm History Associates.

120. First, on information and belief, the FDIC has an unlawful policy or practice of applying a “categorical approach” when it asserts that records are exempt from disclosure under Exemption 8, 5 U.S.C. § 552(b)(8). Such an approach, if it were ever lawful, violates the FOIA Improvement Act of 2016, which requires agencies to “take reasonable steps necessary to segregate and release nonexempt information,” and to disclose information, even if exempt, when doing so would not “harm an interest protected by an exemption.” 5 U.S.C. § 552(a)(8)(A)(i)(I), (ii)(I)-(II). Those requirements prohibit the FDIC from asserting that a class of documents categorically can be withheld under Exemption 8. The FDIC’s policy or practice of applying a categorical approach and otherwise unlawfully withholding records under Exemption 8 thus violates FOIA.

121. Second, on information and belief, the FDIC has an unlawful policy or practice of construing FOIA requests narrowly. FOIA requires agencies to construe requests “liberally.” *National Magazine*, 71 F.3d at 890; *see also PETA v. Nat’l Institutes of Health, Dep’t of Health & Hum. Servs.*, 745 F.3d 535, 540 (D.C. Cir. 2014); *Inst. for Just.*, 941 F.3d at 572. A FOIA requester need only “reasonably describe[e]” the documents sought. 5 U.S.C. § 552(a)(3)(A). When “an agency becomes reasonably clear as to the materials desired, FOIA’s text and legislative history make plain the agency’s obligation to bring them forth.” *Truitt v. Dep’t of State*, 897 F.2d 540, 544 (D.C. Cir. 1990). The FDIC’s policy or practice of construing FOIA requests narrowly violates those requirements.

122. Third, on information and belief, the FDIC regularly fails to conduct a search reasonably calculated to uncover all responsive records within the agency’s possession or control. In responding to a FOIA request, an agency must “demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *Inst. for Just.*, 941 F.3d at

569-70 (internal citations and quotations removed); *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (same). An agency must search for all documents that are in the agency’s “custody” or “control.” *McGehee v. C.I.A.*, 697 F.2d 1095, 1110 (D.C. Cir. 1983). It “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). But the FDIC does not, on information and belief, comply with that obligation because it does not search all of its relevant databases and does not use searches designed to reveal and produce all responsive records.

123. Fourth, on information and belief, the FDIC fails to take the steps necessary to ensure that records responsive to FOIA requests are properly preserved, including implementing litigation holds when a FOIA suit is brought. An agency has a duty to implement a litigation hold once it reasonably anticipates litigation. *Holzmann*, 2007 WL 781941, at \*2 n.2. In addition, an agency may not “intentionally transfer[] or destroy[] a document after it has been requested under FOIA.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009); *see also Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000). The FDIC unlawfully fails to implement the litigation holds—even where, as here, a FOIA lawsuit is not just reasonably foreseeable but has actually materialized. And that is all the more troubling in light of the FDIC’s apparent practice of destroying documents it wishes to conceal. *See* Senator Lummis Letter.

124. History Associates has been harmed by each of the FDIC’s unlawful FOIA policies or practices and will continue to be harmed in the future unless the FDIC is compelled to comply fully with FOIA’s procedural requirements. *See, e.g., Cause of Action Inst. v. United States Dep’t of Just.*, 999 F.3d 696, 703 (D.C. Cir. 2021). History Associates “will suffer continuing injury from this allegedly unlawful policy” because “its business depends on continually requesting and

receiving documents that the policy permits the [FDIC] to withhold.” *Newport Aeronautical Sales v. Dep’t of Air Force*, 684 F.3d 160, 164 (D.C. Cir. 2012). In addition, History Associates has pending and soon-to-be-submitted FOIA requests with FDIC that are likely to be subject to the FDIC’s unlawful policies or practices. *See, e.g., Tipograph v. Dep’t of Just.*, 146 F. Supp. 3d 169, 176 (D.D.C. 2015).

125. This Court should exercise the equitable authority FOIA provides to keep the FDIC accountable to FOIA and to ensure that History Associates suffers no further harm as a result of any unlawful FDIC FOIA policies or practices.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court award the following relief:

- a. Declare that the FDIC failed to conduct an adequate search under FOIA for the Pause Letters;
- b. Order the FDIC to comply with FOIA by conducting searches reasonably calculated to uncover all Pause Letters by a date certain;
- c. Declare that the FDIC violated FOIA by redacting information in the Pause Letters that is not subject to Exemption 8 and/or or would not impair any interest protected by Exemption 8;
- d. Order the FDIC to unredact information in the Pause Letters already produced, as well as any additional Pause Letters ultimately produced after a complete search, that is reasonably segregable and/or or would not impair any interest protected by Exemption 8;
- e. Declare that the FDIC violated FOIA by having unlawful policies or practices of:
  - (a) asserting that records are categorically exempt under Exemption 8;
  - (b) giving FOIA requests improperly narrow constructions; (c) failing to conduct adequate searches reasonably calculated to uncover all records requested; and
  - (d) unlawfully failing to take the steps necessary to ensure that records responsive to FOIA requests are properly preserved;
- f. Enjoin the FDIC from continuing its unlawful policies or practices of:
  - (a) asserting that records are categorically exempt under Exemption 8;
  - (b) giving FOIA requests improperly narrow constructions; (c) failing to conduct adequate searches reasonably calculated to uncover all records requested; and

- (d) unlawfully failing to take the steps necessary to ensure that records responsive to FOIA requests are properly preserved;
- g. Retain jurisdiction over this case to ensure the FDIC's timely compliance with this Court's orders;
- h. Award History Associates its costs and attorneys' fees incurred in this action in accordance with 5 U.S.C. § 552(a)(4)(E);
- i. Order a special counsel investigation of the FDIC's conduct regarding the Pause Letters and the FDIC's unlawful policies or practices challenged here, under 5 U.S.C. § 552(a)(4)(F); and,
- j. Grant such other relief as this Court may deem just and proper.

Date: February 10, 2025

Respectfully submitted,

/s/ Eugene Scalia

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# **Exhibit A**





## P R O C E E D I N G S

THE CLERK: We are on the record with civil case 24-1857, History Associates Incorporated versus Federal Deposit Insurance Corporation. Counsel, starting with the plaintiff, please state your appearance for the record.

MR. HARPER: Good morning, Your Honor -- or good afternoon, Your Honor. Nick Harper for History Associates Incorporated. With me at counsel's table my colleagues from Gibson Dunn, Jonathan Bond and Aaron Hauptman.

THE COURT: All right.

MR. DOBER: Good afternoon, Your Honor. Andrew Dober on behalf of the FDIC and at counsel's table with me is Lina Soni.

THE COURT: Who's behind you?

MR. DOBER: That is Ms. Strapoli (phonetic), she is an attorney at the FDIC as well, but has not entered an appearance in the case.

THE COURT: Can you please explain to me why you took the position you did with respect to the interpretation of the FOIA request, which was pretty obvious on its face not limited as you limited it? And then also explain to me what efforts you made when you got the FOIA request to preserve documents, and whether any documents have been destroyed, intentionally or otherwise, since the issuance of the FOIA request?

1 MR. DOBER: Yes, Your Honor, may I --

2 THE COURT: No, you can answer my questions.

3 MR. DOBER: I was going to ask to go back and grab  
4 my papers.

5 THE COURT: Oh, yes.

6 MR. DOBER: I do have a statement on those issues,  
7 Your Honor. The FDIC respectfully requests that the Court  
8 stay the case for three weeks --

9 THE COURT: No. No. I want you to answer my  
10 question.

11 MR. DOBER: -- due to a change in leadership --

12 THE COURT: I want you to answer my questions right  
13 now.

14 MR. DOBER: Yes, Your Honor. Could Your Honor  
15 repeat those questions.

16 THE COURT: Who took the incredibly narrow illogical  
17 view of their FOIA request.

18 MR. DOBER: Your Honor, I would say that was the way  
19 that it was interpreted --

20 THE COURT: I didn't ask the way it was interpreted.  
21 It was interpreted way too narrowly, in a way that's barely  
22 laugh -- it's almost laughable. Now, who did that?

23 MR. DOBER: I don't have on -- offhand the name of  
24 the original person who processed the FOIA request.

25 THE COURT: Any time since the initial FOIA request

1 was sent in were any documents relating to, this is letters to  
2 banks about crypto, right? How do I say that to encompass  
3 precisely what you all have asked for? I need a phrase.

4 MR. DOBER: Pause letters.

5 MR. HARPER: Pause letters.

6 THE COURT: What's that?

7 MR. HARPER: Pause letters.

8 THE COURT: Pause letters.

9 MR. HARPER: Yes.

10 THE COURT: Pause letters sent by the FDIC to a  
11 number of banks and to pause their crypto activities. So can  
12 everyone in this room agree that when I say pause -- crypto  
13 pause letters that's what we're talking about, yes?

14 MR. HARPER: Yes.

15 MR. DOBER: Yes, Your Honor.

16 THE COURT: Okay. Have any documents whatsoever,  
17 emails, texts, hard copies, soft copies, anything sent by  
18 carrier pigeon been destroyed since the issuance of the FOIA  
19 request on --

20 MR. HARPER: Crypto pause --

21 THE COURT: On what date?

22 MR. HARPER: Oh, I'm sorry, November 8th, 2023.

23 THE COURT: November 8th, 2023.

24 MR. DOBER: Not to my knowledge, Your Honor. We  
25 have robust document retention practices at the Agency for all

1 electronic records.

2 THE COURT: And what efforts have you made to  
3 undertake that representation to me? Because you've gotten an  
4 assertion, an allegation that documents were ordered to be  
5 destroyed. And I assume that because of that you didn't just  
6 come in here having relied on policies and procedures without  
7 doing some investigation as to whether those allegations were  
8 correct, right? Or did you just come in here and say, yeah,  
9 we follow policies and procedures?

10 MR. DOBER: Your Honor, if I gave that impression I  
11 do apologize. There are massive amounts of litigation holds  
12 in place at the FDIC.

13 THE COURT: Okay. I'm asking about this litigation  
14 hold. When was this litigation hold put in place? Was there  
15 a litigation hold put in place specifically for their FOIA  
16 letter?

17 MR. DOBER: Not -- no, Your Honor. I don't believe  
18 so.

19 THE COURT: Was there a litigation hold put for  
20 their FOIA letter, when did you all file this lawsuit?

21 MR. HARPER: It was June 2024.

22 THE COURT: Was there a litigation hold put on June  
23 2024 when you all -- 2024 when you all received this lawsuit?

24 MR. DOBER: No, Your Honor.

25 THE COURT: How is that -- how is that possible?

1 MR. DOBER: The agent --

2 THE COURT: Do you understand that right now if I  
3 find -- and there's going to be an investigation -- that any  
4 documents were destroyed, or if we can't figure out whether  
5 any documents were destroyed, you guys are going to come in  
6 for some serious sanctions?

7 MR. DOBER: Yes, Your Honor.

8 THE COURT: Can you explain to me why no litigation  
9 hold was put in place? Also, not only are you in for serious  
10 sanctions, you don't have attorney work product protection  
11 anymore. You understand that; right? Because attorney work  
12 product protection only attaches to documents once a  
13 litigation hold has been put in place. You understand that  
14 you all now have waived potentially all of your attorney work  
15 product protection? Do you understand that?

16 MR. DOBER: I -- I understand what the Court is  
17 saying, Your Honor. It's -- I haven't looked at the law on  
18 that issue in a while. But I do understand what the Court is  
19 saying.

20 THE COURT: Did you undertake any investigation to  
21 determine why no litigation hold was put in place?

22 MR. DOBER: I have not, Your Honor. No.

23 THE COURT: Have you undertaken any specific  
24 investigation with respect to the allegations that documents  
25 related to crypto pause letters were destroyed?

1 MR. DOBER: Your Honor, yes, I have -- I have spoken  
2 with --

3 THE COURT: Okay. What was that investigation?

4 MR. DOBER: Well, we have spoken with clients about  
5 it and about that issue, yes.

6 THE COURT: Who did you speak to?

7 MR. DOBER: Personnel in RMS which I --

8 THE COURT: Personnel where?

9 MR. DOBER: In our bank -- in our supervision, bank  
10 supervision section that maintains the supervisory  
11 correspondence that go back and forth with banks.

12 THE COURT: Well, I'm not just talking about the  
13 back and forth with the banks, I'm talking about everything  
14 internal to FDIC which would also have to have been held. Did  
15 you do any investigation about whether internal communications  
16 were destroyed?

17 MR. DOBER: Your Honor, I'm -- I'm -- I'm cognizant  
18 of the Court's point, I have not looked at the law on this in  
19 advance of this. I -- but I am not in a position to agree  
20 that the hold that you envision for a FOIA request is  
21 something that -- is something that is required in FOIA, in  
22 terms of asking for the hold of -- to give you an example, we  
23 get a thousand FOIA requests a year.

24 THE COURT: You don't get a thousand FOIA lawsuits a  
25 year, do you? I'm talking about a lawsuit.

1 MR. DOBER: Yes, Your Honor.

2 THE COURT: I don't know whether you need to put a  
3 litigation hold in place once you get the FOIA. I assume you  
4 don't. But you do need to put it as soon as litigation is  
5 reasonably anticipated. And can you and I both agree that the  
6 last date litigation can be reasonably anticipated is the day  
7 you actually get a lawsuit?

8 MR. DOBER: I would agree.

9 THE COURT: So at a minimum, at the absolute  
10 minimum, a litigation hold should have been put in place in  
11 June of 2024 when this case was filed; right?

12 MR. DOBER: Your Honor, I'd have to look at the law  
13 on that as it pertains to FOIA lawsuits.

14 THE COURT: Do you think that -- I'm sorry, is there  
15 an exception to the Federal Rules of Civil Procedure that I'm  
16 unaware of? Is there a Federal Rule of Civil Procedure 9 and  
17 a half that says discovery doesn't apply to lawsuits brought  
18 against the government under the Freedom of Information Act?

19 Mr. -- someone from Gibson, is there such a  
20 exception that I'm not aware of?

21 MR. HARPER: I'm not aware, Your Honor.

22 MR. DOBER: FOIA lawsuits do not generally -- do  
23 not -- are not discovery lawsuits, Your Honor. They're  
24 administrative record, Your Honor. But I do want to emphasize  
25 to the Court that we do have new management in the FDIC and

1 new leadership as of yesterday that they took new positions.  
2 And they do want to re-evaluate the positions that were taken  
3 in this case. And for that reason, we would request that the  
4 Court stay the case --

5 THE COURT: I'm not staying this case.

6 MR. DOBER: -- for the time --

7 THE COURT: I'm not staying this case at all, in  
8 fact, I'm speeding it up dramatically. You're going to have a  
9 30(b)(6) to them within a week. They're going to take a  
10 30(b)(6) deposition of everything that was done with respect  
11 to the issuance of this FOIA request and how it was processed.  
12 That includes any internal nonprivileged communications about  
13 the request. It includes them -- someone had -- you issue by  
14 tomorrow at 2:42 the subject's for a Rule 30(b)(6). And  
15 you're going to get a deponent who is going to be well prepped  
16 and well versed on what happened within a week. And if they  
17 come back to me and they say that your Rule 30(b)(6) witness  
18 didn't know anything or was uncommunicative or was  
19 unresponsive or the defending attorney impeded the deposition,  
20 life will become very, very, very unpleasant for the FDIC. Do  
21 I make myself clear?

22 MR. DOBER: Yes, sir.

23 THE COURT: And I don't care who your management is,  
24 all right?

25 MR. DOBER: Yes, Your Honor.



1 THE COURT: Is there anything else you guys want?

2 MR. HARPER: Just a couple of points, Your Honor.

3 We would ask that they be -- the FDIC be required to  
4 produce -- to search for and produce all -- any other pause  
5 letters that might exist beyond those shared with the OIG as  
6 soon as possible.

7 THE COURT: I thought they were already doing  
8 that.

9 MR. DOBER: We are, Your Honor.

10 THE COURT: Okay. How long do you need for that? I  
11 mean, it can't be that hard, right? There must be a database  
12 where these just exist.

13 MR. DOBER: February the 14th. I just, Your Honor,  
14 we are not -- I do not know whether there are or the volume  
15 of --

16 THE COURT: Well, you're going to tell me, the Court  
17 and opposing counsel, what the volume is by 5:00 p.m. on the  
18 24th, on January 24th. And then depending on that volume we  
19 will determine when you get your pause letters. It's not  
20 going to be -- I mean, the latest it's going to be is February  
21 14th, it might be quite earlier than that. What else would  
22 you like?

23 MR. HARPER: So I just wanted to again inform the  
24 Court that we intend to file a motion for to leave to amend  
25 the complaint to --

1 THE COURT: It's granted.

2 MR. HARPER: That's all, Your Honor.

3 THE COURT: File your amended complaint. Do we have  
4 pending summary judgment motions?

5 MR. HARPER: No, Your Honor.

6 THE COURT: Okay. File your amended complaint.

7 MR. HARPER: Thank you, Your Honor.

8 THE COURT: All right. Stay up here for a moment.  
9 No, no, you.

10 MR. HARPER: Me?

11 THE COURT: Threats against the FDIC lawyers are  
12 totally inexcusable. Do you know who this whistle blower is?

13 MR. HARPER: So I do -- after the public allegations  
14 came out on the FDIC exposed Twitter account, the  
15 whistleblower, whose name is Michael Williams reached out to a  
16 client of ours and we had a couple phone con- -- I had two  
17 phone conversations with him over the past week. He informed  
18 me on those phone calls that he is a former FDIC employee and  
19 provided information about substantiating the allegations that  
20 were made on the Twitter account. But we had no awareness  
21 whatsoever that he was intending to reach out to opposing  
22 counsel.

23 THE COURT: But he is the person who reached out to  
24 opposing counsel?

25 MR. HARPER: I assume so. All I saw was the same

1 text you saw. We didn't have any awareness beyond that.

2 THE COURT: Well, I'm entering an order to prevent  
3 him from contacting FDIC opposing counsel. And how do I get  
4 that order to him?

5 MR. HARPER: We -- I'd be happy to -- I did also --  
6 we have his email address, I would be happy to email it to him  
7 if you issue such an order.

8 THE COURT: How -- okay. Sit down.

9 How would you like me to handle this? I mean, this  
10 is totally unacceptable. I mean, it's beyond unacceptable.  
11 I'm not even -- this isn't going to happen again, because  
12 these lawyers have to deal with me, but they're not going to  
13 have to deal with threats from outside parties.

14 MR. HARPER: Understood, Your Honor.

15 THE COURT: What can I do to alleviate this issue?  
16 I mean, if I enter an order I don't know if this guy is going  
17 to go, you know, do more. So if you want to think about it,  
18 but I'll do what you want me to do.

19 MR. DOBER: Thank you, Your Honor. It has been a  
20 tumultuous 48 hours. You know, if I could ask you to turn  
21 back time I would, but I know that's -- powerful as the Courts  
22 are, they're not that powerful.

23 THE COURT: It's actually unclear whether under the  
24 law of physics it is possible to turn back time, entropy.

25 MR. DOBER: Point taken, Your Honor. So I think the

1 best I can have for an ask, in addition -- I would like to  
2 think on the order, but I do think an order makes sense and I  
3 think the order should extend to family members,  
4 unfortunately, because this individual's first contact was to  
5 my wife to be clear. He texted my wife on her personal cell  
6 phone.

7 THE COURT: How did that -- how --

8 MR. DOBER: He looked it up and he found it, because  
9 that's what he does. It's not hard the fine somebody's  
10 personal cell phone if you know their first and their last  
11 name.

12 THE COURT: Okay. Here's what we're going to do,  
13 you two are going to get together and you're going to draft an  
14 order saying exactly what you want me to say. We're going  
15 issue the order. I'm going to put it on Heritage to make sure  
16 this guy, what's his name?

17 MR. DOBER: Michael Williams.

18 THE COURT: Michael Williams sees the order. If Mr.  
19 Williams violates the order he's going to be under violation  
20 of a court order and then there are going to be serious  
21 problems for Mr. Williams. I mean, I don't --

22 MR. DOBER: Thank you, Your Honor.

23 THE COURT: I guess I can -- I don't know, can I --  
24 I guess I can keep the order under seal and just give it to  
25 Mr. Williams. You draft it the way that you want it. As soon

1 as I get it after -- when I say Heritage signs off, I mean  
2 Heritage does what you want them to do and the order. And if  
3 you have anything to add that's beneficial you can do that.  
4 As soon as you get me the order, whatever you get me, I will  
5 enter it.

6 MR. DOBER: Thank you, Your Honor. The other issue  
7 is what really -- what set this off from my perspective, was  
8 the filing and the attachment of anonymous, these anonymous  
9 blog posts with salacious allegations from this -- from this  
10 site. And those posts, it would seem to me would be helpful  
11 if the Court were to instruct counsel to stop filing anonymous  
12 blog posts in a filing with salacious allegations. And I can  
13 go through -- I mean, you have some allegations in there that  
14 are just so far from even relevant. Putting aside that it's  
15 all anonymous and it's all from somebody with a disturbed  
16 individual with a vendetta, who told me that he was going to  
17 have guys send a package to my house and identified my home  
18 street address in that message. And then told me he knew my  
19 wife's name and he had my wife's number mixed up and my number  
20 mixed up in his cell phone. But the --

21 THE COURT: I mean, do I need to send a Marshal out  
22 to this guy?

23 MR. DOBER: I would ask -- Your Honor, my  
24 understanding, the time stamps on the email and the phone  
25 numbers are from Australia or New Zealand, maybe they know,

1 they've talked to him.

2 THE COURT: Is this guy in Australia?

3 MR. HARPER: Yes, Your Honor, that's what I --

4 THE COURT: Okay.

5 MR. DOBER: I don't even know if that's within --  
6 enforcement of that order would become difficult to say the  
7 least, but I think there's value -- there's value in it. And  
8 he says he's going to have his guys send a package. I don't  
9 know what we can do with that.

10 THE COURT: Well, by the way, one thing that you can  
11 do, you personally if you want, just a suggestion, is if you  
12 order anything, order it using a different name so that  
13 anything that comes to your house that's under your name or  
14 your wife's name you don't open. Does the FDIC have a way to  
15 screen packages that come to the FDIC.

16 MR. DOBER: The FDIC does screen packages that come  
17 to agency, yes.

18 THE COURT: All right. Do you want me to order the  
19 FDIC to have -- you have packages sent to them for a while and  
20 that they screen them even if they're personal?

21 MR. DOBER: That's a very good idea, I hadn't  
22 thought of it. That would -- yes.

23 THE COURT: All right. I'll enter an order to that  
24 effect, so that you're allowed to send your personal packages  
25 through the FDIC, that they'll screen them and get them there

1       beforehand. That's what happens here. And if there's an  
2       issue with that, reach out to my chambers and we'll figure  
3       that out, okay?

4               MR. DOBER: And I am aware that others go through  
5       more than I do.

6               THE COURT: So there --

7               MR. DOBER: No. No. Judges and members of the  
8       Court, you know, and other federal prosecutors are subjected  
9       to threats, I understand that.

10              THE COURT: No, this is totally unacceptable. I  
11       mean -- were you the only one targeted or were there other  
12       lawyers targeted?

13              MR. DOBER: Well, the first was an email sent to our  
14       work addresses and those were to me, Ms. Soni and  
15       Mr. Kurtenbach who work with me and work for me. The personal  
16       text messages to my spouse and to me at our personal numbers  
17       were only sent to me.

18              THE COURT: All right. Well, if you want anyone  
19       else covered by the order just put them in the order. If you  
20       want anyone else covered with the FDIC thing, just add that.  
21       You don't have to tell me right now, just add it and we'll do  
22       it.

23              MR. DOBER: Thank you, Your Honor. And I would just  
24       say on, you know, in Exhibit E of their posting, their filing,  
25       you know, they attach a lengthy post from the individual. And

1 that has information -- it talks about alleged sex scandals,  
2 insider trading, it's in the public filing, it's a rape  
3 victim, it's -- or alleged -- it's a coworker's cookbook. And  
4 I'm aware that Your Honor's rules of standing order say only  
5 provide the pertinent information and it seems like here the  
6 pertinent information was not -- was not provided.

7 THE COURT: All right. Do you guys want to talk  
8 about that? I mean, I can seal the order -- I can seal the  
9 exhibit but I don't think that's going to do you any good  
10 because it's already on the internet. But if you want me to  
11 seal it, I'll seal it. But why don't you come up and tell me  
12 why you attached that. I mean, first of all, I think we can  
13 all agree that they did not intend for any of this to happen  
14 when they posted that. I'm not sure it wasn't foreseeable.

15 But come on up. First of all, you're not going to  
16 post anything else from this person or anyone else anonymously  
17 on the public docket. And if any of the allegations of what  
18 he said are in your second amended complaint, that's going to  
19 be filed under seal and then they're going to tell me what  
20 they are agreed to not seal.

21 MR. HARPER: Okay, Your Honor. So we filed the  
22 full -- I mean, I -- we filed the full Twitter post, not to --  
23 we didn't -- there was just certain of these allegations that  
24 were in certain of these like paragraphs. Since we filed the  
25 whole thing for context we did not intend to --



1 THE COURT: No, I know you didn't intend for this to  
2 happen. But I mean, maybe you don't have the most credible  
3 witness here.

4 MR. HARPER: Yeah, I --

5 THE COURT: Which is something you might want to  
6 think about as you're drafting your second amended  
7 complaint.

8 MR. HARPER: Certainly, Your Honor. I will say that  
9 we -- I spoke to Mr. Williams, and as I think the FDIC has  
10 acknowledged, he is a former FDIC employee. So I mean, based  
11 on those conversations there seem to be some indicia of  
12 credibility there. I'm not saying -- I had no idea that all  
13 this was going to happen.

14 THE COURT: Of course.

15 MR. HARPER: But then -- and beyond that we  
16 approached the FDIC with these allegations over a week ago on  
17 January 10th. That's what we did first, we went to them and  
18 said are these true, do they affect -- they're specific  
19 allegations that affected the response in this case, that  
20 there were 150 documents that were not disclosed in this case  
21 because of insufficient searches and so forth. So we  
22 approached the FDIC. They didn't respond to those allegations  
23 for over a week. And that's when we brought it to the  
24 attention of the Court.

25 And beyond that I will say, you know, and this will

1 come out in our amended complaint, but there's other requests  
2 that I think FDIC's conduct in this case and other requests  
3 that we've had before them that have been denied and some that  
4 are still pending, raise similar questions about the adequacy  
5 of their FOIA processes. So I don't think this was -- we were  
6 not relying solely on these anonymous allegations.

7 THE COURT: All right. Anything else of this nature  
8 you're going to file under seal. And then we're going to talk  
9 about what can be unsealed later, okay, we're not doing this  
10 again. I know you did not intend -- I understand precisely  
11 why you did what you did, probably would have done the same  
12 thing. I don't know. I can imagine a reasonable person  
13 would, another reasonable person might not. I don't know.  
14 Don't do it again because now we know what we're dealing  
15 with.

16 MR. HARPER: Understood.

17 THE COURT: All right. I am very sorry for your  
18 last 48 hours, that is not anything I would wish on anyone.

19 MR. DOBER: Thank you, Your Honor. Permission to  
20 approach with counsel.

21 THE COURT: Yeah, sure.

22 (Bench conference off the record.)

23 THE COURT: We'll seal the transcript. If you want  
24 to order the transcript you're allowed to order the  
25 transcript, but otherwise the transcript is sealed. Is that

1 what I need to do? All right.

2 Okay. FDIC counsel, it occurs to me I should  
3 actually give you an opportunity to respond on the 30(b)(6).  
4 If you want to respond on the 30(b)(6) as to why I'm not  
5 permitted to grant it, you can do that by COB Friday. But in  
6 the meantime you should continue to prepare your guy for a  
7 30(b)(6), because unless there's a D.C. Circuit case telling  
8 me I can't do it, it's going to get ordered. Okay.

9 MR. DOBER: Yes, Your Honor. We'll research the  
10 issue. It's just not something that I've ever come across or  
11 was in my mind today.

12 THE COURT: Fair enough. I mean, it may well be  
13 that in regular FOIA litigation, if it is just on the  
14 administrative record -- I have this actually in another case  
15 right now. Whatever the typical rule is for FOIA, right now  
16 we're dealing with allegations of intentional destruction of  
17 documents. And so that's where I'm basing the 30(b)(6)  
18 inquiry into how documents have been handled in this matter.

19 MR. DOBER: Your Honor, those allegations are all  
20 from one source to be clear.

21 THE COURT: Well, they're from one source,  
22 understood. But it's also as I understand it, a pattern of  
23 narrowly construing FOIA documents so as to avoid the actual  
24 providing the documents, which I understand has not just come  
25 from one individual; is that correct?

1 MR. HARPER: That's correct, Your Honor. May I  
2 approach?

3 That's correct, Your Honor. I also don't think that  
4 we know from sure that this all comes from one individual.  
5 The letters sent by Senator Lummis to --

6 THE COURT: Oh, right, there's a senator letter.  
7 Who was talking to Senator Lummis?

8 MR. HARPER: It just says whistleblowers plural, we  
9 don't know. I don't know.

10 THE COURT: Have you reached out to her staff?

11 MR. HARPER: I have not.

12 THE COURT: I'm not going to tell you how to do your  
13 job, but I know what I would do.

14 All right. Tell me by Friday, file something if you  
15 want to oppose a 30(b)(6) if you absolutely can't get it done  
16 by Friday, let me know. We'll figure out more time. But in  
17 the meantime, I would try to get your head around this,  
18 because what's not going to happen is unless there's -- if  
19 there's a D.C. case telling me I can't do what I want to do  
20 then of course I'm not going to do it. But if I have any  
21 power whatsoever to allow them to investigate what's going on  
22 here, it's going to happen, okay?

23 MR. DOBER: I understand --

24 THE COURT: I also don't want to put you at a --  
25 given the two days that you've had -- all right, just strike

1 all the dates. I'm giving you a week to respond on the  
2 30(b)(6), whether you oppose the 30(b)(6) and if so why. You  
3 can reply in a couple days. I'll issue a decision quickly.  
4 If I need a hearing, I'll have it. You're not going to have a  
5 30(b)(6) prepped in a week. Put that off for a moment, focus  
6 on the opposition. But be prepared that if I grant a -- are  
7 you moving to get a 30(b)(6)?

8 MR. HARPER: Yes.

9 THE COURT: Okay. If I grant that motion it's going  
10 to happen quickly after their reply. So just be prepared that  
11 some things might move quickly after that, okay?

12 MR. DOBER: Yes, Your Honor. I understand the  
13 Court's concern and I'll preface this by saying I --  
14 divulging, I am a Yankees fan, so but if there's -- I can't  
15 emphasize that there's a lot of turnover at the Agency right  
16 now. So a 30(b)(6) witness is going to be challenging. We  
17 have brand new leadership and on a personal note, the reason  
18 Mr. Kurtenbach is not here today is because he's having  
19 surgery.

20 THE COURT: And are you having surgery later?

21 MR. DOBER: I'm having surgery on Monday, Your  
22 Honor. It's a hip surgery. You know, it's not as serious as  
23 the other one, but there's several weeks when I am not going  
24 to be mobile and I'm planning to take two weeks off. I -- we  
25 can work on getting other people up to speed on this matter.

1 THE COURT: When do you get back to the office?  
2 When are you scheduled to be back to the office?

3 MR. DOBER: I think it's February -- two weeks from  
4 January 27th. My calendar is not with me. February --  
5 February 10th.

6 THE COURT: All right. I will give you until  
7 February 14th to get the additional notice letters out,  
8 additional pause letters out. Every date I've given so far is  
9 off the table, okay. I'm giving you brand new dates on  
10 everything.

11 MR. DOBER: My management is very serious about  
12 responding to this, and that could moot the whole issue. We  
13 could have all of these pause letters to opposing counsel. I  
14 mean, that's -- as, you know, by then or at least have a very  
15 much a date certain, which would really promote judicial  
16 economy to the Court and efficiency and might, you know, lead  
17 to a resolution of the case. I also have, you know, brand new  
18 leadership in the agency.

19 THE COURT: Well, they're also concerned -- I mean,  
20 first they're concerned about getting the pause letters, but  
21 then there are also concerns about redactions; correct?

22 MR. DOBER: Yes, which we're happy -- we have the  
23 redactions, we can show them to the Court at any time, on  
24 first set if it's helpful.

25 THE COURT: I mean, I will say that just glancing at

1 the renewed redactions, they do seem like legitimate  
2 redactions. Like they were only redacting names. So I'm not  
3 sure you're going to get very far with me on saying that they  
4 have to unredact everything. But --

5 MR. HARPER: Your Honor, could I just say one thing  
6 about timing.

7 Thank you, Your Honor, I understand that the FDIC  
8 counsel's predicament and don't want to be disrespectful. I  
9 do think we're willing to work with them on the timing of the  
10 30(b)(6). I would ask that we have a quicker turnaround on  
11 the letters. I don't know how involved, like the litigation  
12 counsel is with sort of finding and reviewing those letters.  
13 But, you know, especially given the allegations of document  
14 destruction, like I don't want a month to pass between now and  
15 when they actually --

16 THE COURT: Well, February 14th isn't exactly a  
17 month.

18 MR. HARPER: Okay. And I would -- I think a couple  
19 of weeks for them -- two weeks for them to identify the  
20 universe of records is --

21 THE COURT: All right. You guys have until February  
22 7th to get them the letters. If you need more time than that,  
23 you should tell me by Friday. And then we'll get on a phone  
24 call to assess whether or not you need that additional time.  
25 All right?

1 MR. DOBER: Yes.

2 THE COURT: If your supervisors are new to the  
3 government, tell them welcome to the NFL, things move quickly.  
4 All right.

5 MR. HARPER: Thank you, Your Honor.

6 THE COURT: All right. On the 30(b)(6) issue, just  
7 put a pause on it, after -- we're just going to put a pause on  
8 it. After you get the letters, you tell me whether you want  
9 to make the motion. If so, after you tell me that you want to  
10 make the motion and you tell them, I'll give them two weeks to  
11 respond and then we'll go from there. Does that make sense?

12 MR. HARPER: Yes.

13 THE COURT: Please be sensitive to his time while  
14 he's away, because he shouldn't have to be dealing with  
15 overseeing legal research after what he's gone through plus as  
16 he's going through surgery, okay?

17 MR. HARPER: Understood.

18 THE COURT: Okay. So I guess the main thing that  
19 we're all working towards now is him getting the full pause  
20 letters, all right?

21 MR. HARPER: Thank you, Your Honor.

22 MR. DOBER: Yes, Your Honor. I just add also the  
23 added time could help bring down the temperature in the -- out  
24 there as well.

25 THE COURT: Okay. But you're going to send me



1 whatever proposed order, right, for you?

2 MR. DOBER: Yes, before I -- before my surgery, yes,  
3 my -- this will be music to my wife's ear, Your Honor.

4 THE COURT: Totally on your time, whenever you want  
5 it, just know that whenever you send it to us, as soon as  
6 we're able to it, will get uploaded. Okay.

7 MR. DOBER: Thank you, Your Honor.

8 THE COURT: Thank you, everyone.

9 (The proceedings were concluded at 3:04 p.m.)

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

13 /s/  
Christine T. Asif  
14 Official Court Reporter  
15  
16  
17  
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# **Exhibit B**



**Federal Deposit Insurance Corporation**

550 17th Street NW, Washington, D.C. 20429-9990

Legal Division

January 22, 2024

Josh Shear  
History Associates Incorporated  
7361 Calhoun Place  
Suite 310  
Rockville, Maryland 20855

RE: FDIC FOIA Log Number 2024-FDIC-FOIA-00083

Dear Mr. Shear:

This is in response to your November 8, 2023 Freedom of Information Act (FOIA) request for:

Copies of all “pause letters” described in the attached October 2023 FDIC Office of Inspector General report titled “FDIC Strategies Related to Crypto-Asset Risks”

By its very nature, the information that you requested, if it exists and could be located, would be 1) trade secrets, or confidential or privileged commercial or financial information obtained from a person and 2) information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions. All of that information, if it exists and could be located, would be exempt from disclosure under FOIA Exemptions 4 and 8, 5 U.S.C. § 552(b)(4) and (b)(8). Therefore, your request has been denied in full under Exemptions 4 and 8.<sup>1</sup>

We have determined that the information should be withheld because it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b).

You may contact me (email: [acolgrove@fdic.gov](mailto:acolgrove@fdic.gov)) or our FOIA Public Liaison, FDIC Acting Ombudsman, Jill Lenox, at [FOIAPublicLiaison@fdic.gov](mailto:FOIAPublicLiaison@fdic.gov) or by telephone at (703) 562-6040 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

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<sup>1</sup> Exemption 4 requires the withholding of trade secrets, and confidential or privileged commercial or financial information that was submitted by a person.

Exemption 8 permits the withholding of information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions.

Mr. Josh Shear  
FOIA Request 2024-FDIC-FOIA-00083  
January 22, 2024

If you are not satisfied with the response to this request, you may administratively appeal by writing to the FDIC's General Counsel. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Your appeal should be addressed to the FOIA/PA Group, Legal Division, FDIC, 550 17th Street, NW, Washington, D.C. 20429. Please refer to the log number and include any additional information that you would like the General Counsel to consider.

Sincerely,

Alisa N. Colgrove  
Government Information Specialist  
FOIA/Privacy Act Group

# Exhibit C



May 8, 2024

Electronic Delivery to: [jshear@historyassociates.com](mailto:jshear@historyassociates.com)

Josh Shear  
Senior Historian  
History Associates Incorporated  
7361 Calhoun Place, Suite 310  
Rockville, Maryland 20855

RE: FDIC FOIA Log No. 2024-FDIC-FOIA-0083  
FOIA Appeal No. 2024-FDIC-APPEAL-0011

Dear Mr. Shear:

On November 8, 2023, you submitted a Freedom of Information Act (FOIA)<sup>1</sup> request seeking “Copies of all ‘pause letters’ described in the attached October 2023 FDIC Office of Inspector General report titled ‘FDIC Strategies Related to Crypto-Asset Risks.’”<sup>2</sup>

The FDIC’s FOIA/Privacy Group denied the request in its entirety by letter dated January 22, 2024, citing FOIA Exemptions 4 and 8,<sup>3</sup> and stating:

By its very nature, the information that you requested, if it exists and could be located, would be 1) trade secrets, or confidential or privileged commercial or financial information obtained from a person and 2) information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions. All of that information, if it exists and could be located, would be exempt from disclosure under FOIA Exemptions 4 and 8 . . . .

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<sup>1</sup> 5 U.S.C. § 552

<sup>2</sup> Federal Deposit Insurance Corporation Office of Inspector General, *FDIC Strategies Related to Crypto-Asset Risks*, Evaluation Report 24-01 (Oct. 17, 2023), [https://www.fdicog.gov/sites/default/files/reports/2024-02/EVAL-24-01-Redacted\\_0.pdf](https://www.fdicog.gov/sites/default/files/reports/2024-02/EVAL-24-01-Redacted_0.pdf) (publicly available redacted version).

<sup>3</sup> 5 U.S.C. § 552(b)(4), 552(b)(8). Exemption 4 provides for the withholding of trade secrets and commercial or financial information obtained from a person and privileged or confidential. Exemption 8 provides for the withholding of information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.



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**Federal Deposit Insurance Corporation**

We have determined that the information should be withheld because it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b).

In your March 25, 2024 appeal letter, you assert that the FDIC failed to meet the requirements of the claimed exemption. You state that the requested “pause letters” appear to be form letters sent to banks rather than information obtained from banks, and that the FDIC must segregate and release any non-exempt information. You also state that the FDIC has failed to demonstrate that it is reasonably foreseeable that disclosure of the “pause letters” would harm an interest protected by a FOIA exemption.

Upon review of the request, the FDIC’s denial decision, your appeal, and the applicable law, we have determined that the appeal must be denied.

**The Office of Inspector General Report**

In your FOIA request you specifically reference an FDIC Office of Inspector General Report, *FDIC Strategies Related to Crypto-Asset Risks* (OIG Report), which discusses the “pause letters” that are the subject of your FOIA request. The introduction to the OIG Report (pp. 1-3) describes the significance of crypto-assets in the global and United States financial systems, but notes that:

While crypto assets present many potential opportunities and benefits, they also pose a number of risks to the U.S. financial system. In recent years, the crypto-asset sector has experienced significant volatility. . . . These events highlight various risks that the crypto-asset sector could pose to financial institutions, including liquidity, market, pricing, and consumer protection risks. Financial institutions can be exposed to crypto-asset risks by providing services to crypto-asset companies or by engaging in crypto-related activities.

While currently limited, if material exposure of financial institutions to the risks posed by crypto-related activities were to manifest, it may affect the Federal Deposit Insurance Corporation’s (FDIC) mission to maintain stability and public confidence in the Nation’s financial system. The FDIC carries out its mission by, among other things, supervising and examining financial institutions for safety and soundness and consumer protection. The exposure of financial institutions to the risks posed by crypto-related activities presents safety and soundness risks and consumer protection concerns. . . .

As stated in Executive Order 14067, crypto assets present numerous opportunities to foster innovation and cost savings. The FDIC has an opportunity to take actions to

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uphold the United States' interests in the financial sector. However, because crypto assets also pose significant risks to the financial sector, the FDIC should ensure it can effectively address those risks, and promote safety and soundness and consumer protection.

OIG Report at 1-3 (footnotes and graphics omitted). The Background section of the OIG Report (pp. 3-7) details the FDIC's development of its approach to address crypto-asset risks from 2021 to 2023. In particular, the OIG Report discusses the context of the "pause letters" that are the subject of your FOIA request:

To gain an understanding of the crypto-related activities and the associated risks, on April 7, 2022, the FDIC issued Financial Institution Letter (FIL) 16-2022, *Notification and Supervisory Feedback Procedures for FDIC-Supervised Institutions Engaging in Crypto-Related Activities*. The FIL requested that FDIC-supervised institutions notify the FDIC if they intended to engage in, or were currently engaged in, crypto-related activities. The FIL requested that institutions "provide information necessary to allow the agency to assess the safety and soundness, consumer protection, and financial stability implications of such activities." Also, the FIL stated that the FDIC will review the notification and information received and request additional information as needed. In addition, the FIL stated that the FDIC would provide relevant supervisory feedback to the FDIC-supervised institution, as appropriate, in a timely manner. The FRB and OCC have issued similar requests to their supervised institutions.

In response to FIL 16-2022, a number of FDIC-supervised institutions provided notifications of their intent to engage in, or engagement in, crypto-related activities. According to FDIC data, as of January 2023, the Agency was aware of 96 FDIC-supervised financial institutions that either had expressed interest or were engaged in crypto-related activities. Some of these activities included crypto-asset-custody services, deposit services, crypto-asset-collateralized lending, and facilitation of customer purchase and sale of crypto assets through a third party.

In June 2022, the Directors of RMS and DCP issued a memorandum to the Regional Directors (RD memo) to facilitate the tracking and review of notifications received in response to the FIL. . . .

According to the FDIC, as part of its review of financial institutions' crypto-related activities, between March 2022 and May 2023, the FDIC sent letters to [redacted] supervised institutions. The letters asked that the institutions pause from proceeding with planned activities or expanding existing activities and to provide additional information. The FDIC asked these [redacted] financial institutions to pause their crypto-related activities in order to assess the safety and soundness, consumer protection, and financial stability implications of such activities before providing

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supervisory feedback. According to the FDIC, as of August 2023, the FDIC had provided [redacted] of these [redacted] supervised institutions with supervisory feedback related to their planned or ongoing crypto-related activities.

OIG Report at 4-5 (footnotes omitted).

**Exemption 8**

The disclosure obligations of the FOIA do not apply to records or information within Exemption 8 – material “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.”<sup>4</sup> Exemption 8 serves two purposes: (1) to protect the security of financial institutions by withholding from the public reports that contain frank evaluations of a bank’s stability; and (2) to promote cooperation and communication between bank employees and their regulators.<sup>5</sup> As one court explained:<sup>6</sup>

Bank safety and soundness supervision is an iterative process of comment by the regulators and response by the bank. The success of the supervision therefore depends vitally upon the quality of communication between the regulated banking firm and the bank regulatory agency. This relationship is both extensive and informal.

...

Because bank supervision is relatively informal and more or less continuous, so too must be the flow of communication between the bank and the regulatory agency. Bank management must be open and forthcoming in response to the inquiries of bank examiners, and the examiners must in turn be frank in expressing their concerns about the bank.

This “informal and more or less continuous . . . flow of communication” is reflected in how courts have determined what constitute “examination, operating, or condition reports” under Exemption 8: An examination report is any report arising out of a close inspection or careful inquiry;<sup>7</sup> information obtained or created in connection with an agency’s regulation and supervision of a financial institution is related to an examination, operating, or condition

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<sup>4</sup> 5 U.S.C. § 552(b)(8).

<sup>5</sup> *Consumers Union of U.S., Inc. v. Heimann*, 589 F.2d 531, 533 (D.C. Cir. 1978); *Gregory v. FDIC*, 631 F.2d 896, 898 (D.C. Cir. 1980).

<sup>6</sup> *In re Subpoena Served Upon the Comptroller of the Currency*, 967 F.2d 630, 633-34 (D.C. Cir. 1992) (citations omitted).

<sup>7</sup> *Public Investors Arbitration Bar Ass’n v. SEC*, 771 F.3d 1, 4-5, 8 (D.C. Cir. 2014).

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report;<sup>8</sup> and Exemption 8 does not require the defendant to identify a specific report to which the information relates.<sup>9</sup>

Courts have construed Exemption 8 broadly, finding “absolute protection regardless of the circumstances underlying the regulatory agency’s receipt or preparation of examination, operating or condition reports.”<sup>10</sup> As the United States Court of Appeals for the District of Columbia Circuit explained in discussing Exemption 8, “if the Congress has intentionally and unambiguously crafted a particularly broad, all-inclusive definition, it is not our function, even in the FOIA context, to subvert that effort.”<sup>11</sup>

Here, the text of the OIG Report clearly reflects the fact that the communications between the banks and the FDIC relating to the crypto-asset activities of the banks are an integral part of the examination and supervision of those banks by the FDIC. As such those communications, including the “pause letters,” are related to examination, operating, or condition reports under Exemption 8.

### **Categorical Determination**

The FDIC's FOIA/Privacy Act Group determined that “the information that you requested, if it exists and could be located,” would fall within Exemption 8. That is, the decision to withhold was based upon a determination that the type of records being requested would be exempt, rather than making exemption determinations on a document-by-document basis. “[C]ategorical decisions may be appropriate and individual circumstances disregarded when a case fits into a genus in which the balance characteristically tips in one direction.”<sup>12</sup> Application of categories for purposes of FOIA determinations has been found appropriate with respect to a variety of FOIA exemptions.<sup>13</sup> Categorical treatment, however, may be used “[o]nly when the range of circumstances included in the category characteristically support[s] an inference that the statutory requirements for exemption are satisfied.”<sup>14</sup>

<sup>8</sup> *McKinley v. FDIC*, 744 F. Supp. 2d 128, 144 (D.D.C. 2010).

<sup>9</sup> *Judicial Watch, Inc. v. U.S. Dept. of Treasury*, 796 F. Supp. 2d 13, 37-38 (D.D.C. 2011).

<sup>10</sup> *Gregory*, 631 F.2d at 898.

<sup>11</sup> *Consumers Union of U.S., Inc. v. Heimann*, 589 F.2d 531, 533 (D.C. Cir. 1978).

<sup>12</sup> *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 776 (1989); *Manning v. Dep’t of Justice*, 234 F. Supp. 3d 26, 35-36 (D.D.C. 2017).

<sup>13</sup> *Reporters Comm. for Freedom of Press*, 489 U.S. at 777 (Exemption 7(C)); *Federal Trade Comm’n v. Grolier Inc.*, 462 U.S. 19, 26 (1983) (work-product materials under Exemption 5); *Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 879 (D.C. Cir. 1992) (information provided to the government voluntarily under Exemption 4).

<sup>14</sup> *Citizens for Responsibility and Ethics in Washington v. Dep’t of Justice*, 746 F.3d 1082, 1088-1089 (D.C. Cir. 2014) (quoting *Nation Magazine v. U.S. Customs Service*, 71 F.3d 885, 893 (D.C. Cir.1995)).

**LEGAL DIVISION****Federal Deposit Insurance Corporation**

Given the description of the “pause letters” in the OIG Report – supervisory guidance from the FDIC concerning matters in which the FDIC was actively evaluating risks to the banks and the financial system, to be followed by further supervisory feedback from the FDIC, there is no question that the “pause letters” would “characteristically” be considered to fall entirely within the “all-inclusive” scope of Exemption 8 and would not include any segregable, non-exempt material. As a result, the requested records may be treated as a class rather than individually.

**Foreseeable Harm**

The FOIA provides that an agency shall withhold information only if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption.<sup>15</sup> The OIG Report, quoted above, states that as part of the FDIC’s review of financial institutions’ crypto-related activities, between March 2022 and May 2023, the FDIC sent letters to some number of supervised institutions, asking them to pause their crypto-related activities in order to assess the safety and soundness, consumer protection, and financial stability implications of such activities before providing supervisory feedback. Disclosure of those “pause letters” would, necessarily, reveal information about the particular banks that the letters were sent to and would intrude into the heart of the communications between financial institutions and their regulator.

A supervisory agency’s voluntary disclosure to the public of confidential information about the details of any bank’s business, its management, staff, and customers, and how well the bank fulfills (or fulfilled) its responsibilities, would impair the informal and ongoing supervisory relationship between regulators and bank management and staff.<sup>16</sup> Banks and their management and staff can quite reasonably conclude that if the agency simply disclose confidential information about one bank to the public, it might do so with confidential information about any bank.

For these reasons, it is reasonably foreseeable that disclosure of the requested “pause letters” would harm important interests protected by FOIA Exemption 8.

---

<sup>15</sup> 5 U.S.C. § 552(a)(8)(A).

<sup>16</sup> *Consumers Union*, 589 F.2d at 534 (“If details of the bank examinations were made freely available to the public and to banking competitors, there was concern [by Congress] that banks would cooperate less than fully with federal authorities.”)

**LEGAL DIVISION**

**Federal Deposit Insurance Corporation**

For the reasons discussed above, your appeal is denied. Because your FOIA appeal has been denied, you may seek judicial review in the United States District Court under 5 U.S.C. § 552(a)(4)(B).<sup>17</sup>

Sincerely,  
**ANDREW**  
**DOBER**  
Andrew J. Dober  
Senior Counsel

 Digitally signed by ANDREW  
DOBER  
Date: 2024.05.08 18:38:55 -04'00'

---

<sup>17</sup> You also may contact the Office of Government Information Services (“OGIS”) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877- 684-6448; or facsimile at 202-741-5769.

# Exhibit D

November 8, 2023

FOIA Officer  
Federal Deposit Insurance Corporation (FDIC)  
Legal Division, FOIA/PA Group  
550 17<sup>th</sup> Street, N.W.  
Washington, DC 20429

**Via Secure Release Portal**

**Re: Freedom of Information Act Request**

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, I am requesting copies of the following documents, which I have reason to believe are in the possession of the Federal Deposit Insurance Corporation ("FDIC"):

As described in the attached October 2023 FDIC Office of Inspector General report titled "FDIC Strategies Related to Crypto-Asset Risks" (Attachment 1), at pages 8–9, and 16, I am requesting a copy of the Crypto Asset Risks Interdivisional Working Group ("Crypto Asset Working Group") May 2022 charter.

I am also requesting copies of the Crypto Asset Working Group minutes from March 2022 through to the date you process this request, as described in the attached October 2023 FDIC Office of Inspector General Report, at page 16.

Please provide responsive information as it becomes available on a rolling basis but consistent with the prescribed timelines of the Freedom of Information Act. Please provide the requested records in electronic or paper form, whichever is faster. If this request must be forwarded to a different records custodian, we request that it be so forwarded as soon as possible.

Should you decide to invoke a FOIA exemption or withhold or redact any responsive records or parts thereof, we request that you: (1) identify each such record with specificity and/or date, author, recipient, and parties copied; (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you are claiming a specific exemption. Please correlate any redactions with specific exemptions under FOIA.

If you determine that portions of certain documents are exempt from production, the remainder of said documents should be produced nonetheless along with explanations justifying each exemption, including the specific FOIA provision justifying the exemption. 5 U.S.C. 552(b).

History Associates Incorporated agrees to pay all reasonable and standard processing fees that will be assessed in association with this request, up to the amount of \$100. Should the fees exceed this amount, please call me with an estimate of the total costs in order that specific expenditures beyond \$100 can be authorized.



Should you have any questions or concerns regarding this request, please contact me at (301) 279-9697 or via email to [jshear@historyassociates.com](mailto:jshear@historyassociates.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Shear", written in a cursive style.

Josh Shear  
Senior Historian

Attachment

# Exhibit E



# RE: [EXTERNAL MESSAGE] 2024-FDIC-FOIA-00084

[REDACTED]

**Received:** Dec 10, 2024 5:36 PM  
**Expires:** Dec 10, 2025 5:36 PM  
**From:** [REDACTED]  
**To:** [REDACTED]  
**Cc:**  
**Subject:** RE: [EXTERNAL MESSAGE] 2024-FDIC-FOIA-00084

**Attachments:**  image001.gif

This message was sent securely using Zix<sup>®</sup>

Thank you for the reminder, Mr. Shear.

Yes, the minutes in question were reviewed. There are 41 pages of minutes withheld.

Charles Smith, Government Information Specialist

**Federal Deposit Insurance Corporation**

Legal Division (FOIA/Privacy Act Group)

[REDACTED]

[REDACTED]

[REDACTED]



**From:** [REDACTED]  
**Sent:** Tuesday, December 10, 2024 2:55 PM  
**To:** Smith, Charles A. [REDACTED]  
**Subject:** RE: [EXTERNAL MESSAGE] 2024-FDIC-FOIA-00084

**CAUTION :** External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message was sent securely using Zix<sup>®</sup>

Good afternoon Mr. Smith,

I wanted to reach out to follow up on the correspondence with the office that conducted the review of the responsive records.

Josh Shear

--- Originally sent by [REDACTED] on Dec 5, 2024 6:57 AM ---

This message was sent securely using Zix<sup>®</sup>

Good afternoon, Mr. Shear,

I have reached out to the agency office that conducted the review of your FOIA request. I'm awaiting their reply. Please remind me if you have not heard back from me by COB on Monday, December 9.

Charles Smith, Government Information Specialist

**Federal Deposit Insurance Corporation**

Legal Division (FOIA/Privacy Act Group)

[REDACTED]

[REDACTED]

[REDACTED]

**From:** [REDACTED]

**Sent:** Tuesday, December 3, 2024 9:56 AM

**To:** Smith, Charles A. [REDACTED]

**Cc:** EFOIA <EFOIA@FDIC.gov>

**Subject:** RE: [EXTERNAL MESSAGE] 2024-FDIC-FOIA-00084

**CAUTION** : External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message was sent securely using Zix<sup>®</sup>

Good morning Mr. Smith,

Regarding 2024-FDIC-FOIA-00084, were the minutes in question reviewed, and if so, how many pages of minutes were specifically withheld?

Thank you very much,

Josh

--- Originally sent by [REDACTED] on Nov 19, 2024 4:56 PM ---

This message was sent securely using Zix<sup>®</sup>

Hello Mr. Shear,

As stated in our November 18, 2024, reply, the remainder of your request, including meeting minutes, are withheld in full under FOIA Exemptions (b)(5) and (b)(8).

Thank you. You may also contact our agency's FOIA Public Liaison at FOIAPublicLiaison@fdic.gov or by phone at 703-562-6040.

Charles Smith, Government Information Specialist

**Federal Deposit Insurance Corporation**

Legal Division (FOIA/Privacy Act Group)

[REDACTED]

[REDACTED]

[REDACTED]

**From:** [REDACTED]

**Sent:** Tuesday, November 19, 2024 2:45 PM

**To:** Smith, Charles A. [REDACTED]

Cc: EFOIA <EFOIA@FDIC.gov>

Subject: [EXTERNAL MESSAGE] 2024-FDIC-FOIA-00084

**CAUTION** : External email. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message was sent securely using Zix<sup>®</sup>

Good afternoon Mr. Smith,

Thank you very much for the response for this FOIA for records relating to the Crypto Working Group.

We would like to ask about receiving the Working Group's meeting minutes. They are referenced in both the OIG report and the Charter.

Best,

Josh

This message was secured by Zi x<sup>®</sup>.

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This message was secured by **Zix**®.

Secured by **zix**® This service is hosted by Zix on behalf of FDIC Secure Email More Information



# Exhibit F

January 21, 2025

*Electronic Delivery: jgart1@historyassociates.com*

Jason H. Gart, Ph.D.  
History Associates Incorporated  
7361 Calhoun Place, Suite 310  
Rockville, Maryland 20855

RE: FOIA Appeal No. 2025-FDIC-APPEAL-0005  
Original Request: FOIA Log Number 2024-FDIC-FOIA-0084  
FOIA/PA Group Response: November 18, 2024  
Date of Appeal: December 19, 2024

Dear Mr. Gart:

This is in response to History Associates Incorporated's ("History Associates") administrative appeal under the Freedom of Information Act ("FOIA"). On November 8, 2023, History Associates submitted its initial FOIA request to the Federal Deposit Insurance Corporation ("FDIC"). The FDIC responded to that request on November 18, 2024. You appealed the FDIC's decision on December 19, 2024.

Your appeal concerns the following request:

- Copy of the Crypto Asset Risks Interdivisional Working Group (Crypto Asset Working Group) May 2022 charter as described in the October 2023 FDIC Office of Inspector General report titled "FDIC Strategies Related to Crypto-Asset Risks" at pages 8-9 and 16; and
- Copies of the Crypto Asset Working Group minutes from March 2022 through the date this request is processed.

After considering your request, the FOIA/Privacy Act Group ("FOIA Group") responded to you on November 18, 2024. The FOIA Group released, in part, 3 pages it determined to be responsive to your request for the Crypto Asset Working Group charter and withheld in full documents in response to your request for the Crypto Asset Working Group minutes. The FOIA Group determined that withheld information is exempt from disclosure under FOIA Exemptions 5 and 8 (5 U.S.C. § 552(b)(5) and (8)) and that it is reasonably foreseeable that



disclosure in this matter would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b).

You appealed the FOIA Group's decision on December 19, 2024. In your appeal you maintain that the FDIC failed to adequately show that the records are subject to the claimed exemptions. Further, you maintain that the FDIC should produce any "reasonably segregable" non-exempt portions of each withheld record. Finally, you state the FDIC failed to demonstrate foreseeable harm.

After having reviewed your initial request, the FOIA Group's determination and your appeal, we are remanding this matter to the FOIA Group for further assessment. You may seek judicial review of the FDIC's determination in the United States District Court under 5 U.S.C. § 552(a)(4)(B).<sup>1</sup>

Sincerely,

*/s/ Andrew J. Dober*

Andrew J. Dober  
Senior Counsel

---

<sup>1</sup> You also may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877- 684-6448; or facsimile at 202-741-5769.

# Exhibit G



**Federal Deposit Insurance Corporation**

550 17th Street, NW, Washington, DC 20429-9990

Legal Division

January 29, 2024

Josh Shear  
History Associates Incorporated  
300 N Stonestreet Avenue  
Rockville, Maryland 20850

RE: FDIC FOIA Log Number 2023-FDIC-FOIA-00394

Dear Mr. Shear:

This is in response to your March 31, 2023 Freedom of Information Act (FOIA) request for:

1. All documents and communications, both written and electronic, exchanged between members of the FDIC Board of Directors and/or FDIC staff members, including, but not limited to staff of the Division of Administration, Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, Division of Finance, Division of Information Technology, Division of Insurance and Research, Division of Resolutions and Receiverships, Division of Risk Management Supervision, the Legal Division, Office of Communications, Office of Legislative Affairs, Office of Risk Management and Internal Controls, and Office of Inspector General, and staff of the following federal and state agencies:
  - a. U.S. Department of the Treasury
  - b. Office of the Comptroller of the Currency
  - c. Securities and Exchange Commission
  - d. United States Federal Reserve System
  - e. National Economic Council
  - f. U.S. Department of Justice Office of the Attorney General
  - g. New York State Department of Financial Services
  - h. California Department of Financial Protection and Innovation
2. That refers, relates, or discusses the blog post authored by Brian Deese, Arati Prabhakar, Cecilia Rouse, and Jake Sullivan and published by the White House National Economic Council on January 27, 2023, entitled "The Administration's Roadmap to Mitigate Cryptocurrencies' Risks," and available at the following link:  
<https://www.whitehouse.gov/nec/briefing-room/2023/01/27/the-administrations-roadmap-to-mitigate-cryptocurrencies-risks/>,
3. And was sent between the blog post's publication on January 27, 2023, and the date you process this request.

Although your FOIA request was broad, we reasonably interpreted the search to be for documents and communication with the FDIC Board of Directors and/or FDIC Staff who would be reasonable custodians of the requested documents and staff of the eight identified federal and state agencies.

FOIA Request 2023-FDIC-FOIA-00394  
January 29, 2024

Our records search is complete. There were no records responsive to your request.

This completes the processing of your request.

You may contact me at [acolgrove@fdic.gov](mailto:acolgrove@fdic.gov) or our FOIA Public Liaison, FDIC Ombudsman M. Anthony Lowe, at [MLowe@FDIC.gov](mailto:MLowe@FDIC.gov) or by telephone at 312-382-6777 for any further assistance and to discuss any aspect of your request. You also may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal this response by writing to the FDIC's General Counsel. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Your appeal should be addressed to the FOIA/PA Group, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Please refer to the log number and include any additional information that you would like the General Counsel to consider.

Sincerely,

Alisa Colgrove  
Government Information Specialist  
FOIA/Privacy Act Group

# Exhibit H

**From:** [Soni, Lina D.](#)  
**To:** [Harper, Nick](#); [Smith, Herbert](#); [Bond, Jonathan C.](#); [Hauptman, Aaron](#); [Scalia, Eugene](#); [Nestor, Branton](#)  
**Cc:** [Dober, Andrew J.](#); [Kurtenbach, Daniel](#); [Strippoli, Briana L.](#)  
**Subject:** History Associates v. FDIC, No. 1:24-cv-1857-ACR  
**Date:** Wednesday, February 5, 2025 5:29:18 PM  
**Attachments:** [image001.png](#)

---

**This Message Is From an External Sender**

This message came from outside your organization.

Good evening,

In compliance with the court's January 22 Minute Order to "provide any other pause letters to Plaintiff on or before February 7, 2025", the FDIC performed a further, expanded search of the FDIC's Regional Automated Document Distribution (RADD) system for communications with banks that sought to offer crypto related products or services. RADD is the FDIC system that houses supervisory communications with financial institutions, and therefore is the most reasonable place to search for documents responsive to your client's FOIA requests.

Today, the FDIC released 175 documents via the FDIC's FOIA Reading Room. This release is responsive to the court's January 22 Minute Order and History Associate's FOIA Requests. See: <https://www.fdic.gov/news/press-releases/2025/fdic-releases-documents-related-supervision-crypto-related-activities>. Specifically, today's release includes: (1) additional correspondence with 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), and (2) correspondence and other records with additional institutions beyond those 24 banks involving crypto-related activity. For your review purposes, it is our view that the records in category 1, above (pages 2 – 280 of the pdf produced in the FDIC's FOIA Reading Room) are more directly responsive to History Associate's FOIA Requests and the court's Minute Order, even though many of the communications may not use the word "pause" or similar language.

Attached is a link to today's FOIA release. See: [Correspondence Related to Crypto-Related Activities](#). If you also prefer pdf copies of the documents, please let us know and we will make them promptly available to you via Secure Release.

It is important to note that the FDIC continues to perform a quality control review of RADD. If this measure reveals any additional documents responsive to the categories enumerated above, they will be promptly reviewed, redacted and published via the FDIC's FOIA Reading Room, or sent to you in pdf format, if you prefer.



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



# Exhibit I



**Federal Deposit Insurance Corporation**

550 17th Street, NW, Washington, DC 20429-9990

Legal Division

September 5, 2024

Josh Shear  
History Associates Incorporated  
7361 Calhoun Place  
Suite 310  
Rockville, Maryland 20855

RE: FDIC FOIA Log Number 2023-FDIC-FOIA-00395

Dear Mr. Shear:

This is in response to your March 31, 2023 Freedom of Information Act (FOIA) request for:

1. All documents and communications, both written and electronic, exchanged between members of the FDIC Board of Directors and/or FDIC staff members, including, but not limited to staff of the Division of Administration, Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, Division of Finance, Division of Information Technology, Division of Insurance and Research, Division of Resolutions and Receiverships, Division of Risk Management Supervision, the Legal Division, Office of Communications, Office of Legislative Affairs, Office of Risk Management and Internal Controls, and Office of Inspector General, and staff of the following federal and state agencies:
  - a. U.S. Department of the Treasury
  - b. Office of the Comptroller of the Currency
  - c. Securities and Exchange Commission
  - d. United States Federal Reserve System
  - e. National Economic Council
  - f. U.S. Department of Justice Office of the Attorney General
  - g. New York State Department of Financial Services
  - h. California Department of Financial Protection and Innovation
2. That refers, relates, or discusses the February 23, 2023, joint statement of the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency, entitled "Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities," and available at the following link: <https://www.fdic.gov/news/press-releases/2023/pr23010a.pdf>,
3. And was sent between the publication of the joint statement on February 23, 2023, and the date you process this request.

Our records search is complete. Some of the records that we located are being released to you in part and some additional records are being referred to other agencies for their direct response to you.<sup>1</sup>

The records that are being released consist of 28 pages and can be accessed through the link in the cover email for this response. They were found to be responsive to your request and are being withheld in part. The information withheld is exempt from disclosure under FOIA Exemptions 5, 7(E), and 8, 5 U.S.C. § 552(b)(5), (b)(7)(E), and (b)(8).<sup>2</sup>

We have determined that the information should be withheld because it is reasonably foreseeable that disclosure would harm an interest protected by an exemption described in subsection (b) of the FOIA, 5 U.S.C. § 552(b).

This completes the processing of your request.

You may contact me at [acolgrove@fdic.gov](mailto:acolgrove@fdic.gov) or our FOIA Public Liaison at [FOIAPublicLiaison@fdic.gov](mailto:FOIAPublicLiaison@fdic.gov) or by telephone at (703) 562-6040 for any further assistance and to discuss any aspect of your request.

You also may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal this response by writing to the FDIC's General Counsel. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Your appeal should be addressed to the FOIA/PA Group, Legal Division, FDIC, 550 17th Street,

---

<sup>1</sup> Records that were not created by the FDIC need to be referred to the appropriate agency for review prior to a release determination. Records, consisting of 14 pages, were referred to the Federal Reserve Board (FRB) and records, consisting of 24 pages, were referred to the Department of Treasury (DOT). If you would like to check on the status of these referrals, please contact the FRB FOIA Service Center at (202) 452-3684 or the DOT Director, FOIA & Transparency, at (202) 622-0930.

<sup>2</sup> Exemption 5 permits the withholding of inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency (i.e., information protected by the deliberative process privilege). Exemption 7 requires the withholding of records or information compiled for law enforcement purposes to the extent that the production of such law enforcement records or information (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Specifically, some of the responsive records contain teleconference call information. Disclosure of this information could facilitate unauthorized access into internal FDIC systems. Exemption 8 permits the withholding of information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions.

N.W., Washington, D.C. 20429. Please refer to the log number and include any additional information that you would like the General Counsel to consider.

Sincerely,

Alisa Colgrove  
Government Information Specialist  
FOIA/Privacy Act Group

# Exhibit J

**b5,b8**

**b5,b8**



**From:** Muraywid, Sumaya A. [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=287F9E7BF7E04076B38E68889B55DC57-SUMAYA MURA]  
**Sent:** 3/1/2023 2:08:04 AM  
**To:** Kavita Jain [kavita.jain@frb.gov]; Vice, Charles A [CVice@NCUA.GOV]; Miller, Rae-Ann [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=93efe53cf1e844d7ab16645a627fc942-Rae-Ann Mil]; Bazan, Miriam [Miriam.Bazan@occ.treas.gov]  
**CC:** Bouvier, Christine M. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1635bf9443d84874868ac28351b86cc5-Christine M]; Basnett, Heather L. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9ba5db5d2da74b6baf374334ca88e6cd-Heather L.]  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)  
**Attachments:** FFIEC Accounting - Crypto related kj sm kjbio rmbio.pptx

b5

**From:** Muraywid, Sumaya A.  
**Sent:** Thursday, February 16, 2023 9:59 AM  
**To:** Kavita Jain <kavita.jain@frb.gov>; Vice, Charles A <CVice@NCUA.GOV>; Miller, Rae-Ann <RMiller@FDIC.gov>; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>  
**Cc:** Bouvier, Christine M. <CBouvier@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

b5

**From:** Muraywid, Sumaya A.  
**Sent:** Wednesday, February 15, 2023 6:33 PM  
**To:** Kavita Jain <kavita.jain@frb.gov>; Vice, Charles A <CVice@NCUA.GOV>; Miller, Rae-Ann <RMiller@FDIC.gov>; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>  
**Cc:** Bouvier, Christine M. <CBouvier@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

b5

**From:** Kavita Jain <[kavita.jain@frb.gov](mailto:kavita.jain@frb.gov)>

**Sent:** Wednesday, February 15, 2023 6:28 PM

**To:** Vice, Charles A <[CVice@NCUA.GOV](mailto:CVice@NCUA.GOV)>; Muraywid, Sumaya A. <[SMuraywid@FDIC.gov](mailto:SMuraywid@FDIC.gov)>; Miller, Rae-Ann <[RMiller@FDIC.gov](mailto:RMiller@FDIC.gov)>; Bazan, Miriam <[Miriam.Bazan@occ.treas.gov](mailto:Miriam.Bazan@occ.treas.gov)>

**Cc:** Bouvier, Christine M. <[CBouvier@FDIC.gov](mailto:CBouvier@FDIC.gov)>; Basnett, Heather L. <[HBasnett@FDIC.gov](mailto:HBasnett@FDIC.gov)>

**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

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NONCONFIDENTIAL // EXTERNAL

b5

**From:** Vice, Charles A <[CVice@NCUA.GOV](mailto:CVice@NCUA.GOV)>

**Sent:** Wednesday, February 15, 2023 9:11 AM

**To:** Muraywid, Sumaya A. <[SMuraywid@FDIC.gov](mailto:SMuraywid@FDIC.gov)>; rmiller <[rmiller@fdic.gov](mailto:rmiller@fdic.gov)>; Kavita Jain <[kavita.jain@frb.gov](mailto:kavita.jain@frb.gov)>; Bazan, Miriam <[Miriam.Bazan@occ.treas.gov](mailto:Miriam.Bazan@occ.treas.gov)>

**Cc:** Bouvier, Christine M. <[CBouvier@FDIC.gov](mailto:CBouvier@FDIC.gov)>; Basnett, Heather L. <[HBasnett@FDIC.gov](mailto:HBasnett@FDIC.gov)>

**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

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Sumaya,

Thank you for preparing this document. Looks like my input will be on topics 1 and 5. I am completely flexible regarding order of presentation/discussion.

Sincerely,



**Charles A. Vice**

Director of Financial Technology and Access

National Credit Union Administration

1775 Duke Street | Alexandria, VA 22314

Office: 703.548.2115

Cell: 703.615.2080

Email: [cvice@ncua.gov](mailto:cvice@ncua.gov)

**From:** Muraywid, Sumaya A. <SMuraywid@FDIC.gov>  
**Sent:** Tuesday, February 14, 2023 4:44 PM  
**To:** Vice, Charles A <CVice@NCUA.GOV>; rmiller <rmiller@fdic.gov>; kavita.jain@frb.gov; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>  
**Cc:** Bouvier, Christine M. <CBouvier@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>  
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**From:** Vice, Charles A <CVice@NCUA.GOV>  
**Sent:** Monday, February 13, 2023 4:38 PM  
**To:** Miller, Rae-Ann <RMiller@FDIC.gov>; kavita.jain@frb.gov; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>; Muraywid, Sumaya A. <SMuraywid@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>  
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Christine and Sumaya,

Attached is my PowerPoint for the upcoming FFIEC Accounting Conference.

Sincerely,



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1775 Duke Street | Alexandria, VA 22314  
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Email: [cvice@ncua.gov](mailto:cvice@ncua.gov)

-----Original Appointment-----

**From:** Miller, Rae-Ann <RMiller@FDIC.gov>  
**Sent:** Friday, February 10, 2023 12:56 PM  
**To:** Miller, Rae-Ann; kavita.jain@frb.gov; Bazan, Miriam; Vice, Charles A; Muraywid, Sumaya A.; Basnett, Heather L.

**Cc:** Bouvier, Christine M.

**Subject:** Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel

**When:** Monday, February 13, 2023 4:00 PM-5:00 PM (UTC-05:00) Indiana (East).

**Where:** Microsoft Teams Meeting

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Re: Discussion of panel content

**b5**

Microsoft Teams meeting

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**b7(E)**

**Or call in (audio only)**

**b7(E)**

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**b5**

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**b5**



**b5**

**b5**

**b5**

**b5**

**From:** Kavita Jain [kavita.jain@frb.gov]  
**Sent:** 2/25/2023 7:50:03 PM  
**To:** Muraywid, Sumaya A. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=287f9e7bf7e04076b38e68889b55dc57-Sumaya Mura]  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)  
**Attachments:** FFIEC Accounting - Crypto related kj sm kjbio.pptx

b5

**From:** Muraywid, Sumaya A. <SMuraywid@FDIC.gov>  
**Sent:** Friday, February 24, 2023 5:35 PM  
**To:** Kavita Jain <kavita.jain@frb.gov>  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

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**From:** Kavita Jain <kavita.jain@frb.gov>  
**Sent:** Friday, February 24, 2023 3:03 PM  
**To:** Muraywid, Sumaya A. <SMuraywid@FDIC.gov>  
**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

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**From:** Muraywid, Sumaya A. <SMuraywid@FDIC.gov>

**Sent:** Friday, February 24, 2023 10:02 AM

**To:** Kavita Jain <kavita.jain@frb.gov>

**Subject:** FW: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

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**From:** Muraywid, Sumaya A.

**Sent:** Thursday, February 16, 2023 9:59 AM

**To:** Kavita Jain <kavita.jain@frb.gov>; Vice, Charles A <CVice@NCUA.GOV>; Miller, Rae-Ann <RMiller@FDIC.gov>; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>

**Cc:** Bouvier, Christine M. <CBouvier@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>

**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

b5

**From:** Muraywid, Sumaya A.

**Sent:** Wednesday, February 15, 2023 6:33 PM

**To:** Kavita Jain <kavita.jain@frb.gov>; Vice, Charles A <CVice@NCUA.GOV>; Miller, Rae-Ann <RMiller@FDIC.gov>; Bazan, Miriam <Miriam.Bazan@occ.treas.gov>

**Cc:** Bouvier, Christine M. <CBouvier@FDIC.gov>; Basnett, Heather L. <HBasnett@FDIC.gov>

**Subject:** RE: [EXTERNAL MESSAGE] RE: Planning session: FFIEC Conference, Crypto-Related Activities – Regulatory Perspective panel (secure email)

b5

**From:** Kavita Jain <[kavita.jain@frb.gov](mailto:kavita.jain@frb.gov)>

**Sent:** Wednesday, February 15, 2023 6:28 PM

**To:** Vice, Charles A <[CVice@NCUA.GOV](mailto:CVice@NCUA.GOV)>; Muraywid, Sumaya A. <[SMuraywid@FDIC.gov](mailto:SMuraywid@FDIC.gov)>; Miller, Rae-Ann <[RMiller@FDIC.gov](mailto:RMiller@FDIC.gov)>; Bazan, Miriam <[Miriam.Bazan@occ.treas.gov](mailto:Miriam.Bazan@occ.treas.gov)>

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Re: Discussion of panel content

**b5**

Microsoft Teams meeting

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[Click here to join the meeting](#)

**b7(E)**

**Or call in (audio only)**

**b7(E)**

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# Exhibit K



**Federal Deposit Insurance Corporation**

550 17th Street, NW, Washington, DC 20429-9990

Legal Division

September 16, 2024

Josh Shear  
History Associates Incorporated  
7361 Calhoun Place  
Suite 310  
Rockville, Maryland 20855

RE: FDIC FOIA Log Number 2023-FDIC-FOIA-00393

Dear Mr. Shear:

This is in response to your March 31, 2023 Freedom of Information Act (FOIA) request for:

1. All documents and communications, both written and electronic, exchanged between members of the FDIC Board of Directors and/or FDIC staff members, including, but not limited to staff of the Division of Administration, Division of Complex Institution Supervision and Resolution, Division of Depositor and Consumer Protection, Division of Finance, Division of Information Technology, Division of Insurance and Research, Division of Resolutions and Receiverships, Division of Risk Management Supervision, the Legal Division, Office of Communications, Office of Legislative Affairs, Office of Risk Management and Internal Controls, and Office of Inspector General, and staff of the following federal and state agencies:
  - a) U.S. Department of the Treasury
  - b) Office of the Comptroller of the Currency
  - c) Securities and Exchange Commission
  - d) United States Federal Reserve System
  - e) National Economic Council
  - f) U.S. Department of Justice Office of the Attorney General
  - g) New York State Department of Financial Services
  - h) California Department of Financial Protection and Innovation
2. That refers, relates, or discusses the policy statement issued by the Federal Reserve System on February 7, 2023, "Policy Statement on Section 9(13) of the Federal Reserve Act," and available on the Federal Register website at the following link: <https://www.federalregister.gov/documents/2023/02/07/2023-02192/policy-statement-on-section-913-of-the-federal-reserve-act>,
3. And was sent between the statement's issuance on February 7, 2023, and the date you process this request.

Our records search is complete. There are no records responsive to your request.<sup>1</sup>

This completes the processing of your request.

You may contact me at [acolgrove@fdic.gov](mailto:acolgrove@fdic.gov) or our FOIA Public Liaison at [FOIAPublicLiaison@fdic.gov](mailto:FOIAPublicLiaison@fdic.gov) or by telephone at (703) 562-6040 for any further assistance and to discuss any aspect of your request.

You also may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may administratively appeal this response by writing to the FDIC's General Counsel. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Your appeal should be addressed to the FOIA/PA Group, Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Please refer to the log number and include any additional information that you would like the General Counsel to consider.

Sincerely,

Alisa Colgrove  
Government Information Specialist  
FOIA/Privacy Act Group

---

<sup>1</sup> Although we located potentially responsive documents and you agreed to pay the fee estimate, after consulting with the Federal Reserve Board, the documents were determined to be non-responsive. Accordingly, there are no fees associated with your request.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HISTORY ASSOCIATES INCORPORATED,  
7361 Calhoun Place, Suite 310  
Rockville, MD 20855,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE  
CORPORATION,  
550 17th Street, NW  
Washington, D.C. 20429,

Defendant.

Case No. [1:24-cv-1857-ACR](#)

**AMENDED COMPLAINT**

Coinbase, Inc., the largest digital-asset trading platform in the United States, retained Plaintiff History Associates Incorporated to submit a Freedom of Information Act (“FOIA”) request seeking records from the Federal Deposit Insurance Corporation (“FDIC”). The FDIC denied that request. History Associates now [brings files](#) this ~~action against~~ [amended complaint to compel](#) the FDIC to ~~compel compliance with~~ [cease its unlawful](#) FOIA [policies and practices](#).

**INTRODUCTION**

1. For ~~nearly two~~ [several](#) years, a wide array of federal financial regulators—including the Securities and Exchange Commission (“SEC”), the FDIC, and the Federal Reserve Board—have used every regulatory tool at their disposal to try to cripple the digital-asset industry. This FOIA lawsuit seeks to bring to light the FDIC’s role in that unlawful scheme.

2. In October 2023, a report by the FDIC’s own Office of Inspector General (“OIG”) revealed that the FDIC had sent letters (the “Pause Letters”) to an undisclosed number of supervised financial institutions asking them to pause crypto-related activities—indefinitely. The

OIG report criticized the Pause Letters as inconsistent with previous FDIC guidance on crypto-related activities, and it explained that the letters created a “risk that the FDIC would inadvertently limit financial institution innovation and growth in the crypto space.”

3. But there was nothing inadvertent about it. The Pause Letters ~~are~~were part of a deliberate and concerted effort by the FDIC and other financial regulators to pressure financial institutions into cutting off digital-asset firms from the banking system.

4. This playbook ~~is~~was not new. More than a decade ago, under the leadership of the same Chair, the FDIC and other agencies attempted to bully banks into terminating their relationships with payday lenders. Termed “Operation Choke Point” by the regulators, their coordinated assault on a disfavored industry was halted only after a congressional investigation and a successful lawsuit.

5. The FDIC apparently ~~has~~did not ~~learned~~learn its lesson. Together with other agencies, it ~~is now mounting~~mounted Operation Choke Point 2.0—a similar scheme designed to prevent banks from offering or engaging in digital-asset activities and to deprive the digital-asset industry of the banking services it needs (like all businesses) to operate in today’s economy. The Pause Letters ~~are~~were a critical component of that campaign.

6. Operation Choke Point 2.0, like its predecessor, ~~is~~was unlawful. It is illegal for financial regulators to coerce regulated institutions in secret to cut ties with businesses the government disfavors—particularly those outside the regulators’ jurisdiction. *See Cmty. Fin. Servs. Ass’n of Am., Ltd. v. FDIC*, 132 F. Supp. 3d 98 (D.D.C. 2015). Indeed, the Supreme Court recently confirmed ~~confirmed just weeks ago~~ that these kinds of regulatory pressure campaigns violate the most basic rights protected by the Constitution. *Nat’l Rifle Ass’n of Am. v. Vullo*, 144 S. Ct. 1316 (2024).

7. To try to pull back the curtain, Coinbase, Inc., the largest digital-asset trading platform in the United States, turned to FOIA—a statute designed “to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 361 (1976) (quotation marks omitted).

8. Coinbase retained Plaintiff History Associates to submit a FOIA request seeking copies of the Pause Letters. But even though the OIG’s report had already revealed the existence of the Pause Letters—and had even quoted from them—the FDIC refused to disclose even one word of a single letter-, saying that even if the letters existed, they would be exempt from disclosure. The FDIC then doubled down after an administrative appeal. That refusal violated the FDIC’s FOIA obligations, and History Associates brought this FOIA suit in June 2024 to compel disclosure of the Pause Letters.

~~9. History Associates brings this action to compel the FDIC to comply with FOIA.~~

9. The FDIC’s conduct before and throughout this lawsuit, combined with the FDIC’s responses to other FOIA requests submitted by History Associates and allegations from whistleblowers reported by a U.S. Senator, have raised serious concerns that FOIA violations are commonplace at the FDIC.

10. Despite this Court’s direction to produce redacted versions of the Pause Letters to History Associates (along with its *Vaughn* index), the FDIC initially refused to do so. That refusal necessitated a further order from the Court reiterating its instruction that the FDIC produce redacted Pause Letters. Yet in response, the FDIC produced heavily redacted letters that the Court described as reflecting an apparent “lack of good-faith effort in making nuanced redactions” because the FDIC “cannot simply blanket redact everything that is not an article or preposition.”



December 12, 2024 Minute Order. Those concerns prompted still another Court order mandating that the agency “make more thoughtful redactions” and be prepared to defend each one. *Id.*

11. But even then, far from resolving those concerns, the FDIC’s response only exacerbated them. The revised redacted letters the FDIC produced still appear to contain unlawful and unnecessary redactions. Moreover, the FDIC revealed that its original search (and production) was incomplete and somehow failed to uncover two letters altogether, which it belatedly produced without explaining how its original search missed them. Worse still, the FDIC disclosed that it had taken an implausibly narrow view of the scope of History Associates’ request all along and never looked for any Pause Letters the FDIC sent to banks but did not previously provide to its OIG. And at the same time, whistleblower allegations recounted by a U.S. Senator asserted that the FDIC was destroying documents—allegations the FDIC declined to answer when questioned by History Associates and was unable to refute when questioned by the Court, in part based on the FDIC’s admission that it never implemented a litigation hold for this case.

12. Ultimately, this Court agreed that the FDIC was wrong to narrowly interpret History Associates’ request and ordered the FDIC to produce all of the Pause Letters. In response to that order, the FDIC finally disclosed numerous Pause Letters that it had not previously produced, along with other related documents. As the current Acting FDIC Chair explained in an accompanying press release, those documents revealed that banks seeking FDIC clearance to engage with crypto “were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence ... to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity.” Press Release, *FDIC Releases Documents Related to Supervision of Crypto-Related Activities* (Feb. 5, 2025), <https://tinyurl.com/3t7cmaa5>. These actions, the Acting Chair explained, “sent the message

to banks that it would be extraordinarily difficult—if not impossible—to move forward. As a result, the vast majority of banks simply stopped trying.” *Id.*

13. Even after all this, the FDIC’s production *still* might be incomplete. The agency has said that it is conducting an unexplained quality control review of its FOIA database, which might reveal additional documents.

14. The FDIC’s most recent production underscores the extent of its prior recalcitrance and the vital importance of rigorous enforcement of FOIA. And History Associates’ experience with other previously filed FOIA requests confirms that the FDIC’s misconduct here is not a one off. Instead, the FDIC appears to employ a number of unlawful FOIA policies and practices designed to avoid its obligation to disclose governmental records to the public. History Associates brings this action to compel the FDIC to produce all documents responsive to History Associates’ requests and to enjoin the FDIC’s unlawful FOIA policies or practices.

## PARTIES

~~10:15.~~ Plaintiff History Associates Incorporated is a nationally recognized research and analysis consultancy with expertise in obtaining records through federal FOIA requests, state and local Freedom of Information Law requests, and other sunshine laws. Over the past two years, History Associates has filed fourteen FOIA requests to the FDIC on behalf of Coinbase seeking information related to digital assets. Nine of those requests remain pending.

~~11:16.~~ Defendant the FDIC is an agency of the federal government within the meaning of FOIA, 5 U.S.C. § 552(f), and is in possession or control of the agency records sought here.

## RELATED PARTIES

~~12:17.~~ Coinbase, Inc. is the largest and only publicly traded digital-asset trading platform in the United States. It is also a leading provider of financial infrastructure and technology for the crypto economy.

## JURISDICTION AND VENUE

~~13.18.~~ This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

~~14.19.~~ Venue is proper in this District under 5 U.S.C. § 552(a)(4)(B), which allows a FOIA suit to be brought in “the district court of the United States ... in the District of Columbia.” Venue is also proper under 28 U.S.C. § 1391(e) because the FDIC resides in the District of Columbia.

## BACKGROUND

~~15.20.~~ For the second time in a decade, the FDIC is using its supervisory authority to pressure financial institutions into denying financial services to industries the agency disfavors.

### **A. The FDIC And Other Regulators Implemented Operation Choke Point To Try To Shut Down Payday Lenders**

~~16.21.~~ Around the time Chair Gruenberg took office in 2011, the FDIC, in coordination with the Department of Justice and other federal financial regulators, began leveraging its supervisory authority over financial institutions to “get at payday lending” and other industries that the FDIC does not regulate. *See* Staff of H. Comm. on Oversight & Gov’t Reform, 113th Cong., *Federal Deposit Insurance Corporation’s Involvement in “Operation Choke Point,”* at 9 (Dec. 8, 2014) (“Staff Oversight FDIC Report”), <https://tinyurl.com/yjsdb6fr>. As a congressional staff report detailed, “senior policymakers in FDIC headquarters oppose[d] payday lending on personal grounds, and attempted to use FDIC’s supervisory authority to prohibit the practice.” *Id.* at 8.

~~17.22.~~ To that end, the FDIC issued both formal and informal regulatory guidance labeling as “high-risk merchants” payday lenders and other industries the agency disfavored, thereby pressuring banks not to do business with them. FDIC, Supervisor Insights, Managing Risks in Third-Party Payment Processor Relationships at 3, 11 (2011). The FDIC “provided no explanation

or warrant for the ... ‘high-risk’” designations. Staff of H. Comm. on Oversight & Gov’t Reform, 113th Cong., *The Department of Justice’s “Operation Choke Point”: Illegally Choking Off Legitimate Businesses?*, at 8 (May 29, 2014) (“Staff Oversight DOJ Report”), <https://tinyurl.com/359t7y83>.

~~18.23.~~ The FDIC combined that guidance with threats to exercise its enforcement discretion unfavorably towards banks that continued to serve payday lenders and other targeted merchants. A former FDIC Chairman dubbed these actions an “attack on [the] market economy.” Staff Oversight DOJ Report at 2 (quoting William Isaac, *Operation Choke Point: Way Out of Control*, Am. Banker (Mar. 21, 2014)).

~~19.24.~~ These kinds of government coercion campaigns are unlawful, but they are unfortunately and predictably effective—particularly in the banking industry. The close regulatory supervision the government exercises over banks and the reputational damage that a bank suffers from a government investigation—let alone actual enforcement measures—give financial regulators enormous power to force banks to refrain from perfectly lawful conduct that regulators nevertheless want to eradicate for personal or political reasons.

~~20.25.~~ In one recent case, for example, the head of the New York Department of Financial Services allegedly succeeded in pressuring financial institutions to stop doing business with a disfavored industry by merely sending letters “point[ing] to the ‘social backlash’ against” that industry and “encourag[ing]” “prompt actions” to manage the “reputational risks” of doing business with the industry. *Vullo*, 144 S. Ct. at 1324.

~~21.26.~~ It is no surprise, then, that the original Operation Choke Point was effective. The government knew “that banks would be ‘sensitive’ to the risk of federal investigation,” and thus

capitulate. Staff Oversight DOJ Report at 9. And that is exactly what happened: Banks big and small closed the accounts of payday lenders. *Id.* at 6.

22-27. The FDIC halted Operation Choke Point only reluctantly when brought to heel by the public, Congress, and litigation. In 2013, following public reporting on Operation Choke Point, Congress began investigating the program and the FDIC’s involvement. Staff Oversight FDIC Report at 17. Using information obtained through the congressional oversight, the targeted industries eventually gathered enough evidence to file a lawsuit challenging Operation Choke Point as a violation of due process and the Administrative Procedure Act. *See Cmty. Fin. Servs. Ass’n*, 132 F. Supp. 3d at 105.

23-28. Only after the district court refused to dismiss the industry’s lawsuit—and after a change in Administration—did the government settle the case and officially end Operation Choke Point.

## **B. The FDIC And Other Regulators ~~Are Implementing~~Implement Operation Choke Point 2.0 To Try To Shutter The Digital-Asset Industry**

24-29. ~~Now~~Over the last few years, again under the leadership of ~~then~~-Chair Gruenberg, the FDIC ~~has~~ returned to its old ways. The FDIC ~~is~~ again ~~using~~used informal guidance and pressure tactics, in coordination with other federal regulators, to coerce banks to choke off another industry—this time the digital-asset industry.

### **1. With Coinbase’s Help, Digital Assets Have Grown Into A Transformative, Multi-Trillion-Dollar Industry**

25-30. Digital assets (also known as “cryptocurrencies,” “crypto assets,” or “tokens”) are computer code entries recorded on a blockchain. A blockchain generally is a public ledger that records digital-asset transactions on the Internet so that they can be viewed and verified by anyone with an Internet connection. A blockchain is typically decentralized, meaning in part that no single person or entity operates it.

~~26.31.~~ Bitcoin was the first blockchain and digital asset, invented in 2008. Many other blockchains and digital assets, such as Ethereum, have been created since, with capabilities well beyond peer-to-peer transfers. For example, some digital assets serve as a medium for exchange on applications, function as a digital currency, or help secure digital networks.

~~27.32.~~ Digital assets are now a mainstream part of global financial markets, with a market capitalization of around \$2 trillion and hundreds of millions of users around the world.

~~28.33.~~ Coinbase is the largest and only publicly traded digital-asset trading platform in the United States, serving millions of Americans. It was founded in 2012 to bring economic freedom worldwide by creating a more open, inclusive, and efficient financial system leveraging digital assets and blockchain technology. *See* Brian Armstrong, *Coinbase Is a Mission Focused Company*, Coinbase Blog (Sept. 27, 2020), <https://tinyurl.com/2jemesxebit.ly/4huLjR0>.

~~29.34.~~ Since its founding, Coinbase has been an industry leader in compliance and regulator engagement. Coinbase has been registered as a money-services business with the Financial Crimes Enforcement Network (FinCEN) since 2013; is a member of the federal Bank Secrecy Act Advisory Group; is licensed by the New York Department of Financial Services; and is authorized to transmit money in dozens of States. Coinbase is also a critical partner to law-enforcement agencies around the world, having trained thousands of law-enforcement agents and analysts in blockchain analytics and other cutting-edge investigative techniques.

## **2. The Federal Government Declares War On Crypto**

~~30.35.~~ Starting around 2022, federal financial regulators have taken concerted steps designed to cripple the digital-asset industry.

~~36.~~ The SEC, for example, had for years taken the position that it had at most limited authority over digital assets. But starting in 2022, the agency asserted a sweeping and untenable view of its authority over digital assets. Despite repeated entreaties from regulated parties, the

SEC has refused to explain (through rulemaking or otherwise) which digital assets it now believes are subject to the securities laws or how digital-asset firms could possibly comply with its existing, inapt rules, which a Third Circuit judge indicated may violate due process. See *Coinbase, Inc. v. SEC*, 126 F.4th 175, 204-15 (3d Cir. 2025) (Bibas, J. concurring) (“The SEC repeatedly sues crypto companies for not complying with the law, yet it will not tell them how to comply. That caginess creates a serious constitutional problem.”).

31.37. Instead, the agency has launched a scorched-earth enforcement campaign against digital-asset firms designed to run them into the ground.

32.38. Alongside the SEC’s enforcement war, other federal financial regulators ~~are implementing~~implemented an Operation Choke Point 2.0—a coordinated effort to cut off the digital-asset industry from the banking sector.

33.39. As before, the FDIC ~~is playing~~played a leading role in this sequel to Operation Choke Point. Along with other banking regulators, the FDIC ~~has~~ issued a series of informal guidance documents describing the purported risks of banking the crypto industry. *See, e.g.*, FDIC, Financial Institution Letter 16-2022: Notification of Engaging in Crypto-Related Activities (Apr. 7, 2022); Federal Reserve, FDIC, & OCC, *Joint Statement on Crypto-Asset Risks to Banking Organizations* (Jan. 3, 2023), <https://tinyurl.com/37a3vyst>; Federal Reserve, FDIC, & OCC, *Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities* (Feb. 23, 2023), <https://tinyurl.com/36yve8b7>. The FDIC also reportedly “told several banks to cap deposits from crypto companies.” Veronica Irwin, *Regulators Are Limiting Banks Serving Crypto Clients. Does That Violate the Law?* Unchained (Oct. 8, 2024), <https://tinyurl.com/mvefreaa>.

~~34.40.~~ The FDIC ~~is~~was not alone. In 2023, for example, the Federal Reserve issued guidance effectively prohibiting state member banks from holding digital assets on their own accounts and from issuing crypto tokens. Federal Reserve, *Policy Statement on Section 9(13) of the Federal Reserve Act*, 88 Fed. Reg. 7848 (Feb. 7, 2023). And in 2022, the SEC issued Staff Accounting Bulletin No. 121 (“SAB 121”), 87 Fed. Reg. 21015 (Apr. 11, 2022), which makes it prohibitively expensive for financial institutions to hold digital assets on their balance sheets. ~~Bipartisan~~In May 2024, bipartisan majorities of both Houses of Congress ~~recently~~ voted to overturn SAB 121 under the Congressional Review Act, but the President vetoed the legislation.

~~35.41.~~ Just as in the first Operation Choke Point, moreover, the FDIC and others ~~are~~are sending a clear message that they will exercise their supervisory and enforcement powers against banks that do business with digital-asset firms. In early 2023, for example, regulators abruptly shuttered Signature Bank—a solvent bank with significant digital-asset customers—and put it into FDIC receivership. The FDIC then required the buyer of Signature Bank to give up the bank’s entire crypto business—a move that former Congressman Barney Frank, then a Signature Bank board member, said was meant “to send a message to get people away from crypto.” Ed. Bd., *Barney Frank Was Right About Signature Bank*, Wall St. J. (Mar. 20, 2023), <https://tinyurl.com/ywxdmrd4>.

### C. The FDIC Issues “Pause Letters” To Supervised Financial Institutions

~~36.42.~~ The FDIC’s Pause Letters ~~are~~were a critical component of Operation Choke Point 2.0.

~~37.43.~~ In October 2023, the FDIC’s Office of Inspector General issued a report revealing that, between March 2022 and May 2023, the FDIC sent supervised financial institutions letters asking them to cease all crypto-related activities. OIG, *FDIC Strategies Related to Crypto-Asset Risks* (Oct. 2023) (“OIG Report”), <https://tinyurl.com/3kudyyxn>.



~~38.44.~~ Quoting directly from the Pause Letters, the report stated that the letters instructed institutions to “pause all crypto asset-related activities” and to “not proceed with planned activities, pending FDIC supervisory feedback.” OIG Report at 11-12. The Pause Letters also requested information about the banks’ crypto-related activities. *Id.* at 5.

~~39. — On information and belief, the Pause Letters were form letters whose content varied minimally from one recipient to another.~~

~~40.45.~~ Although in earlier guidance the FDIC had promised to review banks’ crypto-related activities in a timely manner, the agency issued the Pause Letters without a clear timeframe for reviewing the banks’ crypto-related activities or allowing banks to un-pause their crypto-related activities. *See* OIG Report at 4, 11-13. The OIG report states that, as of August 2023, only a subset of the institutions that received a Pause Letter had received any feedback on their crypto-related activities. *Id.* And there is no indication that the FDIC has taken any steps to allow any banks to resume crypto-related activities.

~~41.46.~~ The OIG report criticized the FDIC for creating “uncertainty in the [supervisory] process,” which “creates risk that the FDIC will be viewed as not being supportive of financial institutions participating in crypto activities.” OIG Report at 13. That view, the report explained, “leads to risk that the FDIC would inadvertently limit financial institution innovation and growth in the crypto space.” *Id.*

~~42.47.~~ Halting the innovation and growth of crypto was in fact the whole point. The Pause Letters weren’t a good-faith effort to supervise the crypto-related activities of financial institutions. They were a transparent effort to stop those activities altogether—part and parcel of the FDIC’s and other regulators’ scheme to cut off digital-asset firms from necessary banking services.

43.48. Like the first Operation Choke Point, the Pause Letters and the rest of Operation Choke Point 2.0 are an unlawful scheme of government coercion. *See Cmty. Fin. Servs. Ass’n*, 132 F. Supp. 3d at 124; *Vullo*, 144 S. Ct. at 1322. ~~Yet they are having their intended effect. It has become exceedingly difficult for digital-asset firms to obtain banking services. Yet they had their intended effect.~~ Digital-asset firms “have run into widespread banking problems in recent years.” Angel Au-Yeung, *Majority of Crypto Hedge Funds Report Facing Banking Issues in Recent Years* (Dec. 20, 2024), <https://tinyurl.com/5t4kaxe7>. According to one recent report, “[o]ut of 160 crypto hedge funds, three-quarters reported issues with basic banking services over the past three years.” *Id.* (emphasis added). For example, citing “changes in the regulatory environment,” Metropolitan Commercial Bank announced in January 2023 that it was closing its digital-asset business. Press Release, *Metropolitan Bank Holding Corp. to Exit Crypto-Asset Related Vertical* (Jan. 9, 2023), <https://tinyurl.com/mv5beu52>. Before it was shut down, Signature Bank began “paring back its relationships with crypto depositors.” Rachel Louise Ensign & David Benoit, *Banks Are Breaking Up with Crypto During Regulatory Crackdown*, Wall St. J. (Feb. 16, 2023), <https://tinyurl.com/bdzkmwbk>. And banks “that kept their distance from crypto are trying even harder to stay away, closing accounts and shunning customers with potential connections to the industry.” *Id.*

#### **D. FOIA Requires Disclosure Of Government Records**

44.49. “Sunlight is said to be the best of disinfectants.” *Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam). To try to shine a light on the FDIC’s unlawful conduct, Coinbase turned to FOIA.

45.50. Congress enacted FOIA “to open agency action to the light of public scrutiny,” *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 (1989), and to “ensure an informed citizenry, vital to the functioning of a democratic society,” *John Doe Agency v. John Doe Corp.*, 493 U.S.

146, 152 (1989). FOIA ensures the transparency and accountability “needed” to “hold the governors accountable to the governed.” *John Doe Agency*, 493 U.S. at 152.

46.51. To that end, unless one of nine limited exemptions applies, FOIA requires that federal agencies release information to the public on request. 5 U.S.C. § 552(a)(3)(A).

47.52. Even if a record falls within a FOIA exemption, the agency still must disclose it unless “the agency reasonably foresees that disclosure would harm an interest protected by [the] exemption.” 5 U.S.C. § 552(a)(8)(A)(i). Moreover, when only portions of a record are exempt, the agency is required to “take reasonable steps necessary to segregate and release nonexempt information.” *Id.* § 552(a)(8)(A)(ii); *see also id.* § 552(b).

48.53. Within 20 business days of an agency’s receipt of a FOIA request, the agency must “determine ... whether to comply” with the request. 5 U.S.C. § 552(a)(6)(A)(i). The agency must “immediately notify” the requester of “such determination and the reasons therefor,” as well as “the right ... to appeal to the head of the agency” any “adverse determination.” *Id.* If an agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requestor. *Id.* § 552(a)(6)(C)(i).

49.54. When an agency violates FOIA, federal courts have the power and obligation to correct the agency’s unlawful action—and to ensure the accountability and transparency demanded by Congress. They do so by reviewing the agency’s decision de novo and “order[ing] the production of any agency records improperly withheld.” 5 U.S.C. § 552(a)(4)(B). This judicial review makes FOIA more than empty parchment: It empowers and directs courts to hold agencies to Congress’s mandate and to protect the “public right to secure such information from ... unwilling official hands.” *John Doe Agency*, 493 U.S. at 151.

**E. History Associates Requests Copies Of The Pause Letters, But The FDIC Unlawfully Denies History Associates' FOIA Request**

~~50.55.~~ Coinbase engaged Plaintiff History Associates, a nationally recognized expert in obtaining records through federal FOIA requests, to ~~request~~submit a series of requests designed to uncover Operation Chokepoint 2.0, including a request for copies of the Pause Letters.

~~51.56.~~ On November 8, 2023, History Associates submitted a FOIA request to the FDIC seeking ~~copies~~ “[c]opies of all Pause Letters ‘pause letters’ described in the OIG report.”

~~52.57.~~ On January 22, 2024, the FDIC denied History Associates' FOIA request. The FDIC provided only a conclusory explanation. It stated that the information requested, “if it exists and could be located,” would fall under Exemption 4, which applies to “trade secrets, or confidential or privileged commercial or financial information obtained from a person,” and Exemption 8, which applies to “information contained in, or related to, the examination, operating, or condition reports prepared by, on behalf of, or for the use of the FDIC in its regulation or supervision of financial institutions.” *See* 5 U.S.C. § 552(b)(4), (8).

~~53.58.~~ The FDIC further asserted, without any explanation, that “it is reasonably foreseeable that disclosure would harm an interest protected by” a FOIA exemption.

~~54.59.~~ Consistent with the FDIC's FOIA regulations, History Associates administratively appealed the FDIC's denial on March 25, 2024.

~~55.60.~~ History Associates explained that the FDIC's conclusory invocations of Exemptions 4 and 8 fell far short of meeting the agency's burden of establishing with “reasonable specificity” that the requirements of the claimed exemptions were met. *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015).

~~56.61.~~ Among other problems, History Associates explained that ~~those exemptions are inapplicable to form letters that the FDIC sent indiscriminately to a number of banks. History~~

~~Associates further explained that~~ no harm would follow from disclosing the Pause Letters. Disclosing the ~~form letters~~Pause Letters with appropriate redactions would neither reveal confidential information nor impair the FDIC's relationship with the banks it regulates. And to the extent the Pause Letters contained any bank-specific information, appropriate redactions would eliminate any harm.

~~57.62.~~ The FDIC denied History Associates' appeal on May 8, 2024. Apparently recognizing that Exemption 4 does not apply, the FDIC asserted only that the Pause Letters were "part of the examination and supervision of ... banks by the FDIC," and thus fell under Exemption 8. The FDIC further asserted that, because in its view the Pause Letters were a "type of record[]" that "would be exempt," there was no need for the FDIC to make any attempt to segregate exempt from non-exempt portions of the Pause Letters.

~~58.63.~~ Finally, the FDIC maintained that disclosing the letters would "necessarily reveal information about the particular banks that the letters were sent to and would intrude into the heart of the communications between financial institutions and their regulator." The FDIC did not ~~explain how that could be true if the Pause Letters were form letters. Nor did the FDIC~~ explain why it could not eliminate any such harm through appropriate redactions.

~~59.64.~~ Through its thinly reasoned and unlawful denial of History Associates' FOIA request, the FDIC has stonewalled Coinbase's efforts to shine a light on Operation Choke Point 2.0 and financial regulators' attempts to ~~deprive the~~cut off digital-asset ~~industry off~~firms from the banking ~~services it needs~~sector.

~~65.~~ ~~Having exhausted~~After exhausting its administrative ~~options for obtaining the~~Pause Letters remedies, History Associates ~~files this~~filed a timely suit to compel the FDIC to comply with its FOIA obligations in June 2024.

**F. The FDIC Stonewalls History Associates' FOIA Request During This Litigation**

66. In the more than six months since History Associates filed its initial complaint in this case, the FDIC has continued to delay and obfuscate.

67. After the FDIC filed its answer to History Associates' complaint, the parties filed pre-motion notices and responses, and the Court held a pre-motion conference on September 18. At the hearing, the Court ordered the FDIC to produce a "Vaughn index declaration" within 30 days and further directed that, in preparing the index, the FDIC "go through the [pause] letters ... and determine whether any part of the letter can be sent over with the rest of it redacted" "along with the declaration." ECF 25-1, at 9:7-8, 10:5, 14-18. The Court stated that, if History Associates was "not satisfied" with the FDIC's production, the Court would review in camera a "random sample" of letters to determine whether "there are redactions that could have been made such that some of the letters should go to [History Associates]." ECF 25-1, at 9:11-15, 10:11-13.

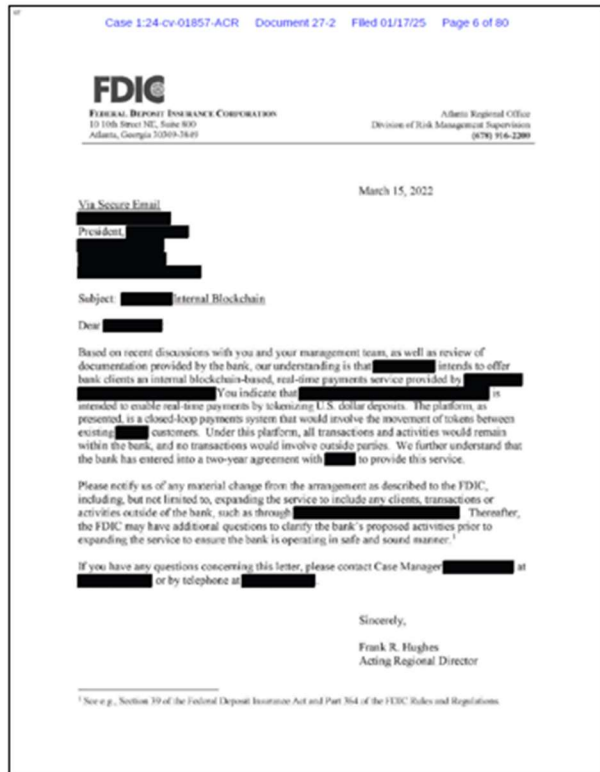
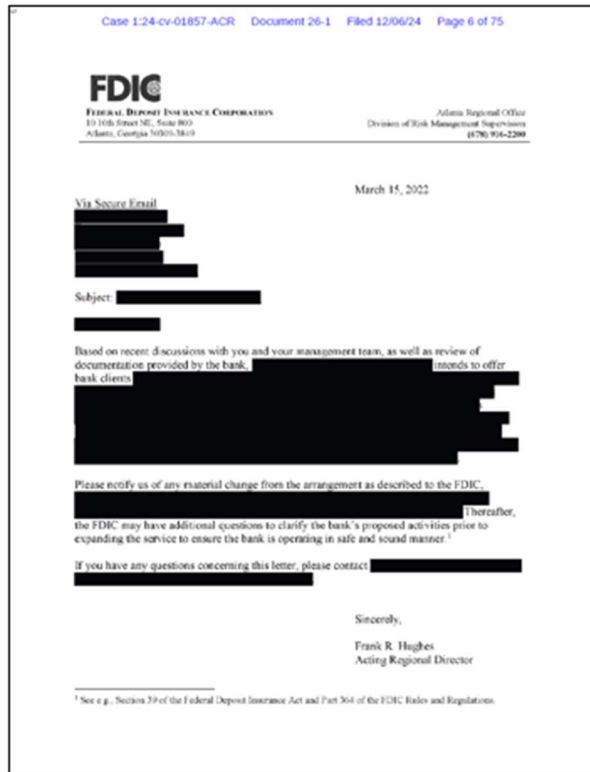
68. The FDIC failed to comply with the Court's instructions. By October 28 it had produced a *Vaughn* index but refused to produce any of the pause letters (redacted or otherwise). After attempting unsuccessfully to resolve the issue with the FDIC, History Associates was forced to seek intervention from this Court to enforce its prior order. This Court granted that request, ordering the FDIC to produce the redacted Pause Letters by November 22 "[p]ursuant to the Court's instructions at the September 18, 2024" hearing. November 4, 2024 Minute Order.

69. On November 22, the FDIC produced 23 highly redacted letters. ECF 26-1, at 2-75. The FDIC indiscriminately redacted entire paragraphs and even *pages* of some letters. *See, e.g., id.* at 45-48 (letter #16); *id.* at 52-57 (letter #18). And the FDIC redacted information that, as later came to light, ran zero risk of identifying a recipient bank or interfering with the FDIC's supervisory relationships. *See, e.g.,* ECF 27-2, at 43 (revised letter #15 revealing that prior version

of the letter redacted “the ability to buy, sell, and hold bitcoin through the Bank’s online banking website”). Unsatisfied with these redactions, History Associates requested in camera review of a subset of the pause letters.

70. On December 12, following its in camera review of four of the pause letters, this Court issued a minute order expressing “concern[] with what appears to be FDICs lack of good-faith effort in making nuanced redactions.” December 12, 2024 Minute Order. The FDIC, the Court said, “cannot simply blanket redact everything that is not an article or preposition.” *Id.* The Court ordered the FDIC to “re-review the documents, make more thoughtful redactions, and provide the new redactions to Plaintiff by January 3, 2025.” *Id.* And the Court further instructed that the FDIC “should be prepared to defend each new redaction in an ex parte discussion with the Judge.” *Id.*

71. On January 3, the FDIC produced revised redacted versions of the Pause Letters to History Associates. The letters in that production contained far fewer redactions, confirming the inadequacy of the agency’s prior production.



72. Even still, the FDIC's revised redactions (once again) appeared to violate FOIA and this Court's orders. Most of the letters still appear to redact information that is either not protected by Exemption 8 or whose disclosure would be harmless (including the identities of third-party digital-asset firms that the banks were proposing to partner with and the names of public blockchains that the banks were seeking to use).

73. Even more troubling than the FDIC's continued apparent failure to make appropriate redactions, however, its latest production brought to light serious problems with the adequacy of its searches for Pause Letters.

74. First, the revised production contains 25 Pause Letters—two more than the FDIC's initial production. According to the FDIC, the agency found the two additional Pause Letters after conducting a "second search" in response to a question from History Associates seeking clarification on whether any Pause Letters were sent after October 21, 2022—the date of the last



letter in the initial production and six months before the end of the period the OIG report described in which the FDIC sent Pause Letters. ECF 27-3, at 10. The FDIC did not explain, however, why its original search had failed to uncover these two Pause Letters or even how its first and second searches differed in scope or methodology, let alone provide any assurance that its latest search was comprehensive as FOIA requires.

75. Second, the FDIC revealed for the first time, in the course of disclosing its second search, that it had adopted an untenable misreading of the scope of History Associates' FOIA request from the start. As noted above, History Associates sought "[c]opies of all 'pause letters' described in the OIG report." When transmitting the revised Pause Letters to History Associates, however, the FDIC cryptically stated that the 25 produced letters were "all the letters *shared with* the OIG and thereby responsive to" History Associates' FOIA request. ECF 27-3, at 10. The FDIC confirmed in later correspondence and in a status report that it had adopted that narrow construction of the request all along. See ECF 27-3, at 2; ECF 28, at 2-4.

76. History Associates' FOIA request contained no such limitation. That request sought copies of any Pause Letters "described in" the OIG report, whether or not the agency provided every letter to the OIG. The OIG's report describes the "pause letters" as documents issued by the FDIC that "asked that the institutions pause from proceeding with planned activities or expanding existing activities and provide additional information." By the terms of History Associates' FOIA request, the FDIC should have searched for "all pause letters" meeting that "descr[iption]," irrespective of whether any particular letters were provided to the OIG.

77. Indeed, History Associates had no way of knowing whether there were Pause Letters the FDIC had not furnished to the OIG, and no reason to expect that possibility. Only the FDIC could know whether it had withheld any Pause Letters from the OIG. And the FDIC's

“shared with” gloss on the request is implausible; no rational FOIA requester seeking to unearth evidence of an agency’s publicly reported effort to cut off an entire industry from access to banking services would exclude from its request Pause Letters that the agency withheld from its own watchdog.

78. The FDIC never informed History Associates when processing its FOIA request or at any point until January 15, 2025—and only after repeated requests from History Associates—that it had so construed the request’s scope. Nor did the FDIC seek clarification from History Associates about whether its request encompassed Pause Letters not provided to the OIG but that fall within the OIG report’s description. The agency chose to stand on its undisclosed, jaundiced reading of History Associates’ request—bypassing the kind of cooperative clarification of FOIA requests in which other agencies often engage.

79. The agency’s never-before-articulated description of the letters it produced—those “shared with the OIG”—prompted History Associates to inquire directly whether any Pause Letters of the kind “described in” the OIG report were *not* shared with the OIG (and thus omitted from the FDIC’s search and production). In response, the FDIC revealed that it did not know because it admittedly had never searched for Pause Letters beyond those it shared with the OIG. And the agency insisted that it had no obligation to do so.

80. The agency later insisted that it had “reasonably interpreted” History Associates’ original FOIA request as seeking only letters shared with the OIG, and that any other documents are outside the scope of the request. Specifically, in a strained, post-hoc attempt to justify that interpretation, the FDIC argued that the OIG report defines the term “pause letters” to encompass only those letters that the FDIC sent banks between March 2022 and May 2023 (which apparently are the only letters the agency shared with the OIG). ECF 28 at 3. But the OIG report nowhere

mechanically defines “pause letters” in that way. Instead, the report variously uses the term “pause letters” as shorthand for letters “asking [banks] to pause, or not expand, planned or ongoing crypto-related activities”—sometimes without any accompanying date-range or number-of-recipients limitation. See *OIG Report* at 8, 11.

#### **G. Whistleblowers Allege Document Destruction At The FDIC**

81. At the same time the FDIC was stonewalling History Associates, U.S. Senator Cynthia Lummis sent a letter to the then-FDIC Chair stating that she had been informed by FDIC “whistleblowers” that “destruction of materials is occurring with respect to the digital asset activities of your agency”; that “staff access to these materials is being closely monitored by management to prevent them from being supplied to the Senate before they can be destroyed”; and “that certain staff have been threatened with legal action to prevent them from speaking out.” *Letter from Sen. Cynthia M. Lummis to Hon. Marty Gruenberg* (Jan. 16, 2025), <https://bit.ly/40Cgk1b> (“Senator Lummis Letter”).

82. Senator Lummis directed the Chair to “cease and desist destruction of all materials and end all retaliatory actions immediately” and to “preserve all existing materials, including documents, communications, electronic information and metadata, relating to the FDIC’s digital asset activities since January 1, 2022.” *Senator Lummis Letter*. Senator Lummis emphasized that “[t]his is illegal and unacceptable.” *Id.*

#### **H. This Court Instructs The FDIC To Produce All Pause Letters And Allows History Associates To Investigate Unlawful FDIC FOIA Policies Or Practices**

83. History Associates raised these issues with the Court in a status report and informed the Court that it intended to move for leave to file an amended complaint to assert FOIA policy-or-practice claims. See ECF 27, at 2, 6. The Court held a hearing on these topics on January 22.

84. At the start of that hearing, the Court asked the FDIC to “explain ... why [it] took the position [it] did with respect to the interpretation of the FOIA request, which was pretty obvious on its face not limited as [the FDIC] limited it?” Exhibit A, at 2:18-21. The FDIC responded by “request[ing] that the Court stay the case for three weeks.” *Id.* at 3:7-8. The Court declined to stay the case and asked the FDIC “[w]ho took the incredibly narrow illogical view of [History Associates’] FOIA request.” *Id.* at 3:16-17, 3:22. The FDIC was unable to answer. *Id.* at 3:23-25.

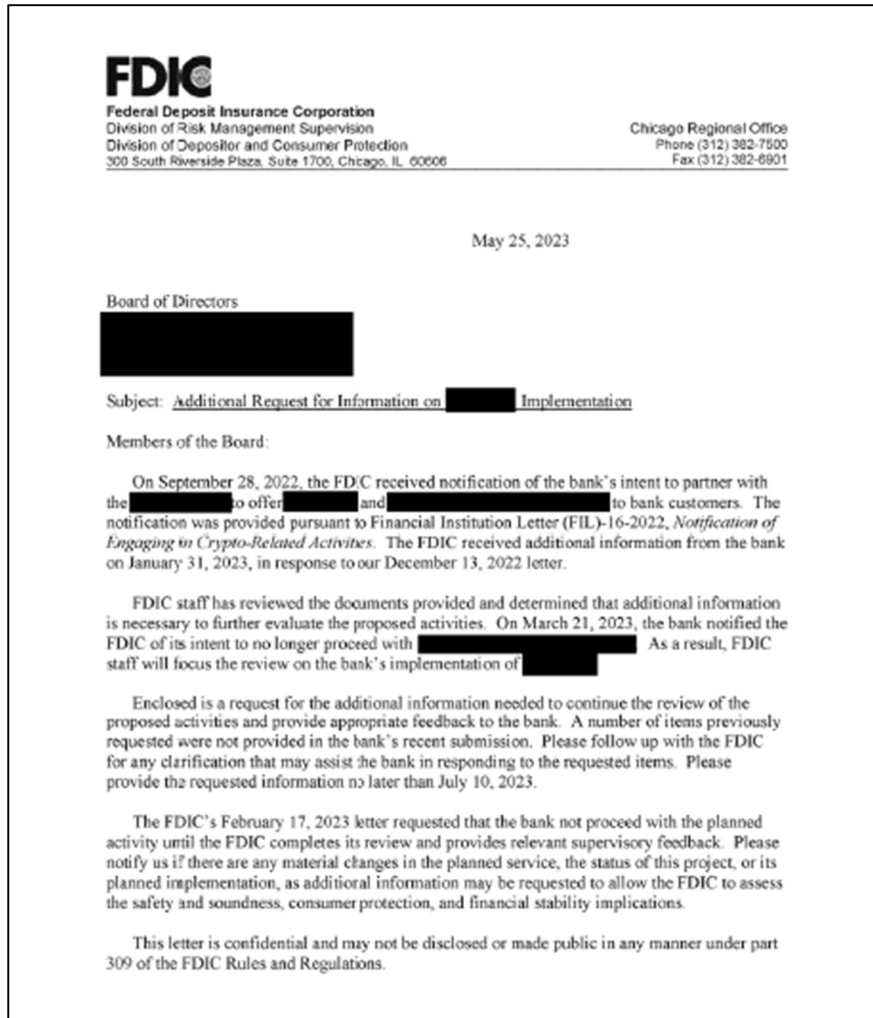
85. The Court then asked the FDIC whether “any documents whatsoever, emails, texts, hard copies, soft copies, anything sent by carrier pigeon [had] been destroyed since the issuance of the FOIA request” on November 8, 2023. Exhibit A, at 4:16-19. The FDIC could neither confirm nor substantiate that nothing had been destroyed. *See id.* at 4:24-5:1. The Court asked “[w]hen ... th[e] litigation hold [was] put in place” in this case. *Id.* at 5:14-15. The FDIC admitted that it never put a litigation hold in place—not even after History Associates filed suit. *Id.* at 5:22-24. The FDIC could not explain why it did not institute a litigation hold, and the agency admitted that it did not even undertake any investigation to determine why there was no litigation hold. *Id.* at 6:20-22.

86. The Court ordered the FDIC to produce any remaining Pause Letters by February 7. *See* Exhibit A, at 24:21-22; Jan. 22, 2025 Minute Order. It also granted History Associates’ request for leave to amend its complaint to bring policy-or-practice claims. Exhibit A, at 11:1; Jan. 22, 2025 Minute Order. And the Court suggested that a deposition of the FDIC under Rule 30(b)(6) may be appropriate and invited History Associates to move for leave to conduct such a deposition. Exhibit A, at 20:15-17, 21:20-22, 25:8-9.

**I. The FDIC’s Most Recent Production Reveals Additional Pause Letters And Still May Be Incomplete**

87. On February 5, the FDIC produced, and published in its FOIA reading room, “additional correspondence with the 24 banks that received ‘pause letters,’” as well as “correspondence and other records with additional institutions beyond those 24 banks involving crypto-related activity.” See FDIC Records—Correspondence Related to Crypto-Related Activities (Feb. 5, 2025), <https://bit.ly/4hu1Vsi> (“Feb. 5 Production”). On February 7, the FDIC notified this Court that it considered that publication to fulfill the agency’s obligation under this Court’s order. See ECF 32.

88. This partially redacted production includes numerous additional Pause Letters the FDIC had not previously produced directing that banks suspend various kinds of crypto activities—showing that the FDIC’s initial, narrow reading of History Associates’ request led to it withholding records responsive to the request. For example:



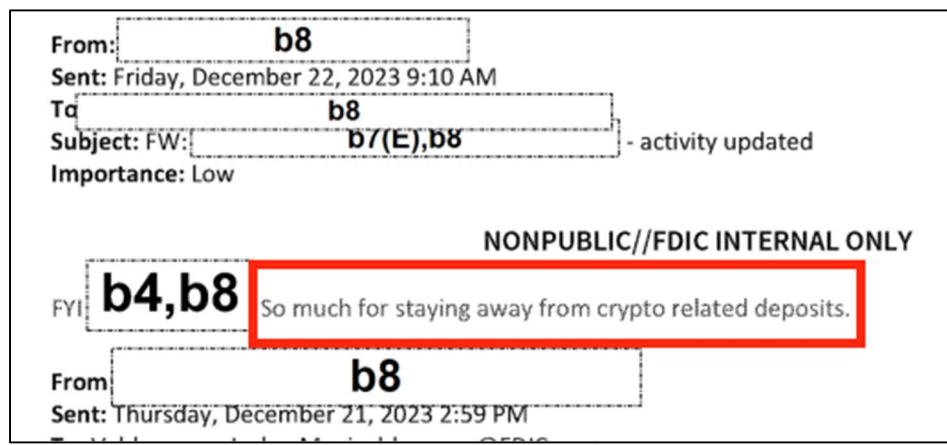
Feb. 5 Production at 37.

89. The production shows that the Pause Letters had their intended effect. As the Acting FDIC Chair explained in a press release accompanying the production:

The documents that we are releasing today show that requests from these banks were almost universally met with resistance, ranging from repeated requests for further information, to multi-month periods of silence as institutions waited for responses, to directives from supervisors to pause, suspend, or refrain from expanding all crypto- or blockchain-related activity. Both individually and collectively, these and other actions sent the message to banks that it would be extraordinarily difficult—if not impossible—to move forward. As a result, the vast majority of banks simply stopped trying.

90. The production also demonstrates that the Pause Letters were only the first step in the FDIC's regulatory pressure campaign to discourage banks from innovating in the crypto space.

When banks answered the FDIC’s first set of questions, they were often met with either a second set of questions or a regulatory visitation. Ultimately, many banks got the message and canceled their planned crypto activities. One bank, for example, after receiving a Pause Letter and then being subject to a visitation by the FDIC, terminated its crypto activities while the visitation findings were being finalized. See, e.g., Feb. 5 Production at 29-30. Other documents in the FDIC’s production show that the FDIC discouraged banks from providing even traditional banking services to crypto clients:



Feb. 5 Production at 654; see also, e.g., Feb. 5 Production at 503 (FDIC Case Manager: “the bar for being a suspicious activity is low, and that it can be reasonably assumed that many of these [crypto company] deposits would be suspicious in nature”).

91. Though the FDIC’s most recent production is more extensive than its first, its search still appears wanting in certain respects. Among other things, the FDIC has admitted that even now it does not know whether even this latest production is complete. The FDIC’s notice indicates that its database contains 9,000 documents that are not currently searchable, and thus would not turn up in the FDIC’s full-text searches. ECF 32, at 3-4. It does not explain why that is the case, how long such issues have existed, or why the FDIC did not bring this issue to the Court’s or History Associates’ attention until the agency made its production. Nor does the notice

explain why the agency did not conduct a manual review of these records, or why it did not search collaboration platforms such as Microsoft Teams. And the FDIC still has not represented to this Court that it has implemented a litigation hold. See ECF 32.

**J. History Associates’ Experience, Combined With Whistleblower Allegations, Reveal Apparent Unlawful FOIA Policies Or Practices At The FDIC**

92. The FDIC’s cumulative conduct in responding to History Associates’ FOIA request—including its initial complete withholding of the Pause Letters, its failure to produce redacted letters to History Associates despite this Court’s direction, its lack of good-faith effort in making its original redactions (as its revised redactions confirm), the failure of its original search to uncover two additional Pause Letters, its unilateral and illogical narrowing of History Associates’ request, its most recent suggestion that there may still be more responsive documents, and its failure to implement a litigation hold—raises serious concerns that there are fundamental breakdowns in the FDIC’s FOIA processes. Considered along with History Associates’ experience filing other FOIA requests with the FDIC and the public whistleblower allegations with which Senator Lummis confronted the FDIC, the FDIC’s treatment of the Pause Letters appears to be the product of several unlawful FOIA policies or practices that the FDIC employs to avoid fulfilling its FOIA obligations.

93. First, the FDIC appears to have a policy or practice of making blanket assertions that requested records are categorically subject to Exemption 8 in their entirety and so completely immune to disclosure—sometimes going so far as to refuse to confirm whether the records exist. Through that policy or practice, the FDIC systematically avoids its obligations under FOIA to search for and review records for segregable information. See 5 U.S.C. § 552(a)(8)(A).

94. For example, in response to History Associates’ request for the Pause Letters, the FDIC asserted that, “[b]y its very nature, the information that [History Associates] requested, if it



exists and could be located, would be ... information ... exempt from disclosure under”  
Exemption 8. Exhibit B. And on administrative appeal, the FDIC confirmed that “the decision to  
withhold was based upon a determination that the type of records being requested would be  
exempt, rather than making exemption determinations on a document-by-document basis.”  
Exhibit C. And as History Associates has now shown, the FDIC was refusing to disclose  
segregable portions of the letters that plainly could have and should have been disclosed with  
modest redactions.

95. The FDIC made a similar determination for a separate request filed by History  
Associates. In November 2023, History Associates requested copies of the FDIC’s Crypto Asset  
Working Group meeting minutes. Exhibit D. The FDIC responded that the meeting minutes were  
“withheld in full under FOIA Exemptions (b)(5) and (b)(8)” with no further explanation. Exhibit  
E, at 4. Upon History Associates’ administrative appeal of that decision, the FDIC remanded the  
request to the FOIA officer, but did not give the FOIA officer any instructions about how to apply  
those exemptions on remand. Exhibit F.

96. Second, the FDIC appears to have a policy or practice of narrowly construing FOIA  
requests to the point of misreading them, contrary to its statutory “duty to construe a FOIA request  
liberally.” *Nation Mag., Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir.  
1995).

97. As discussed, the FDIC unreasonably construed History Associates’ request for  
“[c]opies of all ‘pause letters’ described in” the OIG report, as a request only for copies of the  
Pause Letters shared with the OIG in preparing its report. See ECF 27-3, at 2; *supra* at 19-20.  
This Court described that as a “narrow illogical view” of History Associates’ request. Exhibit A,  
at 3:16-17. And for good reason: History Associates request was directed at learning the content

of the Pause Letters, not the scope of the OIG’s review. Beyond illogical, the FDIC’s narrow interpretation of the request was unknowable. History Associates could not know how many Pause Letters existed, and but for the FDIC’s late-breaking and cryptic description of its production, its narrow interpretation may have never been known. And as the FDIC’s latest production reveals, that narrow interpretation had real bite: It resulted in the withholding of additional Pause Letters, which the FDIC has only now produced—together with voluminous additional internal and external correspondence revealing its efforts to cut off crypto from access to banking.

98. The same sort of undisclosed and unknowable misinterpretation appears likely to have infected at least some of History Associates’ other requests. For example, in response to History Associates’ separate FOIA request for documents concerning a crypto-related blog post published by the White House National Economic Council in January 2023, the FDIC unilaterally “interpreted the search to be for documents and communication with the FDIC Board of Directors and/or FDIC Staff who would be reasonable custodians of the requested documents.” Exhibit G. But the FDIC never explained who those custodians were, leaving History Associates with no way to evaluate whether the FDIC’s sua sponte narrowing of History Associates’ request was reasonable. On the basis of its preferred version of History Associates’ request, the FDIC asserted that there “were no records responsive to [the] request.” *Id.*

99. Third, the FDIC appears to have a policy or practice of failing to search for all records within the FDIC’s custody or control, as required under FOIA. See, e.g., *McGehee v. C.I.A.*, 697 F.2d 1095, 1110 (D.C. Cir. 1983) (agency must “release documents that are in the agency’s ‘custody’ or ‘control’”); *Evans v. Fed. Bureau of Prisons*, 951 F.3d 578, 584 (D.C. Cir. 2020) (agency must make “a good faith effort to conduct a search for the requested records, using

methods which can be reasonably expected to produce the information requested”) (quotation marks omitted).

100. History Associates’ experience again illustrates such failures. With respect to its Pause-Letters request, the FDIC initially produced only 23 letters in response to this Court’s order. But when pressed by History Associates about whether that represented the full universe of Pause Letters, the agency conducted a “second search” and found two additional Pause Letters—without explaining how or why the first search had missed those letters or even how the two searches differed in scope or methodology. ECF 27-3, at 10. And even the FDIC’s most recent production may not be comprehensive until the agency completes an unexplained “quality control review” of its FOIA database. Exhibit H.

101. Moreover, in response to other digital-asset-related requests filed by History Associates, the FDIC has produced zero documents from any collaboration platforms (such as Microsoft Teams), and an implausibly low number of documents overall. For example, History Associates requested documents relating to a February 2023 joint statement issued by the FDIC and other bank regulators titled “Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities.” Exhibit I. Although this was an important FDIC policy statement, the FDIC identified only 28 pages of records (and withheld most of them). See Exhibit J.\* Similarly, the FDIC denied additional requests submitted by History Associates on the ground that it found *no* records relating to a highly publicized Federal Reserve policy statement and National Economic Council blog post on similar issues. Exhibits G, K.

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\* The FDIC recently granted History Associates’ administrative appeal regarding those withholdings.

102. Fourth, the FDIC appears to have a policy or practice of failing to take necessary steps to ensure that records responsive to FOIA requests are properly preserved, including implementing litigation holds when a FOIA suit is brought. See *U.S. ex rel Miller v. Holzmann*, 2007 WL 781941, at \*2 n.2 (D.D.C. Mar. 12, 2007) (explaining that failure to implement a litigation hold following a FOIA suit is “negligent conduct” that “should be deemed sanctionable”); see also *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009) (agency may not “intentionally transfer[] or destroy[] a document after it has been requested under FOIA”).

103. During the January 22 hearing, when asked about the allegations of document destruction, the FDIC could muster only a cursory denial based on its purported “document retention practices” and informal conversations with unspecified staff in the FDIC’s “bank supervision section,” rather than any investigation into what actually took place here. Exhibit A at 4:25, 7:1-11. The FDIC also admitted that it did not implement a litigation hold after History Associates filed its FOIA request or even after History Associates filed this FOIA lawsuit, creating a serious risk that responsive documents could be or have been inadvertently or intentionally destroyed. At a minimum, the FDIC’s failure to implement a litigation hold may make it impossible to determine definitively whether any records were destroyed. *Id.* at 6:3-6 (Court observing that “serious sanctions” may be appropriate either if “any documents were destroyed, or if we can’t figure out whether any documents were destroyed”).

104. And the risk of destruction is acute here. As discussed, a recent letter sent by Senator Cynthia Lummis to the then-FDIC chair alleges that “destruction of materials is occurring with respect to the digital asset activities of your agency.” See *supra* at ¶ 81. The FDIC has been aware of these allegations for weeks. Yet the FDIC to date has been unable to represent, in

response to direct questions from History Associates and the Court, that no documents related to History Associates' FOIA request in this case (let alone History Associates' other pending FOIA requests) have been destroyed.

~~60-105.~~ Even the notice accompanying the FDIC's most recent production does not deny that responsive records have been lost or destroyed. See ECF 32. Instead, just as at the January 22 hearing, the FDIC simply asserts that the database it searched has a "record retention schedule"—i.e., a policy that has "some exceptions" the agency does not identify but asserts (without explanation) are "not relevant here." Id. at 2. That is little better than the FDIC's generic invocation at the January 22 hearing of its unspecified "robust document retention practices." Exhibit A at 4:25. And it provides cold comfort absent any investigation to ascertain whether the agency complied with those practices here.

## COUNT I

### **Violation of FOIA, 5 U.S.C. § 552 (Unlawful Search for and Withholding of Pause Letters)**

~~61-106.~~ Plaintiffs incorporate Plaintiff incorporates by reference the allegations of the preceding paragraphs.

~~62-107.~~ The FDIC is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1).

~~63-108.~~ The Pause Letters are a record within the meaning of 5 U.S.C. § 552(f)(2).

~~64. The FDIC violated its statutory duty under 5 U.S.C. § 552(a) by withholding the Pause Letters because they are not exempt from disclosure and because, at a minimum, the FDIC could segregate portions that are not exempt from disclosure.~~

109. FOIA demands an adequate search for records. "An agency fulfills its obligations under FOIA if it can demonstrate beyond material doubt that its search was reasonably calculated

to uncover all relevant documents.” *Inst. for Just. v. IRS*, 941 F.3d 567, 569-70 (D.C. Cir. 2019) (internal citations and quotations removed).

110. On information and belief, the FDIC has conducted an inadequate search for the Pause Letters in response to History Associates’ FOIA request and the Court’s order by, among other things, failing to use appropriate search terms and search all relevant databases.

~~65.111.~~ FOIA also demands the production of non-exempt records. FOIA was designed “to open agency action to the light of public scrutiny.” *Tax Analysts*, 492 U.S. at 142. (quotation marks omitted). Its purpose is “to provide for open disclosure of public information, and it has long been understood to create a strong presumption in favor of disclosure.” *Pub. Citizen, Inc. v. Rubber Mfrs. Ass’n*, 533 F.3d 810, 813 (D.C. Cir. 2008) (citations and quotation marks omitted).

~~66.—Although disclosure obligations under FOIA are subject to certain exemptions, in light of FOIA’s “goal of broad disclosure, these exemptions have been consistently given a narrow compass.” *Tax Analysts*, 492 U.S. at 151; see also *Pub. Citizen*, 533 F.3d at 812.~~

~~67.—The FDIC on administrative appeal withheld the Pause Letters based solely on FOIA Exemption 8, but that Even if a FOIA exemption does not apply. Exemption 8 applies only to records that are “contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.” 5 U.S.C. § 552(b)(8). It “address[es] the concern that release of bank examination and operating reports could endanger the fiscal well-being of subject banks.” *Pub. Invs. Arb. Bar Ass’n v. SEC*, 771 F.3d 1, 5 (D.C. Cir. 2014) (alterations and quotation marks omitted).~~

68. — Here, the Pause Letters do not “relate[]” to any FDIC “examination, operating, or condition” report. The Pause Letters are a top-down, programmatic FDIC directive unrelated to the supervision process for each recipient bank. The FDIC does not dispute that the Pause Letters are form letters and has not attempted to show that they contain any non-trivial bank-specific information. And the subject of the Pause Letters is the FDIC’s purported concerns with digital assets, not the examination, condition, or operation of any particular bank. Moreover, the FDIC sent the Pause Letters not to *regulate or supervise* financial institutions’ digital asset services, but rather to snuff them out.

69. — Even if the Pause Letters did contain some information falling within Exemption 8, FOIA requires thean agency to produce any “reasonably segregable,” non-exempt portion of theresponsive records through appropriate redactions. 5 U.S.C. § 552(b). At a bare minimum, the agency must release the portions of the letters that the agency’s own OIG report disclosed.

70.112. 5 U.S.C. § 552(b). In addition, even if the Pause Letters fell a record is entirely within Exemption 8, the FDIC protected by an exemption, an agency must release themthe record if doing so “would not reasonably harm an exemption-protected interest and if its disclosure is not prohibited by law.” *Ctr. for Investigative Reporting v. U.S. Customs & Border Prot.*, 436 F. Supp. 3d 90, 105-06 (D.D.C. 2019); 5 U.S.C. § 552(a)(8)(A); (quotation marks omitted); 5 U.S.C. § 552(a)(8)(A). The agency bears the burden of justifying any redactions it makes to responsive records. *Inst. for Just. v. IRS*, 547 F. Supp. 3d 1, 5 (D.D.C. 2021); see also December 12, 2024 Minute Order (FDIC “should be prepared to defend each new redaction”).

71. — The FDIC’s conclusory assertion that releasing the Pause Letters would harm the supervisory process does not suffice. The FDIC must explain why these letters *in particular* would

~~cause harm. At the very least, it must explain how any harm could possibly stem from producing the Pause Letters with bank-specific information redacted.~~

113. The FDIC initially withheld the Pause Letters in full (and unlawfully) based on FOIA Exemption 8. Although the FDIC has since produced redacted versions of the Pause Letters as well as redacted versions of related documents, the agency continues to redact certain information in the Pause Letters that must be disclosed under FOIA because it is either segregable, non-exempt information or would not reasonably harm any interest protected by Exemption 8.

114. Among other things, the Pause Letters the FDIC has produced appear to unlawfully redact the identities of third-party digital-asset firms that the banks were proposing to partner with, the names of public blockchains that the banks were seeking to use, and information that was unredacted in a prior production by the agency. Disclosing that information would neither identify any of the recipient banks nor impair the FDIC's supervisory relationship with any bank.

72-115. History Associates has exhausted its administrative remedies by appealing the FDIC's adverse determination. 5 U.S.C. § 552(a)(6)(A)(ii).

73-116. By failing to release the Pause Letters, the FDIC has violated FOIA. 5 U.S.C. § 552(a)(3)(A).

## COUNT II

### Violation of FOIA, 5 U.S.C. § 552 (Unlawful FOIA Policies or Practices)

117. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

118. "FOIA authorizes a court not only to 'order the production of any agency records improperly withheld,' but also to 'enjoin the agency from withholding agency records.'" *Jud. Watch, Inc. v. U.S. Dep't of Homeland Sec.*, 895 F.3d 770, 777 (D.C. Cir. 2018) (quoting 5 U.S.C. § 552(a)(4)(B)). Thus, even if an agency ultimately produces the documents sought by a FOIA



requester, courts retain equitable authority to enjoin a “formal or informal” agency “policy or practice” that violates FOIA and “will impair the party’s lawful access to information in the future.” *Id.* (quoting *Payne Enterprises, Inc. v. United States*, 837 F.2d 486, 491 (D.C. Cir. 1988)).

119. Based on History Associates’ experience and the public whistleblower allegations, see supra ¶ 92-105, the FDIC appears to have multiple policies or practices that violate FOIA’s requirements and that have harmed and will continue to harm History Associates.

120. First, on information and belief, the FDIC has an unlawful policy or practice of applying a “categorical approach” when it asserts that records are exempt from disclosure under Exemption 8, 5 U.S.C. § 552(b)(8). Such an approach, if it were ever lawful, violates the FOIA Improvement Act of 2016, which requires agencies to “take reasonable steps necessary to segregate and release nonexempt information,” and to disclose information, even if exempt, when doing so would not “harm an interest protected by an exemption.” 5 U.S.C. § 552(a)(8)(A)(i)(I), (ii)(I)-(II). Those requirements prohibit the FDIC from asserting that a class of documents categorically can be withheld under Exemption 8. The FDIC’s policy or practice of applying a categorical approach and otherwise unlawfully withholding records under Exemption 8 thus violates FOIA.

121. Second, on information and belief, the FDIC has an unlawful policy or practice of construing FOIA requests narrowly. FOIA requires agencies to construe requests “liberally.” *National Magazine*, 71 F.3d at 890; see also *PETA v. Nat’l Institutes of Health, Dep’t of Health & Hum. Servs.*, 745 F.3d 535, 540 (D.C. Cir. 2014); *Inst. for Just.*, 941 F.3d at 572. A FOIA requester need only “reasonably describe[e]” the documents sought. 5 U.S.C. § 552(a)(3)(A). When “an agency becomes reasonably clear as to the materials desired, FOIA’s text and legislative history make plain the agency’s obligation to bring them forth.” *Truitt v. Dep’t of State*, 897 F.2d 540,

544 (D.C. Cir. 1990). The FDIC’s policy or practice of construing FOIA requests narrowly violates those requirements.

122. Third, on information and belief, the FDIC regularly fails to conduct a search reasonably calculated to uncover all responsive records within the agency’s possession or control. In responding to a FOIA request, an agency must “demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.” *Inst. for Just.*, 941 F.3d at 569-70 (internal citations and quotations removed); *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (same). An agency must search for all documents that are in the agency’s “custody” or “control.” *McGehee v. C.I.A.*, 697 F.2d 1095, 1110 (D.C. Cir. 1983). It “cannot limit its search to only one record system if there are others that are likely to turn up the information requested.” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). But the FDIC does not, on information and belief, comply with that obligation because it does not search all of its relevant databases and does not use searches designed to reveal and produce all responsive records.

123. Fourth, on information and belief, the FDIC fails to take the steps necessary to ensure that records responsive to FOIA requests are properly preserved, including implementing litigation holds when a FOIA suit is brought. An agency has a duty to implement a litigation hold once it reasonably anticipates litigation. *Holzmann*, 2007 WL 781941, at \*2 n.2. In addition, an agency may not “intentionally transfer[] or destroy[] a document after it has been requested under FOIA.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1004 (D.C. Cir. 2009); *see also Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000). The FDIC unlawfully fails to implement the litigation holds—even where, as here, a FOIA lawsuit is not just reasonably foreseeable but

has actually materialized. And that is all the more troubling in light of the FDIC's apparent practice of destroying documents it wishes to conceal. See Senator Lummis Letter.

124. History Associates has been harmed by each of the FDIC's unlawful FOIA policies or practices and will continue to be harmed in the future unless the FDIC is compelled to comply fully with FOIA's procedural requirements. See, e.g., Cause of Action Inst. v. United States Dep't of Just., 999 F.3d 696, 703 (D.C. Cir. 2021). History Associates "will suffer continuing injury from this allegedly unlawful policy" because "its business depends on continually requesting and receiving documents that the policy permits the [FDIC] to withhold." Newport Aeronautical Sales v. Dep't of Air Force, 684 F.3d 160, 164 (D.C. Cir. 2012). In addition, History Associates has pending and soon-to-be-submitted FOIA requests with FDIC that are likely to be subject to the FDIC's unlawful policies or practices. See, e.g., Tipograph v. Dep't of Just., 146 F. Supp. 3d 169, 176 (D.D.C. 2015).

125. This Court should exercise the equitable authority FOIA provides to keep the FDIC accountable to FOIA and to ensure that History Associates suffers no further harm as a result of any unlawful FDIC FOIA policies or practices.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court award the following relief:

- a. Declare that the FDIC failed to conduct an adequate search under FOIA for the Pause Letters~~or a reasonably segregable portion of those letters must be disclosed under 5 U.S.C. § 552;~~
- b. Order the FDIC to comply with FOIA by conducting searches reasonably calculated to uncover all Pause Letters by a date certain;
- ~~b. Declare that the FDIC violated FOIA by failing to produce the Pause Letters and by failing to reasonably segregate and produce to History Associates any non-exempt portions of redacting information in the Pause Letters;~~

- c. Order the FDIC to produce by a date certain the Pause Letters that is not subject to Exemption 8 and/or or reasonably segregable portions of them would not impair any interest protected by Exemption 8;
- d. Order the FDIC to produce a *Vaughn* index of unredact information in the Pause Letters already produced, as well as any responsive additional Pause Letters ultimately produced after a complete search, that is reasonably segregable and/or or would not impair any interest protected by Exemption 8;
- e. Declare that the FDIC violated FOIA by having unlawful policies or practices of:
  - (a) asserting that records or portions of are categorically exempt under Exemption 8;
  - (b) giving FOIA requests improperly narrow constructions;
  - (c) failing to conduct adequate searches reasonably calculated to uncover all records requested; and
  - (d) unlawfully failing to take the steps necessary to ensure that records responsive to FOIA requests are properly preserved;
- ~~d.f.~~ Enjoin the FDIC from continuing its unlawful policies or practices of:
  - (a) asserting that records are categorically exempt under Exemption 8;
  - (b) giving FOIA requests improperly narrow constructions;
  - (c) failing to conduct adequate searches reasonably calculated to uncover all records requested; and
  - (d) unlawfully failing to take the steps necessary to ensure that records responsive records withheld under a claim of exemption to FOIA requests are properly preserved;
- ~~e.g.~~ Retain jurisdiction over this case to ensure the FDIC's timely compliance with this Court's orders;
- ~~f.h.~~ Award History Associates its costs and attorneys' fees incurred in this action in accordance with 5 U.S.C. § 552(a)(4)(E); ~~and~~
- i. Order a special counsel investigation of the FDIC's conduct regarding the Pause Letters and the FDIC's unlawful policies or practices challenged here, under 5 U.S.C. § 552(a)(4)(F); and,
- ~~g.j.~~ Grant such other relief as this Court may deem just and proper.

Date: ~~June 27~~February 10, 20242025

—Respectfully submitted,

/s/ Eugene Scalia

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2025, I caused a true and correct copy of the foregoing Amended Complaint to be served on Defendant the Federal Deposit Insurance Corporation via electronic mail to its counsel.

/s/ Eugene Scalia  
Eugene Scalia