

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GOLD ANTI-TRUST ACTION)	
COMMITTEE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 09-2436 (ESH)
)	
BOARD OF GOVERNORS)	
OF THE FEDERAL RESERVE SYSTEM,)	
)	
Defendant.)	

DECLARATION OF WILLIAM J. OLSON

1. My name is William J. Olson. I am attorney of record for Gold Anti-Trust Action Committee, Inc. (“GATA”), the plaintiff in the above-captioned case filed against defendant, Board of Governors of the Federal Reserve System, also known as the Federal Reserve Board (“FRB”), under the Freedom of Information Act, 5 U.S.C. section 552 (“FOIA”).

2. This Declaration is submitted pursuant to Rule 56(f), Federal Rules of Civil Procedure, in support of both:

(i) GATA’s Motion for In Camera Review and Limited Discovery herein (“GATA Motion”); and

(ii) GATA’s Statement of Material Facts as to Which a Genuine Issue Exists (“GATA SOMF”), opposing Defendant’s Motion for Summary Judgment.

3. As set forth in the GATA SOMF (as well as the GATA Motion and Memorandum of Points and Authorities in Support of the GATA Motion (“GATA Mem.”)), there are significant factual issues in dispute in this case. Issues in dispute include both (i) the characterization and substance of most of the documents withheld by defendant (where *in*

camera review of those documents by this Court would be the most efficient and fair way to resolve those issues), and (ii) the adequacy of the search conducted by defendant in response to plaintiff's FOIA request (where allowing plaintiff to conduct limited discovery of defendant concerning the presence or absence of additional responsive records would be in the interest of justice).

4. Although GATA has filed a Memorandum of Points and Authorities in Opposition to the Defendant's Motion for Summary Judgment, GATA is in an unfair position with respect to evaluating both (i) the documents being withheld by FRB, as well as (ii) the search that FRB says that it conducted.

5. With respect to the documents being withheld by FRB, GATA knew virtually nothing about them until well into this litigation, and it was only with the filing of Defendant's Motion for Summary Judgment with its attachments, including a Vaughn Index and the declaration of Alison Thro describing the FRB search and discussing the various documents, that GATA had an opportunity to evaluate realistically the FRB's claim that the withheld documents are privileged under FOIA Exemptions 4 and 5.¹ As is evident from GATA's memorandum in opposition to the FRB motion, GATA does not agree — for the most part — that the documents should be exempt. As to whether some of the documents should be considered exempt — such as documents described as drafts of finalized documents that FRB has produced — it is impossible to make that determination without actually seeing the

¹ During the pendency of this litigation, but some weeks prior to filing its motion for summary judgment, defendant furnished a draft Vaughn Index — different from the one that was ultimately filed — but GATA did not find it helpful in answering many factual questions that still exist concerning withheld documents.

documents. It is GATA's belief that the fairest and most efficient way of resolving the various factual issues surrounding the documents would be for this Court to examine them, *in camera*.

6. With respect to defendant's specific representations describing the documents — which defendant claims are undisputed material facts, GATA can only respond as it has in its memorandum in opposition. It would appear, as set forth in that memorandum, that the defendant's descriptions do not warrant the claimed **FOIA exemptions under 5 U.S.C. sections 552(b)(4) and (5)**. *See* GATA Mem. Opp., pp. 24-45. In describing the documents responsive to GATA's FOIA request, defendant made judgments about what portions of those documents could be disclosed consistent with the claimed exemptions, and defendant asserts that it was “not possible to disclose any additional portions, as any releasable material was inextricably intertwined with exempt information such that disclosure would reveal the exempt information.” *See* FRB SUF ¶ 17. GATA believes that much more of the withheld documents could have been released, but obviously, since the documents have not been disclosed, it is impossible to be sure about that determination. It may be that this issue could only be resolved by *in camera* inspection of the documents themselves.

7. With respect to the **adequacy of the FRB search**, GATA has attempted, in its memorandum in opposition to FRB's motion for summary judgment, to describe the issues GATA believes exist. GATA believes that the FRB search did not encompass all sources of records reasonably likely to be responsive to GATA's request. *See* GATA Mem. Opp., pp. 14-24. GATA believes that the basis for FRB's contention that an adequate search has been conducted (*see* GATA Mem., pp. 11-24) should be probed and examined on discovery. For example, the “topic of plaintiff's FOI request” was not limited to gold swaps involving the

United States of the Federal Reserve, as alleged by defendant. *See* FRB SUF ¶ 16. GATA's FOIA request sought records concerning any gold swaps, including swaps not involving the United States. *See* Complaint, Exh. A, p. 4. It is unknown by GATA whether FRB incorrectly limited the scope of its search.

8. In addition to those issues, GATA believes that FRB has many **documents** regarding "gold swaps" — which is the subject of GATA's FOIA request — that **have not yet been identified** by FRB. That belief is supported by the declarations of Chris Powell, Adrian Douglas, and James Turk, which have been filed in support of GATA's opposition to FRB's motion for summary judgment. Each declaration describes or alludes to documents that GATA believes should have been identified by FRB if FRB has possession or control of such documents. GATA believes that FRB's knowledge about the existence and location of such documents should be probed and examined on written discovery in this action.

9. The **documents thus far disclosed** by FRB in response to GATA's 2007 FOIA request, for the most part, were correspondence between the FRB and Members of Congress and members of the public, newspaper and Internet articles, and documents from the FRB and Treasury websites, as well as a smattering of other random documents such as documents written by GATA, minutes of a meeting of the Federal Open Market Committee, a research paper not related to gold swaps, a pleading from litigation in which GATA had been involved, etc. Documents released in response to GATA's 2009 FOIA request were so heavily redacted that they are difficult to characterize. However, they appear to be FRB internal documents relating to currency swaps, how possible gold sales would affect the price of gold, and how the nation's gold could be better used. A June 9, 1997 memorandum relates to a gold swap

arrangement with an unnamed party where the Federal Reserve Bank of New York would have custody of the gold. A May 24, 2000 memorandum relates to the ability of Federal Reserve Banks to Engage in Gold Transactions. One cannot tell whether any of these documents involve gold swaps engaged in by the FRB or U.S. Treasury Department, or gold swaps engaged in by any other country in the world, the International Monetary Fund, or the Bank for International Settlements. From the little of these documents that has been disclosed (e.g., date, title, author, and a bit of text), it would appear that only a few could address issues relating to gold swaps of the sort raised in the Declarations of Messrs. Powell, Douglas and Turk in this case.

10. Of the documents currently being withheld by FRB, those identified as **Items 11, 13 and 15** in the FRB's Vaughn Index, are said to mention or involve "gold swaps," and appear to be among the types of records that GATA believes must exist in much higher numbers somewhere in the records of FRB or its personnel.

11. The discovery GATA seeks is the bare minimum that GATA believes is necessary to test the adequacy of the FRB search related to GATA's FOIA request. GATA probably could accomplish more by way of deposition of certain FRB officials, but believes, in light of normal practice in FOIA cases, that less intrusive discovery, such as by written interrogatories, would be more appropriate, at least initially. In my judgment, such discovery would be important to assist the court in evaluating GATA's claim as well as the FRB's defenses to this action.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed, this 27th day of September, 2010.



William J. Olson