

FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON
CAPITAL MARKETS AND
GOVERNMENT SPONSORED ENTERPRISES

SUBCOMMITTEE ON
MONETARY POLICY AND TRADE

Congress of the United States
House of Representatives
Washington, DC 20515-4802

July 27, 2018

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Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Honorable Jerome Powell, Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitutional Avenue, NW
Washington, DC 20551

Dear Secretary Mnuchin and Chairman Powell:

I write in response to your July 11, 2018, and July 12, 2018, letters addressing questions I raised in my April 24 letter regarding the Treasury Department's and the Federal Reserve's activities involving gold.

I appreciated the responses but a few questions were either not answered at all or not fully addressed. I also have a few follow-up questions.

1. Records in the archives of the historian of the U.S. State Department describe U.S. government policy in recent decades as aiming to drive gold out of the world financial system in favor of the Federal Reserve Note or Special Drawing Rights issued by the International Monetary Fund (IMF):

<https://history.state.gov/historicaldocuments/frus1969-76v31/d63>

Is this still U.S. government policy toward gold? If not, what *is* the U.S. government's current policy toward gold?

2. What was the policy justification for prohibiting IMF members from linking their currencies to gold? (Section 4-2b of the IMF Articles of Agreement)
3. Are the Fed and Treasury aware of the recent correlation of the gold price with the price of the Chinese yuan and the valuation of the IMF's Special Drawing Rights? Do these correlations reflect surreptitious intervention in U.S. currency markets by China and currency manipulation by China? What do the Fed and Treasury think of these correlations?
4. The response from Treasury's acting assistant secretary, Brad Bailey, addressed gold transactions between the Treasury Department / U.S. Mint and the Bank for International Settlements, Bank of England, and other central banks or governments. But Mr. Bailey did not address gold transactions by the Exchange Stabilization Fund (ESF), which the Treasury oversees.

With respect to the ESF's involvement in gold swaps, Fed General Counsel Virgil Mattingly advised the Federal Open Market Committee on their legality in 1995. Specifically, on Page 69 of the transcript of the January 31-February 1, 1995 FOMC meeting, Mattingly said:

"It's pretty clear that these ESF operations are authorized. I don't think there is a legal problem in terms of the authority. The statute is very broadly worded in terms of words like 'credit' -- it has covered things like the gold swaps -- and it confers broad authority. Counsel at the White House called the Treasury's general counsel today and asked, 'Are you sure?' And the Treasury's general counsel said, 'I am sure.' Everyone is satisfied that a legal issue is not involved, if that helps."

<https://www.federalreserve.gov/monetarypolicy/files/FOMC19950201meeting.pdf>

So I ask for a description of transactions in gold and gold derivatives by the Exchange Stabilization Fund or any other U.S. government agency, whether undertaken directly or through the Bank for International Settlements, Bank of England, other central banks, governments, or agencies or entities, governmental or non-governmental, including commercial banks or brokers. I also ask for a description of transactions in gold or gold derivatives undertaken by foreign government agencies or brokers at the urging of the U.S. government.

5. In a letter dated September 17, 2009, a copy of which is enclosed, responding to a Freedom of Information Act request about to the Fed's gold activities, Fed Board of Governors member Kevin M. Warsh said the Fed was declining to disclose information uncovered during the gold records search relating to "swap arrangements with foreign banks on behalf of the Federal Reserve System."

Given Mr. Warsh's apparent acknowledgement of the Fed's involvement in gold transactions, please explain how this reconciles with Chairman Powell's July 12, 2018, letter stating the following:

"The Federal Reserve does not, either on its own behalf or on behalf of others, including other government agencies, lend gold or silver, facilitate the lending of gold or silver, or trade in any securities, such as futures contracts and call and put options, involving gold or silver. The Federal Reserve does not engage, nor has it ever engaged, in 'gold swaps.'"

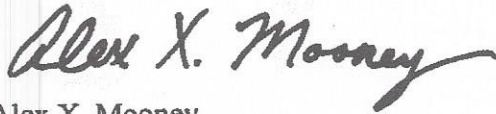
6. What markets, if any, are the Federal Reserve and the Treasury trading in, and through what mechanisms? If the Federal Reserve and Treasury are engaged in trading, what is the objective?
7. The letter from Mr. Bailey notes that the Treasury conducts an annual audit of Mint Schedules that involves "an inspection of all gold compartments and Joint Seals to verify the compartments are locked, and the seals have not been tampered with and are intact."

But an audit of Mint Schedules is neither an inventory nor an audit of our country's gold. When was the last time, if ever, that there was a complete inventory conducted of U.S. government-owned gold? What were the results of the most recent inventory?

A true audit would also review any encumbrances placed upon the metals owned by the United States. Has there been an accounting for any such encumbrances, as part of any audit, inventory, or other review? If so, when did this last occur and what were the results?

Thank you for your consideration. I look forward to receiving your complete response to these questions.

Sincerely,

A handwritten signature in dark ink, reading "Alex X. Mooney". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alex X. Mooney
Member of Congress

Cc: Acting Assistant Secretary Brad Bailey, U.S. Treasury

Enclosures: Governor Warsh's letter dated September 17, 2009
Chairman Powell's letter dated July 12, 2018
Acting Assistant Secretary Bailey's letter dated July 11, 2008
Congressman Mooney letter dated April 24, 2018



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

KEVIN M. WARSH
MEMBER OF THE BOARD

September 17, 2009

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

Dear Mr. Olson:

This is in response to your letter dated and received by the Board's Freedom of Information office on August 20, 2009, in which you appeal, on behalf of the Gold Anti-Trust Action Committee ("GATA"), pursuant to 12 CFR 261.13(i), the determination of the Secretary of the Board ("Secretary") on your request under the Freedom of Information Act ("the Act" or "FOIA"), 5 U.S.C. § 552. By letter dated April 14, 2009, you requested documents from January 1, 1990, to the date of your letter, "relating to, explaining, denying or otherwise mentioning: 'gold swap'; 'gold swaps'; 'gold swapped'; 'proposed gold swap'; 'proposed gold swaps'; or 'proposed gold swapped', either involving the United States of America, or any department, agency or agent thereof, or not involving the United States of America." Your request also includes eighteen other categories of documents, generally relating to gold swaps, including numerous documents from the Department of the Treasury ("Treasury") as well as documents relating to your near-identical FOIA request regarding gold swaps from December 6, 2007.¹

¹ Among other things, the eighteen other categories of documents requested include "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." Your request also seeks copies of all 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. The Secretary informed you that the Board has not received any FOIA requests for records requested by

received
9/21/09

Staff's search disclosed documents that were responsive to your request. By letter dated August 5, 2009, the Secretary informed you that staff had searched Board records and made suitable inquiries and found two additional documents, in addition to those that were responsive to your December 6, 2007 FOIA request. These two documents, consisting of 173 pages, were provided to you in their entirety. The Secretary informed you that all other responsive documents contained information that was exempt from disclosure under exemptions 4 and 5 of FOIA, 5 U.S.C. §§ 552(b)(4) and (b)(5), respectively. The Secretary further informed you that the documents containing the exempt information had been reviewed in accordance with subsection (b) of FOIA and that no reasonably segregable nonexempt information was found. Accordingly, 137 full pages were withheld from you, in like fashion to your earlier request.

You appealed this determination by letter dated and received by the Board's Freedom of Information office on August 20, 2009. I interpret your appeal as (1) requesting the Board to reevaluate the Secretary's determination that the claimed exemptions provide valid bases for withholding the information, (2) challenging Board staff's search in response to your request, (3) requesting that the Board provide documents originating from Treasury, (4) requesting that the Board make a discretionary release of information even if the Board determines the documents are covered by an exemption, and (5) requesting the Board to provide a Vaughn index of the withheld information.

Information in the possession of an agency is exempt from disclosure if it falls within one or more of the enumerated FOIA exemptions. See 5 U.S.C. §§ 552(b)(1)-(9). Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4). Information is exempt from disclosure if disclosure is likely either to impair the government's ability to obtain necessary information in the future or to cause substantial harm to the competitive position of the person from whom the information was obtained. See National Parks and Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

GATA or provided to GATA. The Board also has not received any subsequent requests for records pertaining to the topics listed in your request. Accordingly, the Secretary informed you that the Board does not have any records responsive to this portion of your request. I have confirmed the Secretary's determination regarding the lack of any subsequent request for records regarding gold swaps since December 2007.

In connection with your appeal, I have confirmed that the information withheld under exemption 4 consists of confidential commercial or financial information relating to the operations of the Federal Reserve Banks that was obtained within the meaning of exemption 4. This includes information relating to swap arrangements with foreign banks on behalf of the Federal Reserve System and is not the type of information that is customarily disclosed to the public. This information was properly withheld from you.

Exemption 5 of FOIA permits agencies to withhold "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." 5 U.S.C. § 552(b)(5). This exemption includes documents that embody the "deliberative process" of the agency before reaching a decision, in order to encourage honest and frank communication within the agency. See, e.g., National Wildlife Fed'n v. United States Forest Serv., 861 F.2d 114, 118-20 (9th Cir. 1988). Exemption 5, therefore, covers "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). "[E]ven factual segments of documents are protected by Exemption 5 from disclosure if the manner of selecting or presenting those facts would reveal the deliberat[ive] process, or if the facts are 'inextricably intertwined' with the policy making process." Jowett, Inc. v. Department of Navy, 729 F. Supp. 871, 877 (D.D.C. 1989). "Exemption 5 serves a number of purposes among which [is] the prevention of premature disclosure of proposed policies before they have been finally formulated or adopted." Wolfe v. Department of Health and Human Serv., 839 F.2d 768, 775 (D.C. Cir. 1988).

I have confirmed that information withheld from you under exemption 5 in this case is both predecisional and deliberative within the meaning of exemption 5. Accordingly, this information was properly withheld.

As previously noted, the Secretary provided you with 173 pages of documents responsive to your request. You state that these documents appear to be redacted. I have confirmed that these documents were provided to you as they were found in our files, without having been redacted by Board staff. These documents consist of notes for and meeting transcripts of the Federal Open Market Committee ("FOMC") and originated from individuals acting in their capacity as FOMC staff, not Board staff. The FOMC is a separate entity for FOIA purposes with its own systems of records and FOIA regulation. Any redactions were made

by FOMC staff, and Board FOIA staff received the documents in redacted form. Therefore, you may wish to contact the FOMC directly at the address below should you wish to request the unredacted portions of these documents.

Federal Open Market Committee
Carol R. Low
Secretariat Assistant
20th Street and Constitution Avenue, N.W., Mail Stop 55
Washington, D.C. 20551

With regard to these same 173 pages of documents, you also state that they were responsive to, but not produced, in response to an earlier FOIA request from GATA. You state that "this is evidence of the FRB's failure to adequately search and/or disclose responsive documents..." You also cite to a Board staff discussion paper mentioning gold swaps that you found on the internet via a Google search, and which was not disclosed in response to your initial request, as further evidence of the inadequacy of the initial search.² Failure to conduct an adequate and proper search to locate responsive records would provide a basis for an appeal, and your appeal questions the adequacy and propriety of Board staff's initial search.

The Board's Rules Regarding Availability of Information require staff to conduct, in response to an initial request under FOIA, an appropriate and reasonable search, by manual or automated means, of the Board's official files and any other files containing Board records in existence on the date of receipt of the request as seem reasonably likely in the particular circumstances to contain information of the kind requested. 12 C.F.R. § 261.2(n)(1); 12 C.F.R. § 261.13(f). Under FOIA, the Board is not required to provide copies of documents that are already in the public domain, such as on a website, and are reasonably accessible to the requester. 5 U.S.C. § 552(a)(2)-(3). In this instance, the Board staff discussion paper was posted directly to the Board's public website.³ In any case, the disclosure of additional responsive documents would not undermine the reasonableness of staff's initial search. See, e.g., Meeropol v. Meese, 790 F.2d 942, 952-953 (D.C. Cir. 1986).

² Brahim Coulibaly, "Effects of Financial Autarky and Integration: The Case of the South Africa Embargo," Board of Governors of the Federal Reserve System, International Finance Discussion Papers, No. 839, Sept. 2005.

³ <http://www.federalreserve.gov/pubs/ifdp/2005/839/ifdp839.htm>

The Secretary also informed you that you "may wish to contact Treasury directly for assistance with your request for records that originated with or are located on the Treasury website." You mistakenly assert in your appeal that this statement "acknowledges that (the Board) has copies of records 'that originated with or are located on the Treasury website.'" In fact, staff's search of Board records did not locate any such documents, and the Secretary's statement was simply to inform you of the correct agency to which you should direct that portion of your request. Accordingly, any queries relating to this portion of your request should be directed to Treasury for any documents in the possession of that agency.

With respect to your request for a descriptive index of the withheld information, it is well settled that a FOIA requester is not entitled to receive a Vaughn Index during the administrative process. See, e.g., Schwarz v. United States Dep't of Treasury, 131 F. Supp. 2d 142, 147 (D.D.C. 2000); Crooker v. CIA, No. 83-1426, slip op. At 3 (D.D.C. September 28, 1984). Accordingly, the Board is under no obligation to provide you with a Vaughn Index, and I decline to do so in connection with this appeal.

Based on a de novo review of the Secretary's decision, and on the recommendation of counsel regarding the legal issues involved, I affirm the Secretary's decision to withhold information from you under exemptions 4 and 5 of FOIA for the reasons stated above. Moreover, in light of the nature of the withheld information, it would not be appropriate to make a discretionary release of such information. Accordingly, your appeal is denied. If you believe that the Board is withholding information from you contrary to your legal rights, you may seek judicial review of my decision in an appropriate United States District Court pursuant to 5 U.S.C. § 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to be "R. M. W." with a stylized flourish at the end.