

February 28, 2023

John E. Yanish
Vice President and Deputy General Counsel
Federal Reserve Bank of Minneapolis
90 Hennepin Avenue
Minneapolis, MN 55401

LuAnne Pederson
Senior Vice President, General Counsel, and Corporate Secretary
Federal Reserve Bank of Minneapolis
90 Hennepin Avenue
Minneapolis, MN 55401

Dear Mr. Yanish and Ms. Pederson:

This is a request under the Freedom of Information Act (FOIA). Center of the American Experiment is the requestor of the information sought herein.

Please waive all fees for this request. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Reserve System and is not primarily in our commercial interest. Therefore, this request meets the criteria for a fee waiver recognized by both the U.S. Department of Justice and the federal courts.¹

You previously stated the Federal Reserve Bank of Minneapolis “is not subject to public records disclosure laws” in a letter to Michael Kaszuba with Public Record Media dated March 9, 2021. A subsequent letter dated August 2, 2021 to Mr. Kaszuba from Michele Taylor Fennel, the Deputy Associate Secretary of the Federal Reserve Board, similarly noted the Board’s “understanding that the position of the individual Reserve Banks is that they are not ‘agencies’ that are subject to the FOIA when carrying out their own authorities.”

This misinterprets the FOIA. The Reserve Banks are agencies for the purposes of applying the FOIA requirements under both 5 U.S.C. §§ 551(1) and 552(f)(1). Congress added the FOIA to the Administrative Procedures Act (APA) in 1966 to strengthen its disclosure requirements on federal agencies.² Originally, the FOIA relied entirely on the APA’s definition of agency under 5 § USC 551(1).³ Using this definition, federal courts as recently as last year have held that the Reserve Banks are federal agencies for the purposes of the APA.⁴ If there remains any ambiguity

¹ U.S. Department of Justice, “New Fee Waiver Policy Guidance,” *FOIA Update*, Vol. VIII, No. 1, January 1, 1987; *Project on Military Procurement v. Department of the Navy*, 710 F. Supp. 362, 363, 365 (D.D.C. 1989).

² *Soucie v. David*, 448 F. 2d 1067, 1072-73 (D.C. Cir. 1971).

³ *See id.* at 1073.

⁴ *Custodia Bank, Inc. v. Fed. Reserve Bd. of Governors*, No. 22-CV-125-SWS, 2022 U.S. Dist. LEXIS 205620, at *11 (D. Wyo. Nov. 11, 2022) (holding that, for purposes of Fed. R. Civ. P. 12, the bank plaintiff stated a “plausible claim that [the Federal Reserve Bank of Kansas City] is subject to the APA”) (citing approvingly *Flight Int’l Group*

under this definition, Congress passed amendments to the APA in 1974 which expanded the definition of agency beyond the original 1966 formulation to include “government controlled corporations” for the purposes of the FOIA.⁵

The Federal Reserve Banks are “government controlled corporations” based on the way federal statutes govern and tightly control how the Reserve Banks operate to support the goals of the Federal Reserve System.⁶ As the Board of Governors of the Federal Reserve System website explains, the Reserve Banks serve as the “operating arms of the Federal Reserve System”⁷ and, in this role, operate “under the supervision of the Federal Reserve Board of Governors.”⁸ The Board of Governors’ recent action requiring all regional banks to approve and adopt a new clause prohibiting employees from using their position or bank resources to influence ballot questions is case-in-point.⁹ Under this structure, the Reserve Banks clearly operate as government controlled corporations and are therefore subject to the FOIA requirements based on the definition of agency in 5 U.S.C. § 552(f)(1).

As a federal agency subject to the FOIA, please provide the following information:

- 1) All records describing or relating to the Minneapolis Fed’s lobbying, advocacy or education efforts related to the Page Amendment;¹⁰
- 2) All records describing or related to any lobbying, advocacy or education efforts of any Minneapolis Fed official or employee related to Minnesota K-12 education, including, but not limited to, the Page Amendment;
- 3) All memoranda, emails, and any other records of communication between Minneapolis Fed officials or employees and Alan Page;
- 4) All memoranda, emails, and any other records of communication between Minneapolis Fed officials or employees and the Our Children organization;

v. Fed. Reserve Bank, 583 F. Supp. 674, 677-78 (N.D. Ga. 1984) and *Lee Constr. Co. v. Fed. Reserve Bank of Richmond*, 558 F. Supp. 165, 172-79 (D. Md. 1982)).

⁵ Pub. L. 93-502 (November 21, 1974).

⁶ 5 U.S.C. § 552(f)(1). *See, e.g., Rocap v. Indiek*, 539 F.2d 174 (D.C. Cir. 1976) (holding the Federal Home Loan Mortgage Corporation (Freddie Mac) is a “government controlled corporation” under the FOIA’s expanded definition of agency).

⁷ Board of Governors of the Federal Reserve System website, “Federal Reserve Banks,” at <https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-banks.htm> (accessed on February 17, 2023).

⁸ Board of Governors of the Federal Reserve System website, “Structure of the Federal Reserve System,” at <https://www.federalreserve.gov/aboutthefed/structure-federal-reserve-system.htm> (accessed on February 17, 2023). *See also Lee Constr. Co.*, 558 F. Supp. at 179 (finding the Reserve Banks “are subject to close governmental supervision and control (by the Board)”).

⁹ Kavita Kumar, “Neel Kashkari and other Fed employees now prohibited from advocating for constitutional amendments,” *Star Tribune*, Feb. 24, 2023, available at <https://www.startribune.com/neel-kashkari-and-other-fed-employees-now-prohibited-from-advocating-for-constitutional-amendments/600254059/> (accessed on February 24, 2023).

¹⁰ The Page Amendment is the amendment proposed to the Minnesota Constitution’s Education Clause by former Minnesota Supreme Court Justice Alan Page, and promoted by Minneapolis Fed President Kashkari. *See, e.g.,* Elizabeth Shockman, “Minneapolis Fed calls for constitutional amendment to tackle education disparities,” *MPR News*, January 8, 2020, at <https://www.mprnews.org/story/2020/01/08/minneapolis-fed-calls-for-constitutional-amendment-to-tackle-education-disparities>.

- 5) All records relating to the Minneapolis Fed’s financial support of the Our Children organization;
- 6) All records related to the Minneapolis Fed Board of Directors decision to “fully” support the Minneapolis Fed work “in offering an informed view of the Page Amendment” as expressed in a letter from Srilata Zaheer to Peter Nelson, dated January 19, 2022;
- 7) Records sufficient to show the number of Minneapolis Fed officials and employees who have been engaged in activities related to the Page Amendment;
- 8) Records sufficient to show the total number of work hours that Minneapolis Fed officials and employees have spent on activities related to the Page Amendment;
- 9) All records describing or relating to whether the activities of any Minneapolis Fed officials or employees in support of the Page Amendment violate any laws, rules, regulations, or policies, including but not limited to, the Minneapolis Fed Code of Conduct; and
- 10) All records describing or relating to the information requested by Sen. Pat Toomey in a letter to Neel Kashkari, dated May 23, 2021,¹¹ including all records related to responding to this information request.

Congress expanded the definition of agency for the purposes of the FOIA in the midst of the Watergate scandal after executive branch agencies exploited several loopholes in the FOIA to keep documents hidden from public view.¹² This expanded definition particularly fits the Reserve Banks considering their unique corporate structure alongside the important and sometimes controversial role they play in setting the federal government’s monetary policy.

Now is the time for the Minneapolis Fed to lead the nation’s Reserve Banks toward a new era of transparency. Efforts to continue exploiting Watergate-era loopholes which Congress closed in 1974 can only undermine the independence and credibility of the Federal Reserve System further. To help rebuild the reputation of the Reserve Banks, please take the necessary steps to align the Minneapolis Fed’s policy with the public oversight required by the FOIA and provide the information requested here.

Sincerely,



Peter J. Nelson, Esq.
Senior Policy Fellow
Center of the American Experiment



James V. F. Dickey, Esq.
Senior Trial and Appellate Counsel
Upper Midwest Law Center

¹¹ A copy of this letter is available at https://www.banking.senate.gov/imo/media/doc/toomey_to_minneapolis_fed.pdf (accessed on February 24, 2023).

¹² United States House of Representatives website, “Historical Highlights: Amending The Freedom of Information Act,” at <https://history.house.gov/HistoricalHighlight/Detail/35741> (accessed on February 17, 2023).