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Description of document: Two (2) Federal Housing Finance Agency (FHFA) records:

- Page 4 only of Nell Minow's report from Administrative Investigation into Anonymous Hotline Complaints, 2017
- OIG Memorandum of Interview of the Chairman, Fannie Mae Board of Directors, 2017

Requested date: 24-January-2019

Release date: 05-March-2019

Posted date: 22-July-2019

Source of document: FOIA Request
Federal Housing Finance Agency
Office of Inspector General
400 7th Street, SW
8th Floor
Washington, D.C. 20219
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OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency

400 7th Street SW, Washington, DC 20219

March 5, 2019

RE: Freedom of Information Act

This letter responds to your January 24, 2019 request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, which was received by the Federal Housing Finance Agency's Office of Inspector General (FHFA-OIG) on February 06, 2019. Your request has been assigned the tracking number 2019-FOIA-00005 and seeks the following information:

I request a copy of page 4 only of Nell Minow's report (enclosed) WITH the dates that were redacted. Exemption b(6) does not apply to dates of memos.

I also request a copy of the OIG Memorandum of Interview of the Chair of Fannie Mae's Board of Directors (listed as the thirteenth item in the bulleted listing on that page).

FHFA-OIG has conducted a search and has determined that it possesses 7 pages of records responsive to your request. These are attached.

FHFA-OIG has declined the first part of your request which seeks unredacted dates on page 4 of Nell Minnow's report. We find no support in applicable precedent for your unequivocal contention that "[e]xemption (b)(6) does not apply to dates of memos[.]" and indeed, you provided none. Before posting the redacted page on its website (as part of the larger report), FHFA-OIG applied the balancing test required by exemption b(6) and concluded that (b)(6) should be applied to the dates on page 4. FHFA-OIG stands by that decision and will not release those dates in response to this request, *see National Whistleblower v. HHS*, 849 F. Supp.2d 13, 30-31 (D.D.C. 2012) ("Nothing in the language of the exemption limits such withholdings to names, social security numbers, phone numbers, and other discrete personally identifiable information. . . .").

With regard to the second part of your request which seeks the memorandum of interview, the memorandum is being provided but certain information contained in this record has been exempt and withheld under the following FOIA Exemptions:

- (b)(5), Permits withholding information under the deliberative process privilege, including the pre-decisional documents, or information that could be withheld under civil discovery, attorney-client, or attorney-work product privileges.
- (b)(6), Permits withholding of records and information about individuals when disclosure would be a clearly unwarranted invasion of personal privacy.

Non-Public

This is the final decision on your request. You may contact me for any further assistance at foia@fhfaoig.gov. 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, e-mail at 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 and believe this decision denies your request in whole or in part, you may appeal it in writing within 90 days by writing directly to the FOIA Appeals Officer via electronic mail, mail, delivery service, or facsimile. Your appeal must cite the applicable tracking number(s) for the request(s) you contend to have been denied. Your appeal must include a copy of the request(s) you contend to have been denied, a copy of the decision letter, and a statement of circumstances, reasons, or arguments you believe support disclosure of the requested record(s). Your appeal must also be clearly marked "FOIA Appeal: FHFA-OIG." The electronic mail address is: foia@fhfa.gov. For mail or delivery service, the mailing address is: FOIA Appeals Officer, Federal Housing Finance Agency, 400 7th Street, SW, Washington, DC 20219. The facsimile number is: (202) 649-1073. Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Peden" followed by a small monogram or initials.

Sheila Peden
Acting FOIA Officer
Attorney Advisor

Methodology

I conducted no fact finding in connection with this report. To render this opinion, I examined the following materials:

- Fannie Mae's Code of Conduct and Conflict of Interest Policy for Members of the Fannie Mae Board of Directors
- Fannie Mae's Code of Conduct for Fannie Mae Employees
- Fannie Mae's Conflict of Interest Policy for Fannie Mae Employees
- Fannie Mae's Conflict of Interest Procedure for Fannie Mae Employees
- Fannie Mae's Charter of the Nominating and Corporate Governance Committee of the Fannie Mae Board of Directors
- Fannie Mae Bylaws
- Fannie Mae Corporate Governance Guidelines
- FHFA regulation governing responsibilities of boards of directors, corporate practices, and corporate governance matters (12 C.F.R. § Part 1239)
- Memorandum prepared by Fannie Mae's Office of Compliance and Ethics (FM Ethics) dated (b)(6)
- (b)(6) email memorandum from FM Ethics and recusal agreement relating to (b)(6)
- Memorandum opinion by Crowell & Moring dated (b)(6) a law firm retained by Fannie Mae
- Two detailed memoranda, dated (b)(6) and (b)(6) submitted by (b)(6) personal counsel, Cadwalader, Wickersham & Taft LLP, to the Inspector General of OIG
- OIG Memorandum of Interview of the Chair of Fannie Mae's Board of Directors
- Letter dated (b)(6) from Chair of Fannie Mae's Board of Directors to the FHFA Inspector General
- OIG Memorandum of Interview of the Chair of the Fannie Mae Board's Nominating and Corporate Governance Committee
- OIG Memorandum of Interview of (b)(6)
- Emails and attachments sent to (b)(6) by Fannie Mae's FM Ethics group regarding its review of issues raised by (b)(6) disclosures
- Log entries from Fannie Mae's case management system
- Minutes and materials from (b)(6) Fannie Mae Board and committee meetings pertaining to (b)(6) and (b)(6) other Fannie Mae (b)(6)
- Statement of facts prepared by OIG and contained in OIG's Management Alert
- Documents on which that Statement of Facts is based



OFFICE OF INSPECTOR GENERAL
Federal Housing Finance Agency

400 7th Street, S.W., Washington DC 20024

(b)(6)

MEMORANDUM OF INTERVIEW

Subject: (b)(6) Chairman, Fannie Mae Board of Directors

Interviewers: Leonard J. DePasquale, Angela Choy, Kyle D. Roberts, and Richard Parker

The telephonic interview began at 10:01 AM. (b)(6) was represented by (b)(6), (b)(6), (b)(6), and (b)(6) of David Polk & Wardell LLP.

Len DePasquale (LD) introduced those present from FHFA-OIG (Richard Parker, Angela Choy, and Kyle Roberts).

LD characterized the interview as taking place in the context of an administrative inquiry into FHFA's oversight of Fannie Mae in the matter of a relationship (b)(6)

(b)(6)

(b)(6). He stipulated that neither Fanny Mae nor (b)(6) were subjects of the inquiry, and that his questions were "very simple."

LD: "When did you learn of the relationship?"

(b)(6)

I learned of it in one such conversation that I recall being in (b)(6) (b)(6) brought it to my attention about a month or so ago.

LD: "What did (b) tell you about the relationship?"

(b)(6) It was sort of matter-of-fact information. (b) was passing along that there could be some newspaper coverage of the relationship because (b)(6)

(b) also said that (b)(6) said that (b) had brought up the

nature of (b) relationship with “the Compliance Department” a few months ago, so they could do whatever was necessary, and they thought that there was no COI or potential COI.

LD: “Did (b) tell you the nature of the relationship? Did (b) say if it was a (b)(6) or (b)(6)?”

(b)(6) (b) said it was (b)(6). (b) said (b)(6), and there was a (b)(6). (b) said (b) knew (b)(6) when (b)(6) (b)(6).

LD: “Did (b) say (b) was (b)(6)?”

(b)(6) I can’t recall (b) exact words, and I didn’t consider it important. (b) could’ve said (b)(6) or (b)(6) I don’t recall.

LD: “Did (b) say when the (b)(6) of it began?”

(b)(6) No, (b) did not.

LD: “Did (b) elaborate on what (b) told the Compliance Department about the nature of the relationship?”

(b)(6) No. I pre-empted it. I said that I would reach-out to (b)(6) because (b) handles that COI/potential COI thing. It’s a staple of our BoD meetings. The Nominating and Corporate Governance Committee (NGC) had to do the job of digging with (b)(6) (b)(6) and they had to determine if there was any COI and whether (b) did what (b) had to do and whether (b) gave appropriate notice. The Fannie Mae Board has a robust policy. I put this matter in its proper home in our governance structure. I was comfortable that NGC would do its job.

LD then asked when (b)(6) contacted (b)(6) of the NGC.

(b)(6) said I had a call (b)(5) (b)(6) about ... (b)(5) (b)(5) within a few hours of my conversation with (b)(6). I put it in my calendar to do so and I did so at that time.

LD then asked (b)(6) if (b)(6) told (b)(6) that (b)(6) wanted (b)(6) to do a review to see if (b)(6) made the appropriate disclosure notice, etc. (b)(6) said that (b)(6) gave (b)(6) the details and told (b)(6) that it could come up in the press. (b)(6) I put it in the right

home. I felt that (b)(1) had made (b)(6) aware of it months ago, so there should be a trail for NGC to follow.” I asked (b)(1) to let me know if (b)(1) thought the matter should come up in front of the full Board. (b)(6) then gave me an interim notice about what NGC thought.

LD: “Did (b)(6) and the NGC do an investigation?”

(b)(6) Yes

LD: “Was outside counsel hired?”

(b)(6) I believe so, but I can’t say with certainty for what purpose. It could’ve been to see if we had the right policies and whether our conduct was consistent with them. I don’t know if NGC did that particular analysis then or at some later point in time.

LD: “Who at NGC worked on this? Were they assisted by directors and officers? [Note Fannie Mae has employees who carry the title “Director”]

(b)(6) I asked (b)(1) to work on it. Normally, the members of (b)(1) committee [(b)(6)], (b)(6) work on things collectively. “I don’t think (b)(6) ‘slices and dices’ the work. I think (b)(1) led the effort and didn’t parcel it out.” “We [referring to the Board] don’t manage the company; we provide governance.” Each committee has its own charter and responsibilities, so “I can’t tell you how the NGC functions with respect to each issue it handles.”

LD: “After the NGC investigation, was there a report?”

(b)(6) No. (b)(1) reached back to me and said we would handle it at the next BOD meeting (note: (b)(6) (b)(5) (b)(6) (b)(5))

(b)(5)

because they [NGC] reviewed email trails, conducted a transaction review, and conferred with (b)(6), and that (b)(6) gave them an opinion [that there was no COI] so we did not need to hold a special BOD meeting. (b)(6) elaborated and said that the legal department did the email review, Compliance did the transaction review, and outside counsel did the review of policies. (b)(6) (b)(1) told me that based on all of this (b)(1) thought (b)(1) did what (b)(1) needed to and NGC did what it had to do and that was it. The (b)(6) did what we would’ve wanted and expected (b)(1) to do. There was no report by the NGC sent to the Board or me.

LD: "Is there a compilation of work papers, etc., that the NGC relied upon to reach this conclusion?"

(b)(6) Yes. At our next meeting there will be a summary from (b)(6), not a formal report, but I understand that NGC documented its work to show the trail of activity and conclusions it drew. (b)(5)

LD asked about the work papers and trail of documents. Essentially, (b)(6) said that there was correspondence between Fannie Mae's Compliance Office and the NGC, the record of emails that NGC reviewed, and a transaction review. (b)(6) did not give dates around any of these documents, (b)(5) (b)(5);(b)(6) (b)(6)

(b)(6) then voiced his opinion (b)(6) (b)(6) said that (b)(6)

LD asked whether the (b)(6) relationship (b)(6) (b)(6) to Fannie Mae. (b)(6) said that, in retrospect, it has not (b)(6) (b)(6) (b)(6) (b)(5) (b)(6) (b)(5) (b)(5) (b)(6) again voiced his opinion that, (b)(6) (b)(6)

LD asked (b)(6) if (b)(6) knew that (b)(6) was authorized to do up to (b)(6) in business with Fannie Mae and was then transacting about (b)(6) in sales and servicing. (b)(6) said that (b)(6) didn't know about that but (b)(6) knew the (b)(6) counterparties and (b)(6) was somewhere in the (b)(6) (b)(6) did not know the exact number. (b)(6) (b)(6) "I was more concerned with (b)(6) direct involvement with (b)(6) transactions, and (b)(6) had none, so I was happy."

LD asked (b)(6) if (b)(6) knew whether the relationship was ongoing when (b)(6) became the (b)(6), and (b)(6) said (b)(6) didn't know.

Kyle Roberts (KR) asked (b)(6) about the application of the *Board's* code of conduct policy, which is distinct from the *employee* COI policy but applies to (b)(6) conduct as a director. The Board's code of conduct is not limited to conflicts of interest. (b)(6) commented that (b)(6) may need to review Fannie policies again. KR drew (b)(6) attention to (b)(6) of the NGC Charter and noted that the NGC's duties and responsibilities include interpretation of the COI (b)(6). A dialogue ensued among KR, LD, (b)(6) and (b)(6) wherein (b)(6) protested that (b)(6) did not have the referenced documents in front of (b)(6) to refer to and wasn't in a position to provide interpretations of the provisions in the documents. KDR explained that OIG is not asking (b)(6) to interpret the provisions; OIG is pointing (b)(6) to the operative language that reflects the NGC has responsibility for interpreting the employee COI policy (b)(6) (b)(6)

The issues discussed were whether (b)(6) should've disclosed to NGC (b)(6) relationship with (b)(6) at the time (b)(6) was appointed (b)(6), assuming the relationship was then ongoing given the plain language of the Fannie Mae Code of Conduct for Directors and Officers. Essentially, (b)(6) said that (b)(6) should've reported it if, at the time, (b)(6) believed that (b)(6) conduct constituted a COI, and that (b)(6) was not going to "Monday morning quarterback" (b)(6) decision at the time. (b)(6) said it would be appropriate to disclose to Compliance if (b)(6) thought it was an issue to disclose pursuant to policy. Whether (b)(6) takes it to NGC depends on reputational risk. There's a certain amount of judgment related to what issues should be disclosed to Compliance and what is disclosed to the Board. KR then asked (b)(6)

(b)(6)
(b)(6)

LD then asked about the appropriateness of the (b)(6) (b)(6) regarding a potential COI. He pointed out that the policy says employees are to report up, and not down. (b)(6) reiterated that the BOD "doesn't run the company. We have a compliance department. If you think you have a potential COI, then you should go to the compliance department." (b)(6) also said that if a director suspects (b)(6) has a COI (b)(6) should go to the NGC. The NGC "is designed to deal with issues of Board business, but it is advised by the compliance department."

LD asked about the provision in the Fannie Mae Code of Conduct for Members of the BOD regarding the reporting of known or suspected violations of the code. (b)(6)

(b)(6) said there is no “known” violation so the provision is not applicable. (b)(6) added that (b)(6) not sure that either of the two is applicable.

Richard Parker (RP) then asked (b)(6) to answer this question: “If the (b)(6) was having a (b)(6) relationship with a (b)(6) at the time (b)(6) was (b)(6) to be the

(b)(6)

(b)(6)