

WILLIAM J. OLSON, P.C.

ATTORNEYS AT LAW

370 MAPLE AVENUE WEST, SUITE 4

VIENNA, VIRGINIA 22180-5615

TELEPHONE (703) 356-5070

FAX (703) 356-5085

E-MAIL: wjo@mindspring.com

<http://www.lawandfreedom.com>

114 CREEKSIDE LANE
WINCHESTER, VA 22602-2429
TELEPHONE (540) 450-8777
FAX (540) 450-8771

WILLIAM J. OLSON
(D.C., VA.)

JOHN S. MILES
(D.C., MD., VA. OF COUNSEL)

HERBERT W. TITUS
(VA. OF COUNSEL)

JEREMIAH L. MORGAN
(CA ONLY)

April 14, 2009

(By fax to 202-872-7565)

Freedom of Information Office

Attn: Jennifer J. Johnson

Chief FOIA Officer

Board of Governors of the Federal Reserve System

20th & Constitution Avenue, N.W.

Washington, D.C. 20551

Re: Freedom of Information Act (FOIA) Request of
Gold Anti-Trust Action Committee, Inc.

Dear Ms. Johnson:

We represent Gold Anti-Trust Action Committee, Inc. ("GATA"), 7 Villa Louisa Road, Manchester, Connecticut 06043-7541. GATA submits this new request under the Freedom of Information Act ("FOIA").

We are aware that the Federal Reserve System includes other entities such as the Board of Governors, the Federal Reserve Banks, and the Federal Open Market Committee. We understand it is possible that certain of the records herein requested could be maintained by one or more of those entities, and not by the Board of Governors of the Federal Reserve System. We understand, however, that no separate FOIA request is required for those entities because you will forward any such request to the appropriate entity for processing, and that we will be advised. Please let us know if this is not correct.

GATA is a nonprofit corporation organized under the laws of Delaware, is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, and is classified as a public charity. GATA is an educational organization engaged in a variety of research and public education activities relative to economic and monetary policy, with a particular focus on the price and supply of gold. *Inter alia*, GATA attempts to monitor the policies and actions of the United States with respect to gold, and educates the public concerning governmental and nongovernmental efforts to control the price or supply of gold. (For further information on GATA, see www.gata.org.)

The records sought by GATA in this request are intended to be the basis of information released to the public, and are likely to contribute significantly to public understanding of the operations or activities of the government.

In making this request, we want to call your special attention to the message of President Obama, in his January 21, 2009 Memorandum for the Heads of Executive Departments and Agencies, and the President's following directive:

The Freedom of Information Act should be administered with a clear **presumption**: In the face of doubt, **openness** prevails..... [i]n responding to requests under the FOIA, executive branch agencies ... should act **promptly** and in a spirit of cooperation, recognizing that such agencies are servants of the public.

All agencies should adopt a **presumption in favor of disclosure**, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. [74 *Fed. Reg.*, No. 15, pp. 4683-84, (Jan. 26, 2009) (emphasis added); http://www.whitehouse.gov/the_press_office/FreedomofInformationAct/.]

We look forward to the Federal Reserve Board's processing this new request "promptly," and with a "presumption in favor of disclosure," in accordance with this Presidential directive. *See also* Attorney General Holder's Memorandum for Heads of Executive Departments and Agencies (March 19, 2009), <http://www.usdoj.gov/ag/foia-memo-march2009.pdf> (issued pursuant to the President's January 21, 2009 FOIA Memorandum, underscoring our nation's fundamental commitment to open government).

Background

GATA submitted a FOIA request to your office on December 6, 2007, seeking records in the possession or control of the Board of Governors of the Federal Reserve System relating to, explaining, denying, or otherwise mentioning "gold swaps" involving the United States of America, or any agent thereof, during the time period January 1, 1990, to December 6, 2007. In view of the new Presidential directive, GATA repeats and expands its earlier request in this new FOIA request. Thus, the present request seeks the same categories of records that GATA previously sought, although the time frame is now expanded and certain new categories of records have been added and are also being sought. Although hundreds of pages of records were produced in response to GATA's 2007 FOIA request, 137 pages of records were

withheld. In this request, GATA does not seek the records that were produced in response to its 2007 FOIA request, although it does seek, *inter alia*, the records that were denied.

We believe that the Federal Reserve Board may not have observed the principles set forth in the new Presidential directive in processing GATA's 2007 FOIA request, but we hope that it will act in accordance with those guidelines with respect to this request. We particularly want to urge the Federal Reserve Board to consider — even if a FOIA exemption technically (and/or arguably) may be assertable with respect to one or more responsive documents — discretionary release of any such documents in accordance with section 261.14(c) of the Federal Reserve Board's regulations. Due to the importance of the information being sought — the requested information relates to the confidence of the American people in the integrity nation's gold stocks — a discretionary release of such records would be in the public interest.

Moreover, if the requested records are not disclosed in full, GATA requests the Federal Reserve Board to provide a Vaughn Index of any documents completely or partially withheld, identifying the nature and date of each document, the FOIA exemption claimed, and the basis for each such claim. We understand that such an index may not be required as a matter of law at this stage of the FOIA process, but we would hope that, in the spirit of President Obama's Memorandum on FOIA referenced above, it would be provided.

Clarification

In an effort to simplify this request and avoid any possible confusion, the following instructions clarify and govern this FOIA request:

1. "Gold swaps" is defined, as that term is used by the U.S. Department of the Treasury on the Department of the Treasury website, as described below.
2. "Department of Treasury website" means www.treasury.gov.
3. "Federal Reserve Board," as used herein, means and includes the Federal Reserve Board of Governors as well as the various divisions, bureaus, and departments which are part of the Federal Reserve system.
4. "Federal Reserve Board website" means www.federalreserve.gov.
5. "Records," as used herein, means and includes, without limitation, any information that is an agency record subject to the requirements of the Freedom of Information Act, in any format, including an electronic format.

Records Request

On behalf of GATA and pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Federal Reserve Board’s implementing regulations, 12 C.F.R. § 261.1, *et seq.*, we hereby request copies of all records in the possession or control of the Federal Reserve Board relating to, explaining, denying or otherwise mentioning:

- “gold swap,”
- “gold swaps,”
- “gold swapped,”
- “proposed gold swap,”
- “proposed gold swaps,” or
- “proposed gold swapped.”

during the time period **January 1, 1990, to the date of this request** either

- (a) **involving** the United States of America, or any department, agency or agent thereof, or
- (b) **not involving** the United States of America,

Without limiting the foregoing, but in an effort to particularize certain categories of records covered by this request, we request copies of the following:

1. All records defining, in whole or in part, or explaining or referring to “gold swapped,” as that term is used in describing “official reserve assets” in the Treasury Department’s “U.S. International Reserve Position” press releases issued beginning May 14, 2007.

This series of press releases is illustrated by the most recent such release of April 14, 2009 (number 2009-4-14-14-18-49-3770), entitled “U.S. International Reserve Position” found on the Department of Treasury website, at line I.A.(4) (using the term “gold swapped”) <http://www.treas.gov/press/releases/20094141418493770.htm> (said line I.A.(4) is hereinafter referred to as “the gold swapped line-item”).

2. All records demonstrating the accuracy of “the gold swapped line-item” (*i.e.*, “gold (including gold deposits and, if appropriate, gold swapped)”) in the above-referenced press release of April 14, 2009.

3. All records defining, in whole or in part, or explaining or referring to “gold swaps” as that term is used in the following answer in “FAQs: International, Gold & Silver” section of the Department of Treasury website, at www.treas.gov/education/faq/international/goldsilver.shtml (said reference being hereinafter referred to as “the FAQ gold swap item”):

“Neither the ESF, nor the Treasury Department, nor the Federal Reserve made any gold swaps during this period.”

4. All records relied upon in making, supporting, or contradicting the above-quoted representation in the FAQ gold swap item (*i.e.*, that “Neither the ESF, nor the Treasury Department, nor the Federal Reserve made any gold swaps during this period”).

5. All records identifying, explaining, or referring to either (a) the type of transaction, or (b) specific transactions encompassed within the term “gold swapped” in the gold swapped line-item, as well as in the term “gold swaps” as used in the FAQ gold swap item.

6. All records identifying, explaining or referring to, in whole or in part, the following change in the Treasury Department’s press releases:

- Prior to May 11, 2007, the line-item accounting for United States’ gold reserves appeared as: “(4) Gold stock.” *See* Treasury Department press release of May 8, 2007, <http://www.treas.gov/press/releases/2007581342179779.htm>.
- On and after May 11, 2007, the line-item accounting for United States’ gold reserves appeared and now appears as follows: “I.A.(4) gold (including gold deposits and, if appropriate, gold swapped).”

7. All records identifying or referring to the legal authority for “gold swap,” “gold swaps,” or “gold swapped” of any kind under United States law, including any “gold swap,” “gold swaps,” or “gold swapped” that have actually occurred, or are planned for the future.

8. All records identifying or referring to the legal authority for “gold swaps” or “gold swapped” of any kind under the law of any country other than the United States, including any “gold swap,” “gold swaps,” or “gold swapped” that have actually occurred or are planned.

9. All records describing, in whole or in part, or referring to, the procedure by which “gold swap,” “gold swaps,” or “gold swapped,” whether included in the gold line-item or not,

- a. actually have taken place, or
- b. may take place in the future.

10. All records identifying, explaining, referring to, or describing, in whole or in part, any “gold swap,” “gold swaps,” or “gold swapped” involving the United States, including, but not limited to, any agent, agency, or instrumentality of the United States, that have taken place during the period January 1, 1990 to the date of this request.

11. All records identifying, explaining, referring to, or describing, in whole or in part, any “gold swap,” “gold swaps,” or “gold swapped” of any country (or political subdivision)

and/or any individual or entity that have taken place during the period January 1, 1990 to the date of this request.

12. All records identifying, explaining, describing, or referring to United States policy, including, but not limited to, the policy of the Department of the Treasury, the Federal Reserve System, and/or Federal Reserve Board of Governors, with respect to “gold swap,” “gold swaps,” or “gold swapped.”

13. All records setting out requests for information with respect to gold swaps and/or any of the matters set forth in request numbers 1-12 above, during the period January 1, 1990 to the present, including, but not limited to, (a) requests from members of Congress, (b) requests from non-U.S.-government-related persons and entities, and (c) FOIA requests other than GATA’s FOIA request of December 6, 2007.

14. All Federal Reserve Board responses to the requests referenced in request number 13.

15. All records relating to and/or mentioning the requests identified in request number 13, and all records relating to and/or mentioning the responses identified in request number 14.

16. The records withheld by the Federal Reserve Board in response to GATA’s December 6, 2007 FOIA request.

17. All records of FOIA requests submitted by other persons which requested records involving: (a) the GATA FOIA request of December 6, 2007; or (b) the records provided to GATA in response to its FOIA request of December 6, 2007 since December 6, 2007.

18. FOIA requests made by persons or entities other than GATA for records relating to “gold swap,” “gold swaps,” or “gold swapped” since January 1, 1990.

We ask that copies of the documents be mailed to the undersigned as soon as possible to the following address:

William J. Olson
William J. Olson, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615

Fee Waiver Request

We request that the search, review, and copying fees be waived as provided under section 5 U.S.C. § 552(a)(4)(A) and 12 C.F.R. § 261.17(f). As indicated above, GATA is a nonprofit organization seeking the requested records in an effort to make information available

to the public, which information is likely to contribute significantly to public understanding of the operations or activities of the government, and are not primarily in the commercial interest of GATA. The fees should be waived because release of the requested records clearly is in the public interest, and there is no question that the requested information is likely to contribute significantly to public understanding of the operations or activities of the government. Indeed, the subjects of this FOIA request are addressed by the Treasury Department on its website, which references the Federal Reserve Board and its activities (or lack thereof) with respect to gold swaps. GATA seeks more information than either the Treasury Department or the Federal Reserve Board thus far has made available, but the public interest in such information is indisputable.

The release of the requested documents is not primarily for any commercial interest or purpose, including any commercial interest of GATA. GATA has already disseminated information about the issue of gold swaps involving the United States by mail, e-mail, and through its website. It is anticipated that GATA will disseminate to the public any relevant information it obtains as a result of this request, through its website or otherwise.

If this waiver request is denied, we would appreciate an estimate of the costs involved in procuring any of the requested documents if the cost exceeds \$1,000. If the costs do not exceed \$1,000, however, we do not need an estimate, and we will guarantee payment.

Conclusion

Thank you for your prompt attention to this request. We look forward to hearing from you within 20 business days, in accordance with 12 C.F.R. § 261.13(e). As we understand it, Section 7 of the OPEN Government Act of 2007, Pub. L. 110-175, requires the Treasury Department to assign an individualized tracking number to this request, if it will take longer than ten days to process, and to provide that tracking number to us. In addition, a telephone line or Internet service must be established by the Federal Reserve Board to allow us, using that tracking number, to inquire about the status of this request, including the date on which you received it and an estimated date on which you will complete action on it. *See also* www.usdoj.gov/oip/foiapost/2008foiapost30.htm.

Sincerely yours,

William J. Olson

WJO:mm

cc: Chris Powell, Secretary
Gold Anti-Trust Action Committee

Edwin Vieira, Jr., Esquire